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## Notice of Violation and Order to Comply

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

**Inspection Site:** NYSDOCCS Marcy Correctional Facility  
9000 Old River Road  
Marcy, New York 13403

**Inspection Number:** 1559717  
**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.*

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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](http://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.



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### 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 Marcy 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 Marcy 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

**Establishment:** NYSDOCCS Marcy Correctional Facility  
**Inspection Site:** 9000 Old River Road, Marcy, New York 13403

### Citation 2 Item 1

Type of Violation: **Serious**

29 CFR 1910.132(a): Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, were not provided, used, and maintained in a sanitary and reliable condition wherever it was necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

a) New York State Department of Corrections and Community Supervision Marcy Correctional Facility- The employer did not provide Correction Officers with appropriate personal protective equipment for their hands (i.e., nitrile gloves were not available in Housing Unit F1) to protect them from exposure to illicit drugs while performing normal job duties (frisking, searches, responding to overdoses).

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

### Citation 2 Item 2

Type of Violation: **Serious**

29 CFR 1910.132(f)(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 Marcy Correctional Facility- 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. Affected employee (i.e., correction officers) need retraining on use of PPE as required PPE was not being used in various parts of the facility.

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



## Notice of Violation and Order to Comply

**Establishment:** NYSDOCCS Marcy Correctional Facility  
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Citation 2 Item 3                      Type of Violation: **Serious**

29 CFR 1910.134(e)(1): The employer did not provide a medical evaluation to determine the employee's ability to use a respirator, before the employee was fit tested or required to use the respirator in the workplace:

a) New York State Department of Corrections and Community Supervision Marcy Correctional Facility- The employer provided an employee with a respirator (i.e., Moldex 2360 P100) but did not provide a medical evaluation to determine the employee's ability to use a respirator.

Note: The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator.

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

Citation 2 Item 4                      Type of Violation: **Serious**

29 CFR 1910.134(f)(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 Marcy 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.

b) New York State Department of Corrections and Community Supervision Marcy 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.

c) New York State Department of Corrections and Community Supervision Marcy 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 Marcy Correctional Facility  
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### Citation 2 Item 5

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 Marcy 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 6

Type of Violation: **Serious**

29 CFR 1910.134(k)(1): The employer did not provide effective training that covered the required elements in 1910.134(k)(1)(i) through 1910.134(k)(1)(vii).

a) New York State Department of Corrections and Community Supervision Marcy Correctional Facility- The employer did not provide respirator training to all employees who are required to wear a respirator. One employee was provided with a respirator (i.e., Moldex 2360 P100) without any training.

Date by Which Violation Must Be Abated:

January 09, 2023

### Citation 2 Item 7

Type of Violation: **Serious**

29 CFR 1910.141(g)(2): Employees were permitted to consume food or beverage in area(s) exposed to toxic materials:

a) New York State Department of Corrections and Community Supervision Marcy Correctional Facility- An employee was eating his lunch on the package room table while performing his job functions which include searching for suspected contraband drug substances.

Date by Which Violation Must Be Abated:

April 06, 2023

### Citation 2 Item 8

Type of Violation: **Serious**

29 CFR 1910.1200(h)(1): Employees were not provided effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard that the employees had not been previously trained about was introduced into their work area.



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a) New York State Department of Corrections and Community Supervision Marcy Correctional Facility- Employees were not provided with effective information and training on hazardous chemicals in their work area. Employees were not using the proper personal protective equipment while working around illicit drugs, employees were eating around areas with potential exposure to illicit drugs.

Note: NIOSH recommends responders who perform jobs where illicit drugs including fentanyl may be present should receive special training in how to conduct an on-scene risk assessment. Responders should demonstrate an understanding of the following:

- How to recognize the form and determine the quantity of illicit drugs
- How to recognize situations that may cause illicit drugs to enter the air
- How to safely collect, handle, process, and store evidence that may be contaminated by illicit drugs
- When to use PPE; what PPE is necessary; how to put on, use, take off, dispose of, and maintain PPE; and the limitations of PPE
- What the potential exposure routes are for illicit drugs
- How to recognize the signs and symptoms of poisoning from an illicit drug exposure
- When and how to seek medical help

Date by Which Violation Must Be Abated:

April 06, 2023

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 Marcy Correctional Facility - The employer did not maintain the SH 900 Log of Work-Related Injuries and Illnesses, or equivalent form, for calendar years 2018, 2019 and 2020 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 1/17/2020, 1/27/20, 2/7/20, 3/30/20, 4/1/20, 5/25/20, 6/2/20, 8/20/20, 10/16/20)( e.g., no description on 1/23/19, 1/30/19, 2/1/19, 2/18/19, 3/15/19, 9/4/19, 9/11/19, 9/25/19, 11/22/19, 12/2/19), (e.g., no description on 1/27/18, 1/30/18, 2/16/18, 3/20/18, 11/2/18) .

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



## Notice of Violation and Order to Comply

**Establishment:** NYSDOCCS Marcy Correctional Facility  
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### 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 Marcy 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 one privacy concern case on the 2020 Log of Work Related Injuries and Illnesses, two privacy concern cases on the 2019 Log of Work Related Injuries and Illnesses, one privacy concern case on the 2018 Log of Work Related Injuries and Illnesses. The privacy concern cases identified were discussed with the employer.

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.

Note: The employer must enter "privacy case" in the space normally used for the employee's name.

**Date by Which Violation Must Be Abated:**

January 09, 2023



New York State Department of Labor  
Public Employee Safety and Health Bureau

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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 Marcy 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 and was not provided to the hygienist.

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:

December 15, 2022

  
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Joseph Fuller  
Supervising Safety and Health Inspector