



Notice of Violation and Order to Comply

To: Commissioner
Harriman State Office Campus, Building 2
Albany, New York 12240

Inspection Site: NYSDOCCS Mid-State Correctional Facility
9005 Old River Road
Marcy, New York 13403

Inspection Number: 1557455
Inspection Date(s): 09/30/2021-03/15/2022
Issuance Date: 11/18/2022
CSHO ID: I9990

The violation(s) described in this Notice of Violation and Order to Comply is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Notice of Violation and Order to Comply (this Notice) describes violations of the Public Employee Safety and Health Act of 1980. You must abate the violations cited in this Notice by the dates listed below. An employer who wishes to file an appeal of the violation(s) cited, including but not limited to appeals which raise issues concerning the application of the cited standard(s) to the employer or to the violation(s) cited, as well as issues concerning the appropriateness of the abatement period(s), must do so within 60 days of the issuance date of this Notice by filing a petition with the Industrial Board of Appeals. Appeals of the violation(s) cited, including but not limited to appeals raising the issues listed above, will be considered time barred if not filed within the 60-day period. The details of such appeal process are set forth at 12 NYCRR Part 65 et seq and Section 101 of the Labor Law. Additional information may also be obtained from the Industrial Board of Appeals at their website: www.labor.state.ny.us/iba.

Posting - The law requires that a copy of this Notice be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Notice must remain posted until the violation(s) cited below have been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer.

Penalty Assessment - An employer that fails to correct a violation by its abatement date is subject to a PER DAY penalty assessment. We will assess a penalty of up to \$50 per day for each non-serious violation, and up to \$200 per day for each serious violation, until the violations are corrected. The penalty assessed for each violation will appear in the Failure to Abate notice.

Informal Conference - If an informal conference is requested, it must be made to the nearest PESH district office by telephone or letter, within 20 working days from the date of issuance given on this Notice.

Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the PESH district office at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (P907) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees - An employee (or an authorized employee representative) may object to the abatement date set for a violation if the employee believes the date to be unreasonable. The objection must be filed at the nearest PESH district office within fifteen (15) working days (excluding weekends and State holidays) from the posting of this Notice.



Notice of Violation and Order to Comply

Establishment: NYSDOCCS Mid-State Correctional Facility
Inspection Site: 9005 Old River Road, Marcy, New York 13403

Citation 1 Item 1

Type of Violation: **Serious**

NYSLL Article 2, Section 27-a.3.a(1): The employer did not furnish to each of its employees, employment and a place of employment which was free from recognized hazards that are causing or were likely to cause death or serious physical harm to its employees and which did not provide reasonable and adequate protection of the lives, safety or health of its employees. In applying this paragraph, fundamental distinctions between private and public employment have been recognized. The employer was in violation of the general duty clause for the following reasons:

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- On or about April 2021, employees (Sergeants, Lieutenants, Correction Officers, Office Assistants) have been exposed to illicit drugs including, but not limited to: fentanyl and its analogues, suboxone, and synthetic marijuana while searching incoming mail and packages for contraband. New York State Department of Corrections and Community Supervision Mid-State Correctional Facility did not implement sufficient controls to keep the workplace free of a hazard to which employees of that employer were exposed. Employees may be exposed to illicit drugs while searching incoming mail and packages for contraband in the mail and package rooms. Exposure to illicit drugs is known to cause sedation, confusion, drowsiness, dizziness, nausea, vomiting, urinary retention, pupillary constriction, and respiratory depression. As opioids can act quickly to depress central nervous system and respiratory function, exposure can be fatal from even minute quantities.

Feasible abatement includes the following:

- According to the NIH (National Institute of Environmental Health Sciences) an effective Exposure Control Program includes management commitment and worker involvement; hazard assessment; hazard control; environmental, administrative, personal protective equipment and respirators; decontamination; reporting and recordkeeping; training; post-exposure procedures (naloxone, etc.); plan updates; and evaluation. An effective program requires a systematic approach where a combination of engineering controls and administrative controls along with training are used.
- For mail processing, various approaches could be used including, but not limited to: portable ventilated enclosures with HEPA filtration, real time drug screening instrumentation, and digitization and electronic transmittal of mail. For package processing various approaches could be used including, but not limited to: using a secure vendor program.
- Other correctional facilities across the United States are utilizing various engineering controls and work practices to help eliminate the hazard. Examples include, but are not limited to: portable ventilation, vendor package programs, and photocopying or digitizing incoming mail before distributing it to the recipients.

Date by Which Violation Must Be Abated:

March 16, 2023



Notice of Violation and Order to Comply

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Citation 2 Item 1

Type of Violation: **Serious**

29 CFR 1910.132(l)(3)(iii): The employer did not retrain employees when inadequacies in the affected employee's use of PPE indicated the employee had not retained the requisite understanding.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not retrain employees when inadequacies in the affected employee's use of personal protective equipment (PPE) indicated the employee had not retained the requisite understanding. Affected employee (i.e., correction officers) need retraining on use of PPE as required PPE was not being used in 4 Baker.

Note: As a reminder controlling exposures to occupational hazards is the fundamental method of protecting workers. Traditionally, a hierarchy of controls has been used as a means of determining how to implement feasible and effective control solutions. The hierarchy of controls lists elimination/substitution (i.e., removing or replacing the hazard) as the most effective followed by engineering controls (i.e., isolating the hazard such as using ventilation), administrative controls/work practices (i.e., changing the way people work), and finally personal protective equipment (i.e., protecting the worker with personal protective equipment).

Date by Which Violation Must Be Abated:

April 06, 2023

Citation 2 Item 2

Type of Violation: **Serious**

29 CFR 1910.134(l)(2): Employee(s) using a tight-fitting facepiece respirator were not fit tested prior to use and at least annual thereafter.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- Correction officers, sergeants, lieutenants were not fit tested prior to use. Employees are required to wear a tight-fitting facepiece respirator (i.e., Moldex 2360 P100 particulate respirator) when responding to incidents with suspected/confirmed illicit drugs including, but not limited to, searches of incarcerated individuals or their property.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- Nurses were not fit tested prior to use. Employees are required to wear a tight-fitting facepiece respirator (i.e., Moldex 2360 P100 particulate respirator) when providing care to a potential overdose.

b) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- OSI Officers/Narcotics Investigators were not fit tested prior to use. Employees are required to wear a tight-fitting facepiece respirator (i.e., Moldex 2360 P100 particulate respirator) when conducting presumptive field tests and/or evidence collection.

Date by Which Violation Must Be Abated:

April 06, 2023



Notice of Violation and Order to Comply

Establishment: NYSDOCCS Mid-State Correctional Facility
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Citation 2 Item 3

Type of Violation: **Serious**

29 CFR 1910.134(l)(1): Evaluations of the workplace were not conducted to ensure the written respiratory protection program was being effectively implemented.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not conduct evaluations of the workplace to ensure the written respiratory protection program was being effectively implemented. Employees were issued respirators (i.e., Moldex 2360 P100) without proper fit testing and the respiratory protection program was not updated to include the Moldex 2360 P100.

Date by Which Violation Must Be Abated:

January 09, 2023

Citation 2 Item 4

Type of Violation: **Serious**

29 CFR 1910.138(a): The employer did not select and require employee(s) to use appropriate hand protection when employees' hands were exposed to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasion; punctures; chemical burns; thermal burns; and harmful temperature extremes.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not require employee(s) to use appropriate hand protection when employees' hands were exposed to hazards such as those from skin absorption of harmful substance. Correction officers are exposed to illicit drugs (i.e., synthetic opioids) during the course of their job duties. Gloves that the employer has selected for employees to wear (e.g., Cabvi Better Touch Thickness 4 mil and Safe sense nitrile) were not available for employees on one unit (i.e., 4 Baker).

Note: As a reminder controlling exposures to occupational hazards is the fundamental method of protecting workers. Traditionally, a hierarchy of controls has been used as a means of determining how to implement feasible and effective control solutions. The hierarchy of controls lists elimination/substitution (i.e., removing or replacing the hazard) as the most effective followed by engineering controls (i.e., isolating the hazard such as using ventilation), administrative controls/work practices (i.e., changing the way people work), and finally personal protective equipment (i.e., protecting the worker with personal protective equipment).

Date by Which Violation Must Be Abated:

December 01, 2022



Notice of Violation and Order to Comply

Establishment: NYSDOCCS Mid-State Correctional Facility
Inspection Site: 9005 Old River Road, Marcy, New York 13403

Citation 3 Item 1

Type of Violation: **Non-Serious**

12 NYCRR Part 801.29(a): The employer did not use the SH 900 Log of Work-Related Injuries and Illnesses, SH 900.1 Annual Summary of Work-Related Injuries and Illnesses and SH 900.2 Injury and Illness Incident Report, or equivalent forms, and associated instructions, for recordable injuries and illnesses:

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility - The employer did not maintain the SH 900 Log of Work-Related Injuries and Illnesses, or equivalent form, for calendar years 2020, 2019, and 2018 in accordance with the associated instructions. For calendar year 2020, 2019, 2018, information required by the instructions associated with the SH 900 form was not included. Examples include no description of the injury or illness, parts of the body affected or object/substance that directly injured or made the person ill (Column F) (e.g., no description on 1/14/2018, 4/17/18; no description on 6/28/19, 7/19/19; no description on 6/25/2020, 11/28/20, 12/4/20, 12/12/20) .

Note: The employer must enter each recordable injury or illness on the SH 900 Log and SH 900.2 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

Date by Which Violation Must Be Abated:

January 09, 2023

Citation 3 Item 2

Type of Violation: **Non-Serious**

12 NYCRR Part 801.29(b): The employer did not enter "privacy case" in the space normally used for the employee's name for a case that was considered to be a "privacy concern case" on the SH 900 Log of Work-Related Injuries and Illnesses Form. The employer did not keep a separate, confidential list (the Privacy Case List) of the case numbers and employee names for the employer's privacy concern cases so the employer can update the cases and provide the information to the government if asked to do so:

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not enter "privacy case" in the space used for the employee's name (Column B) and keep a separate, confidential list that included two privacy concern cases (2/11/19, 7/24/19) on the 2019 Log of Work Related Injuries and Illnesses. The privacy concern cases were discussed with the employer.

b) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not enter "privacy case" in the space normally used for the employee's name on several cases in the 2018, 2019, 2020 Log of Work-Related Injuries and Illnesses. The employer entered "*****" instead of entering "privacy case". These cases were discussed with the employer.

c) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer marked cases privacy concern case but they should not have been according to the complete list of all injuries and illnesses considered privacy concern cases. These cases were discussed with the employer.



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Note: The employer must consider the following injuries or illnesses to be privacy concern cases:

- (1) an injury or illness to an intimate body part or the reproductive system;
 - (2) an injury or illness resulting from a sexual assault;
 - (3) mental illnesses;
 - (4) HIV infection, hepatitis, or tuberculosis;
 - (5) needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see 801.7 for definitions); and
 - (6) other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log.
- Effective January 1, 2004, musculoskeletal disorders (MSDs) are not considered privacy concern cases.

This is a complete list of all injuries and illnesses considered privacy concern cases. No other types of injuries or illnesses may be classified as privacy concern cases.

Date by Which Violation Must Be Abated: January 09, 2023

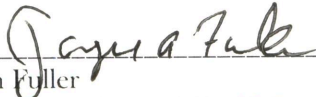
Citation 3 Item 3 Type of Violation: **Non-Serious**

12 NYCRR Part 801.40(a): Records required under Part 801 were not available for inspection and copying.

a) New York State Department of Corrections and Community Supervision Mid-State Correctional Facility- The employer did not provide the SH 900 log for 2021 within four (4) business hours. The year-to-date SH 900 log for 2021 was requested at the time of the inspection, September 29, 2021, and was provided to the hygienist on November 4, 2021.

Note: Copies of records must be provided within four (4) business hours, regardless of where records are maintained.

Date by Which Violation Must Be Abated: Corrected During Inspection



Joseph Fuller
Supervising Safety and Health Inspector