

**INVESTIGATION NARRATIVE**

REPORTING DISTRICT:	<b>Utica</b>	
INVESTIGATION TYPE	ESTABLISHMENT NAME AND SITE ADDRESS	
<input checked="" type="checkbox"/> COMPLAINT	<b>New York State Department of Corrections and Community Supervision (NYS DOCCS) Marcy Correctional Facility 9000 Old River Rd Marcy, NY 13403</b>	
<input type="checkbox"/> ACCIDENT		
<input type="checkbox"/> PROGRAMMED		
<input type="checkbox"/> MONITORING		
<input type="checkbox"/> FOLLOWUP	DATE(S) OF INVESTIGATION:	INSPECTION NUMBER
<input type="checkbox"/> OTHER	<b>September 30, 2021</b>	<b>1559717</b>

A partial scope health complaint inspection was initiated by the NYS Department of Labor Public Employee Safety and Health (PESH) Bureau at the NYSDOCCS Marcy Correctional Facility (Corr Fac), 9005 Old River Rd, Marcy, NY on September 30, 2021. The inspection was conducted by Senior Industrial Hygienist [REDACTED] in response to a formal complaint received in accordance with NYS Labor Law Article 2 Section 27-a, "Public Employee Safety and Health Act".

The written complaint stated:

"Ongoing and frequent exposure to fentanyl."

Employees at this location are represented by Public Employees Federation (PEF), Civil Service Employees Association (CSEA), New York State Correctional Officers and Police Benevolent Association (NYSCOPBA), and Council 82.

The following employee representatives were contacted by the hygienist prior to starting the opening conference:

- [REDACTED] - CSEA Local 192 President / Cook
- [REDACTED] - PEF Asst Steward Div 375 / Offender Rehab Counselor
- [REDACTED] - NYSCOPBA Marcy Treasurer / Correction Officer
- [REDACTED] - Council 82 Executive Vice- President / Lieutenant
- [REDACTED] - Council 82 Representative / Lieutenant

An opening conference was conducted on September 30, 2021. At this time the PESH Act, scope of the inspection, and nature of the complaint were explained to the participants. Present during the opening conference:

- [REDACTED] - Superintendent
- [REDACTED] - Deputy Superintendent for Programs
- [REDACTED] - Deputy Superintendent for Security

- ██████████ - Deputy Superintendent for Administration
- ██████████ - CSEA Local 192 President / Cook
- ██████████ - PEF Asst Steward Div 375 / Offender Rehab Counselor
- ██████████ - NYSCOPBA Marcy Treasurer / Correction Officer
- ██████████ - Council 82 Executive Vice- President / Lieutenant
- ██████████ - Council 82 Representative / Lieutenant

The following materials were distributed and explained to the participants during the opening conference, including a copy of the complaint:

- SH 909 – PESH Act
- 12 NYCRR – Parts 801, 802, 803, 804, 805, and 820
- SH 907 – Employer’s Rights and Responsibilities pamphlet
- P 906 – Employee’s Rights and Responsibilities pamphlet
- Log and Summary of Injuries and Illnesses/recordkeeping information and forms (SH 900, SH 900.1, SH 900.2)
- P 206 – Consultation Assistance pamphlet
- SH 908 – PESH poster
- SH 918 – Penalty Information for Public Employers
- NYS Right to Know / Hazard Communication information
- 12 NYCRR Part 800.6 - Workplace Violence Prevention Program rule

These materials may be accessed at:

<https://dol.ny.gov/reference-material-public-employee-safety-and-health-inspections>

A “Public Employee Safety and Health Bureau Inspection Reference Material” handout was distributed to the participants along with a copy of the complaint.

A walkaround inspection of the facility was conducted on September 30, 2021.

Participating in the walkaround portion of the inspection:

- ██████████ - Superintendent
- ██████████ - Deputy Superintendent for Programs
- ██████████ - Deputy Superintendent for Security
- ██████████ - Deputy Superintendent for Administration
- ██████████ - NYSCOPBA Marcy Treasurer / Correction Officer
- ██████████ - Council 82 Representative / Lieutenant

The inspection site consists of the Marcy Correctional Facility. Marcy Correctional is a medium security correctional facility. The Marcy Correctional Facility campus consists of various buildings (i.e., dormitory, gymnasium, classrooms, mess hall, storehouse).

The walkaround included an examination of the Mail Room, Medical Building, Package Room, Activities Building, Housing Unit C1, Housing Unit F1. The alleged hazards listed in the complaint were examined and evaluated regarding compliance with PESH standards. Listed below are the hygienist’s observations of conditions relevant to the alleged hazards in the complaint, applicable PESH standard, if any, and determination of whether a violation exists.

**Alleged hazard:** Ongoing and frequent exposure to fentanyl.

**Conditions observed:** Employees at Marcy are exposed to illicit drugs (including but not limited to heroin, fentanyl, carfentanyl, mixtures of the previously mentioned drugs, suboxone, spike/K2/other synthetic cannabinoids). Over the past year the correctional facility has seen an increase in the incidences of illicit drugs being sent into the facility. Employees (e.g., Office Assistants, OSI, Correction Officers, Sergeants, Lieutenants, Registered Nurses) are exposed to illicit drugs through various job duties including but not limited to frisking incarcerated individuals, searching incarcerated individual's areas, contraband drug testing, inspecting mail, inspecting packages, and providing first aid.

**Determination:** There are currently no enforceable OSHA/PESH permissible exposure limits (PEL), short-term exposure limits (STEL) or threshold limit values (TLV, established by the American Conference of Governmental Industrial Hygienists) for fentanyl, its analogues, or any of the other illicit drugs mentioned above. Some of these substances have medicinal/pharmaceutical value (e.g., heroin, fentanyl, suboxone), however, they are also used recreationally/illicitly when not prescribed by a licensed medical professional, misused, and their use in this manner is unlawful under the Controlled Substances Act. Aside from their medicinal/pharmaceutical value, they have no known recognized use in industrial applications. Because of the highly toxic nature of these substances, there are currently no safe and traditional chemical sampling methods for these substances.

Fentanyl and its analogues have become a well-known illicit drug in recent years due to their ability to produce the same symptoms and effects that heroin does at a fraction of the production cost and with higher potency. Fentanyl is a synthetic opioid which, prescribed in medicinal quantities, has analgesic and anesthetic applications for medical treatment purposes. On its own, fentanyl is also much more lethal than heroin, and in combination, the two drugs can produce a synergistic lethal effect on the recipient. Other substances that are similar in chemical structure to fentanyl (such as carfentanyl) produce similar and/or more toxic effects. Other symptoms of fentanyl/opioid use and abuse include feelings of relaxation, euphoria, pain relief, sedation, confusion, drowsiness, dizziness, nausea, vomiting, urinary retention, pupillary constriction, and respiratory depression.

Suboxone, a combination medication containing buprenorphine and naloxone, is used to treat opioid addictions, however, overdosing on it can cause symptoms such as nausea, vomiting, seizures, abdominal pain, depressed breathing, coma, death, slowed heartbeat, irritability, anxiety, mood swings, loss of physical coordination, sleepiness, and trouble concentrating or focusing on tasks.

Other substances such as synthetic cannabinoids (spike/K2) can cause symptoms such as agitation, vomiting, hallucination, paranoia, tremor, seizure, tachycardia, hypokalemia, chest pain, cardiac problems, stroke, kidney damage, acute psychosis, brain damage, and death.

“Provisional data from CDC’s National Center for Health Statistics indicate that there were an estimated 100,306 drug overdose deaths in the United States during 12-month period ending in April 2021, an increase of 28.5% from the 78,056 deaths during the same period the year before.

The new data documents that estimated overdose deaths from opioids increased to 75,673 in the 12-month period ending in April 2021, up from 56,064 the year before. Overdose deaths from synthetic opioids (primarily fentanyl) and psychostimulants such as methamphetamine also increased in the 12-month period ending in April 2021.”  
([https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2021/20211117.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm))

In 2021, the facility had two incidents which required employees to receive outside medical attention due to an employee exposure while inspecting the mail and an employee exposure while searching an incarcerated individuals’ property.

It is due to the severity of symptoms of all these substances that the OSHA/PESH standards for personal protective equipment and respiratory protection were examined by the hygienist in reference to this complaint item. There are currently no OSHA/PESH standards that are specific to fentanyl or other illicit drugs, likely since they have no recognized industrial uses.

Various personal protective equipment (PPE) is available for employees when they come across suspected contraband/illicit drugs. The PPE was selected by NYSDOCCS management consulting various fentanyl guides, including but not limited to the NIOSH-Fentanyl: Emergency Responders at Risk (<https://www.cdc.gov/niosh/topics/fentanyl/risk.html>) according to ██████████, NYSDOCCS Associate Industrial Hygienist. The NIOSH guide identifies appropriate PPE for relevant job categories including pre-hospital patient care, law enforcement routine duties, and law enforcement investigation and evidence collection, based on potential exposure levels dependent upon whether illicit drugs are suspected, and if visible, the relative quantity involved. Nitrile gloves (Cabvi Better Touch nitrile- 4mil) and vinyl gloves are available at the facility. One Housing Unit, F1, did not have any nitrile gloves available to the officer/employees at the time of the inspection [serious violation- 1910.132(a)]. Employees need to be retrained as required PPE was not being used on a housing unit [serious violation- 1910.132(f)(3)(iii)].

A response kit is available for when visible suspected contraband is found. The response kits include, but are not limited to: gloves, gowns, goggles, and P100 respirators. Employees had been provided medical evaluations but had not been fit tested for the P100 respirators [serious violation- 1910.134(f)(2)]. One employee had not been provided a medical examination [serious violation- 1910.134(e)(1)], fit tested [serious violation- 1910.134(f)(2)], and had not been trained [serious violation- 1910.134(k)(1)]. The employer’s respiratory protection program did not reflect the addition of a different brand of P100 respirators.

Based on NIOSH Fentanyl: Emergency Responders at Risk Guidance recommendations for potential exposure to illicit drugs and appropriate PPE for the job category and potential exposure level, NYSDOCCS seems to have properly assessed the workplace. For example, all job categories with minimal level exposure (where it is suspected that illicit drugs may be present, but not visible) nitrile gloves are recommended. Routine searches of incarcerated individuals and their cells would be an example. Different PPE is required by NYSDOCCS when moderate exposure level is anticipated. Moderate exposure level is defined as “response to a situation where small amounts of illicit drugs in powder or liquid are visible”. Currently, NYSDOCCS requires employees with moderate level exposure to utilize the response kits which contain P100 respirators, safety goggles/glasses, nitrile gloves, and gown, which is also consistent with the NIOSH guidance

NYSDOCCS has selected nitrile gloves with a thickness of 4mil which falls in the NIOSH recommendation of “powder-free nitrile gloves should be worn with a minimum thickness of 5 +/- 2 mil (i.e., 0.127 +/- 0.051 millimeters; 1 mil=0.0254 millimeters), unless manufacturer data provides performance breakthrough data for thinner gloves”.

There are generally no splash hazards or chemical vapor exposures associated with these substances since upon arrival at the destination, they are usually in dry solid powder form and/or absorbed into a medium such as paper. Dermal exposure to these substances would be generally limited to hand contact. Therefore, there would be no general need for a fully encapsulating suit for these employees. Exposure by inhalation and ingestion have been already addressed. The employer is required to evaluate the respiratory protection program on an annual basis and can decide to change respirators (to a higher or lower assigned protective factor) as circumstances change.

Employees at this facility expressed concern about lack of training regarding illicit drugs, including but not limited to, fentanyl; the lack of training was also observed by the hygienist (serious violation- 1910.1200(h)(1)]. One employee in the package room was eating his lunch where screening for suspected contraband drug substances was conducted. (serious violation- 1910.141(g)(2)].

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).

For exposure to illicit drugs which have already entered the facility and to which employees could be exposed during response activities (searches, evidence collection, and provision of Emergency Medical Services), PPE must be utilized as other engineering controls are generally not feasible for those scenarios. However, other hazard control options would be appropriate at the points and means by which contraband enters the facility. Appropriate

means of interdiction can protect employees involved with the inspection process, as well as those exposed elsewhere in the facility through the reduction of the amount of illicit drugs that make their way into and throughout the facility.

There are no specific OSHA/PESH regulations under 29 CFR Part 1910 - General Industry Standards that cover exposure to fentanyl and its analogues and other illicit drugs. As mentioned previously, it has been recognized that the NIOSH Fentanyl: Emergency Responders at Risk Guidance recommendations apply to scenarios for which hazard controls other than PPE are not feasible, and that other reasonable hazard elimination and reduction measures would be appropriate for the mail and package inspection processes.

Therefore, the only option would be a citation under the 'General Duty Clause' (GDC) of the NYS Department of Labor Public Employee Safety and Health (PESH) Act as described below. The hygienist obtained sufficient supporting evidence to warrant a general duty citation in this case, as employees are routinely exposed to fentanyl and its analogues and other illicit drugs.

Section 27-a(3)(a)(1) of the PESH Act requires that "Every employer shall: (1) Furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety and health of its employees." In applying this paragraph, fundamental distinctions between private and public sector employment have been recognized.

Reasonable and adequate methods to abate this hazard include, but are not limited to:

- 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 country 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.

**Other Observations:**

A PESH poster was posted for employees to access.

The Logs and Summaries of work-related injuries and illnesses were collected for 2018, 2019, and 2020 and found to not be in compliance. Column F entries were not fully completed [non-serious violation- 12 NYCRR Part 801.29(a)]. The employer did not enter "privacy case" in the space used for the employee's name (Column B) on several cases according to the complete list of all injuries and illnesses considered privacy concern cases [non-serious violation- 12 NYCRR Part 801.29(b)].

Upon completion of the walkaround an exit conference was held with the following participants:

- ██████████ - Superintendent
- ██████████ - Deputy Superintendent for Programs
- ██████████ - Deputy Superintendent for Security
- ██████████ - Deputy Superintendent for Administration
- ██████████ - NYSCOPBA Marcy Treasurer / Correction Officer
- ██████████ - Council 82 Representative / Lieutenant

All were informed that they would be contacted at a later date with the status of the complaint.

An on-site closing conference was conducted on March 15, 2022 with

- ██████████ - Superintendent
- ██████████ - Deputy Superintendent for Mental Health
- ██████████ - Deputy Superintendent for Administration
- ██████████ - Senior Investigator / Internal Affairs
- ██████████ - Deputy Commissioner / Chief of Investigations
- ██████████ - NYSDOCCS Associate Industrial Hygienist
- ██████████ - Secretary
- ██████████ - CSEA Local 192 Representative / Office Assistant 1
- ██████████ - PEF Asst Steward Div 375 / Offender Rehab Counselor
- ██████████ - NYSCOPBA Marcy Steward / Correction Officer
- ██████████ - Council 82 Representative / Lieutenant

A second on-site closing conference was conducted on November 7, 2022 with

- ██████████ - Superintendent
- ██████████ - Deputy Superintendent for Mental Health
- ██████████ - Deputy Superintendent for Administration
- ██████████ - NYSDOCCS Associate Industrial Hygienist
- ██████████ - Secretary
- ██████████ - CSEA Local 192 Representative / Office Assistant 1
- ██████████ - PEF Asst Steward Div 375 / Offender Rehab Counselor
- ██████████ - NYSCOPBA Marcy Steward / Correction Officer
- ██████████ - Council 82 Representative / Lieutenant

██████████ - Deputy Superintendent for Security

██████████ - Deputy Superintendent for Programs

The complaint is considered to be sustained as there were violations involving personal protective equipment, respiratory protection, and a general duty related to employees' exposure to illicit drugs. Twelve (12) citations will be issued. Case remains open.

ORDERS ISSUED:		CSHO NAME (TYPED)	DATE PREPARED
X	YES	██████████	
	NO		11/8/2022

SH 914 (12-09)