

INVESTIGATION NARRATIVE

REPORTING DISTRICT:	New York City	
INVESTIGATION TYPE	ESTABLISHMENT NAME AND SITE ADDRESS	
<input checked="" type="checkbox"/> COMPLAINT # 1976295	NYC Sheriff’s Office 30-10 Starr Avenue Astoria, NY 11101	
<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	01/06/2023, 01/23/2023	1641274

A partial health complaint inspection was initiated by the NYS Department of Labor Public Employee Safety and Health (PESH) Bureau at New York City Sheriff’s Office (NYCSO), 30-10 Starr Avenue, Astoria, NY 11101. Associate Industrial Hygienist Philip Mathew conducted the inspection in response to a formal complaint in accordance with NYS Labor Law Article 2 Section 27-a, “Public Employee Safety and Health Act”.

Hazards alleged in the complaint are listed as follows:

1. Improper storage and transportation of seized evidence or property such as tobacco products, liquid nicotine vapes products, marijuana flower, marijuana edibles, liquid THC vape products, and lithium-ion batteries.
2. Lack of personal protective equipment for the transportation and handling of tobacco products, liquid nicotine vapes products, marijuana flower, marijuana edibles, liquid THC vape products, and lithium-ion batteries.
3. Employees complain of headaches after spending long periods of time around these items at their workstation.
4. Decontamination of transporting vehicles
5. Lack of Hazmat training in dealing with potentially contaminated materials.

Employees at this location are represented by DC 37. Employee representatives contacted by the inspector prior to starting the opening conference:

Deborah Williams-----DC 37/ Director Safety & Health Unit
Ingrid Simonovic-----NYC Deputy Sheriff’s Union President

An opening conference was conducted on 01/06/23. At this time the PESH Act, scope of the inspection, and nature of the complaint were explained to the participants. The complainant's identity was not revealed. Present during the opening conference:

Sheela Williams-----Senior Director
Maureen Kokeas-----First Deputy Sheriff
Sinikka Wahab-----DC 37/ Principal Program Coordinator
Simon Lee-----Public Safety Officer
Warren Glover-----Assistant Commissioner
Diana Beinart-----General Counsel

The following materials were explained to participants during the opening conference including a sanitized 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
SH 906 – Employee's Rights and Responsibilities pamphlet
SH 900 – Log and Summary of Injuries and Illnesses/recordkeeping information and forms (SH 900.1, SH 900.2)
SH 905 – Consultation Assistance pamphlet
SH 908 – PESH poster
SH 918 – Penalty Information for Public Employers
NYS Right to Know / Hazard Communication information
Workplace violence law
12 NYCRR Part 800.6- Workplace Violence Prevention Rule

These materials may be accessed at:

<http://www.labor.ny.gov/workerprotection/safetyhealth/Inspector%20Reference%20Material.shtm>

A "Public Employee Safety and Health Bureau Inspection Reference Material" handout was distributed to participants.

An initial walkaround inspection of the facility was conducted on 01/06/23. Participating in the walkaround portion of the inspection:

Sheela Williams-----Senior Director
Maureen Kokeas-----First Deputy Sheriff
Sinikka Wahab-----DC 37/ Principal Program Coordinator

Simon Lee-----Public Safety Officer
Warren Glover-----Assistant Commissioner
Diana Beinart-----General Counsel

A second walkaround inspection of the facility was conducted on 01/23/23. Participating in the second walkaround portion of the inspection:

Sheela Williams-----Senior Director
Maureen Kokeas-----First Deputy Sheriff
Sinikka Wahab-----DC 37/ Principal Program Coordinator
Warren Glover-----Assistant Commissioner
Diana Beinart-----General Counsel
Lisa A Mack-----Labor relations Officer
Mary Rose O’Connell-----Director/Employment Law
Ingrid Simonovic-----NYC Deputy Sheriff’s Union President

The alleged hazards listed in the complaint were examined and evaluated regarding compliance with PESH standards. Listed below are the inspector’s observations of conditions relevant to the alleged hazards in the complaint, applicable PESH standard, if any, and determination of whether a violation exists.

The Sheriff’s Office is a division of the New York City Department of Finance, operating as an enforcement arm. The Sheriff’s Office handles investigations concerning cigarette tax enforcement, real estate property/deed fraud & more recently enforcing regulatory framework for medical and adult-use cannabis and hemp in the state of New York, which includes the production, licensing, packaging, marketing, and sale of cannabis.

Deputy Sheriffs perform various law enforcement related activities. This includes but is not limited to executing and enforcing mandates and orders resulting from litigation issued from local or state courts of competent jurisdiction; interdicting the trafficking of synthetic narcotics, illegal, untaxed, or counterfeit stamped tobacco products and related tax crimes; making criminal arrests; vouchering illegal drugs, products, weapons, and evidence.

The Cannabis and E - vapes task forces have inspected hundreds of sites, issued numerous violations, and seized large quantities of illicit products. Seized illicit products includes but is not limited to untaxed or counterfeit stamped tobacco products, marijuana flowers & edibles, liquid THC vape products, liquid nicotine vape products, heroin, cocaine, and synthetic drugs such as ecstasy pills, OxyContin, and fentanyl.

1. Alleged hazard: Improper storage and transportation of seized evidence or property such as tobacco products, liquid nicotine vapes products, marijuana flower, marijuana edibles, liquid THC vape products and lithium-ion batteries.

Conditions observed: One of the duties of Deputy Sheriffs includes the inspection of stores that sell cigarettes and tobacco to ensure compliance with tax and licensing requirements. The Sheriff's Office newly created NYC Cannabis & e-vape task forces ensures licensing compliance for the sale of cannabis & e-vape products, which results in the seizure of illegal marijuana products & e-vape pens from smoke shops and bodegas. The complaint alleges improper transportation & storage of seized illicit products.

During the inspection, three large shipping containers (Conex containers) filled with e-vape products, marijuana and untaxed or counterfeit stamped tobacco products were observed stored in the garage. E-vape products and other illicit products were also observed stored in the office processing room, a caged storage area and the evidence room. Hundreds of evidence bags containing e-vape products, untaxed or counterfeit stamped tobacco products and other seized illicit products were observed at the above locations. Each evidence bag contained hundreds of vapes pens.

The Centre for Disease Control & Prevention (CDC) states electronic smoking devices (E – vapes, vape pen or E-cigarettes) such as liquid tetrahydrocannabinol (THC) and nicotine vape products are not safe to the users' health, in addition, lithium-ion batteries attached to electronic smoking devices have caused fires &/or explosions, causing serious injuries such as burns, broken bones, and even death.

https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#:~:text=Top%20of%20Page-.Are%20e%2Dcigarettes%20less%20harmful%20than%20regular%20cigarettes%3F,in%20smoke%20from%20regular%20cigarettes.&text=However%2C%20e%2Dcigarette%20aerosol%20is%20not%20harmless.

Electronic smoking devices rely on a lithium-ion battery to power the heating element (atomizer) in the E-cigarette. This heating element heats up e-liquid or e-juice located in the cartridge containing varying amounts of nicotine, THC, flavorings, and other chemicals, which becomes the aerosol (vapor) E-cigarette users' inhale. Lithium batteries are capable of overheating which can lead to smoke, fire, or an explosion. Lithium-ion battery fires are hard to control due to the rapid rate that these fires burn, as well as their extreme heat and toxic gases the fire emits.

Determination: Sustained. At the time of the inspection, E-Vapes products were observed stored in large shipping containers, in the office processing room, caged storage area and evidence room.

Employees are engaged in various job duties in these areas on a regular basis such as, but not limited to packing, storing, and moving e-vape products. During interviews, employees expressed concerns regarding the potential fire hazards of lithium-ion batteries and stated no plan

is set in place by management to protect employees from lithium-related incident due to battery failures leading to fires and/or explosions. Average number of employees in the year 2021 was 119.

Upon request management provided an Emergency Evacuation Plan (EAP) but EAP did not include the following elements, procedures to be followed by employees performing rescue or medical duties; and Procedures to be followed by employees who remain to operate critical plant operations before they evacuate. According to the emergency evacuation plan, employees are expected to use fire extinguishers. Management stated employees at this location were not offered fire extinguisher training.

The large number of lithium-powered devices at the worksite increases the risk of lithium battery related incident. The employer provided fire extinguishers in the workplace that were intended for employees to fight incipient stage fires, but training was not provided. The employer may provide all affected staff with fire extinguisher training and/or develop an Emergency Action Plan (EAP).

A violation of OSHA standard 29 CFR 1910.157(g)(2): The educational program to familiarize employees with the general principles of fire extinguisher use and the hazards involved with incipient stage firefighting was not provided to all employees upon initial employment, and at least annually thereafter; was observed. A notice of violation and order to comply is issued.

2. Alleged hazard: Lack of personal protective equipment for the transportation and handling of tobacco products, liquid nicotine vapes products, marijuana flower, marijuana edibles, liquid THC vape products and lithium-ion batteries.

Conditions observed: Employees were provided with personal protective equipment such as, but not limited to disposable gowns, nitrile gloves, shoe coverings, face shield and 3M™ N95 Tight-fitting Particulate Respirators. Employees at this location are involved in the inspection, handling and seizure of illegal marijuana flowers, marijuana edibles, liquid THC vape products, liquid nicotine vape products, heroin, cocaine, and synthetic drugs such as ecstasy pills, OxyContin, and fentanyl from smoke shops and bodegas.

Employees at the location are involved in seizing marijuana from illegal shops/ bodegas, removing marijuana from the package (bottle) for weighing, repackage it for storing; and transportation of marijuana and other illicit products in the official vehicles. During the inspection, employees expressed concerns regarding the smell of marijuana in the transporting vehicles, storage units, evidence room and in office processing room. During the interviews, employees stated they were having breathing problems, headaches, nausea, chest pain, and nosebleed after handling seized illicit products including marijuana.

The employer provided tight-fitting N95 Particulate Respirators for employees use to protect them from airborne contaminants. Employees are mandated to wear tight-fitting N95 Particulate Respirators to protect them from airborne contaminants. The employer is required to follow the

requirements set under OSHA Respiratory Protection Standard (1910.134) such as develop a written respiratory protection program, designate a qualified administrator to manage the program, administer medical clearance for employees to wear N95, annual fit testing and annual training.

The employer did not develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. A respiratory protection program ensures that all employees required to wear respiratory protection as a condition of their employment are protected from respiratory hazards through the proper use of respirators.

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. Wearing a respirator can put an extra burden on the body. People with underlying medical conditions may put themselves at risk if they work while wearing one. 29 CFR 1910.134(e) (1) requires medical evaluations before fit testing or respirator use.

Employees use tight-fitting respirators within the workplace are required to be fit tested prior to use. 29 CFR 1910.134(f) (2) requires respirator users to be fit tested to confirm the fit of a respirator that forms a tight seal on the face before using it in the workplace. Fit testing is important to ensure the expected level of protection is provided by minimizing the total amount of contaminant leakage into the facepiece through the face seal.

The employer did not provide to employees required to use respirators, annual and more often, if necessary, effective respiratory protection training that was comprehensive and understandable. The respiratory protection training must be comprehensive, understandable, and reviewed annually or more often if necessary. Employer must provide effective site-specific training to respirator users, including why the respirator is necessary and how improper fit, use, or maintenance can compromise the protective effect of the respirator. Limitations, capabilities of the respirator, medical signs or symptoms that would limit or prevent the use of the respirator and use in emergency situations. Retraining is required whenever there are changes in the workplace, when new types of respirators are used, if inadequacies are noticed, or employee knowledge or use indicates a need.

Determination: Sustained. The employer provided PPE to its employees but did not establish/ implement elements of a Respiratory Protection Program (RPP) require for the use of respirators. A violation of OSHA standard 29 CFR 1910.134(c) (1): The employer failed to establish and implement a written respiratory protection program with worksite-specific procedures for employees required to utilize respirators in the performance of their job tasks. A notice of violation and order to comply is issued.

A violation of OSHA standard 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 notice of violation and order to comply is issued.

A violation of OSHA standard 29 CFR 1910.134(f) (2): Employee(s) using tight-fitting face piece respirators were not fit tested prior to initial use of the respirator. A notice of violation and order to comply issued.

A violation of OSHA standard 29 CFR 1910.134(k): The employer did not provide to employees required to use respirators, annual and more often, if necessary, effective respiratory protection training that was comprehensive and understandable. A notice of violation and order to comply is issued.

3. Alleged hazard: Employees complain of headaches after spending long periods of time around these items at their workstation.

Conditions observed: During the inspection, employees expressed concerns regarding the smell of marijuana in the transporting vehicles, storage units, evidence room and the office processing room.

Determination: Not Sustained. No violation of PESH/OSHA standard was determined.

4. Alleged hazard: Decontamination of transporting vehicles

Conditions observed: Employees interviewed stated that due to increased enforcement and limited storage space, marijuana, and e- vape products were stored in transporting vehicles. During interviews, employees stated that they take the transportation vehicles to motor vehicle detailing locations to clean the vehicles at the employer's expense. Vehicles used for the transportation of seized marijuana and e – vape products were visually inspected. The vehicles were observed to be reasonably clean and no marijuana and e – vape products were observed in the vehicles.

Determination: Not Sustained. During visual inspection, no material was observed in the vehicle that appeared to be tobacco or marijuana. Employees interviewed stated the employer made arrangement with car detailing locations to clean the transporting vehicles. No violation of PESH/OSHA standard was determined.

5. Alleged hazard: Lack of Hazmat training in dealing with potentially contaminated materials.

Conditions observed: Employees job duties includes the inspection of smoke shops and bodegas and seizure of illegal marijuana and vape products. Seized illegal marijuana may be tainted or mixed with other harmful products. The responsibility of the evidence unit is to sort the seized products including e-vapes and marijuana by hand to prepare it for vouchering at NYPD. Employees at the location are involved in handling, sorting, weighing, packing, and transporting marijuana and other illicit products. Employees also test seized illicit products for the presence of heroin, cocaine, and synthetic opioids.

During the inspection of the office processing room, leaking e vape products were observed in the evidence bags. Employees interviewed stated leaking E –cigarettes are a major concern due to the presence of nicotine and THC (Tetrahydrocannabinol) in the vaping cartridge. Leaking vaping cartridge potentially exposes employees to toxic nicotine and THC mixture, which are OSHA regulated substances. The CDC states Nicotine is a category 2 chemical with acute skin, dermal and inhalation hazards.

(https://www.cdc.gov/niosh/ersbdb/emergencyresponsecard_29750028.html). THC is a toxic chemical and can cause injury to body through skin contact, eye contact and inhalation.

(<https://nida.nih.gov/publications/drugfacts/cannabis-marijuana>)

Employees at this location did not receive site specific training to deal with potential exposures associated with handling & transporting seized illegal products such as marijuana, liquid THC & nicotine vape products, and other illegal substances. Employees at this location received general right to know / hazcom training developed for department of finance employees. The training lacks any site-specific information, specific to the job duties of Deputy Sheriffs, precautions to prevent exposures to seized illegal products, potential exposure routes of hazardous chemicals and how to safely collect, handle, process and store seized illegal products.

Determination: Sustained. 29 CFR 1910.1200 specifies that when hazardous chemicals are present in the workplace, employees have a right to know about the risks involved with storing and handling of such substances. Employees must be trained on the identification, labelling and safe handling of hazardous materials present at the workplace. A violation of OSHA standard 29 CFR 1910.1200(h) (3) (iii): Employee training did not include the measures employees can take to protect themselves from chemical hazards, including specific procedures the employer had implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures and personal protective equipment to be used. A notice of violation and order to comply is issued.

An initial closing conference was conducted on 01/23/23. Present during the initial closing conference:

Sheela Williams-----Senior Director
Maureen Kokeas-----First Deputy Sheriff
Sinikka Wahab-----DC 37/ Principal Program Coordinator
Warren Glover-----Assistant Commissioner
Diana Beinart-----General Counsel
Lisa A Mack-----Labor relations Officer
Mary Rose O’Connell-----Director/Employment Law
Ingrid Simonovic-----NYC Deputy Sheriff’s Union President

The following materials were distributed and explained to participants during the closing conference in addition to observations made during the walkaround portion of the inspection.

DOSH 904 - Closing Conference Pamphlet

The results of the survey and pertinent standards were discussed. Provisions and regulations such as an Informal Conference (IC), the Petition for Modification of Abatement (PMA) dates, the Industrial Board of Appeals (IBA), and the Hazard Abatement Board (HAB) were discussed. The consultation program, the penalty system, and the requirements to post citation in the workplace were also discussed.

A second telephone closing conference was held on 09/15/2023. Present during the second closing conference:

Sheela Williams-----Senior Director
Sinikka Wahab-----DC 37/ Principal Program Coordinator
Cisa A Mack-----Labor relations Officer
Ingrid Simonovic-----NYC Deputy Sheriff's Union President

Management and employee representatives were informed that a written report and the Notice of Violation and Order to comply would be forth coming.

ORDERS ISSUED:		CSHO NAME: Philip Mathew	DATE
X	YES		PREPARED
	NO		09/15/2023

DOSH 914 (12-09)

