Date: May 20, 1982

From: Offices of Vice Chancellor for Capital Facilities and University Counsel and Vice Chancellor for Legal Affairs

Subject: State Occupational Safety and Health Act (OSHA)/Inspection of University Facilities by the New York State Labor Department

This memorandum is to advise you of recent developments concerning inspections of University facilities being conducted by the New York State Labor Department under the State Occupational Safety and Health Act (OSHA). Campuses were informed about the applicability of this Act to University facilities by Memorandum to Presidents from Alden N. Haffner dated December 23, 1981.

The State OSHA permits the New York State Labor Department to inspect any premises occupied by a public employee if there is reason to believe that a violation of OSHA safety and health standards has occurred. If a violation is found, the State OSHA inspector must issue a Notice of Violation and Order to Comply citing the specific standards violated and fixing a reasonable time to comply. The University, as all other employers, must conspicuously post the Order and correct any violations. Upon failure to do so, the University would face a possible court order to correct deficiencies.

Several University campuses have recently been visited by inspectors from the Public Employee Safety and Health Bureau of the State Labor Department who have conducted inspections and, in some cases, found violations. More inspections can be expected and it is important for you to know about certain key procedures.

First, each campus should have in place procedures for assuring that appropriate campus officials receive the earliest possible notice that an inspection is scheduled or about to take place. Under the State OSHA, advance notice of inspections need not be given by the Labor Department so it is important for those personnel who may have knowledge that an unannounced inspection is underway to know the campus administrative officials who should be advised. In all cases
it is important for a responsible physical plant official to accompany the Labor Department inspector, especially to obtain adequate explanations of the nature of any violations.

Second, upon receipt of a notice of violation and order to comply, the campus should immediately forward a copy of any such notice and order to:

Mr. Lindo A. Signorelli  
Assistant Vice Chancellor for Plant Management  
Office of Capital Facilities  
P. O. Box 1946  
Albany, New York  12201

This transmittal should indicate those alleged violations which can be corrected within campus resources and those which cannot be corrected because of lack of funds or otherwise. If a violation cannot be corrected because of lack of funds, an estimate of the cost of correcting the violation should be provided. The Office of Capital Facilities should also receive an analysis from the campus of the alleged violations indicating grounds, if any, for objecting to the violation, including evidence that a violation did not occur or that an inappropriate standard was applied. This is particularly important if the University is to take an appeal of any Labor Department order.

It will be necessary for each campus to have sufficient information about the applicable OSHA standards, not only for the purpose of helping to assure compliance but also to conduct essential post inspection reviews of compliance orders. Accordingly, each campus will need to obtain a copy of the applicable OSHA standards for its own use. The New York State Labor Department has adopted the federal OSHA standards. Unfortunately, the Labor Department has advised us that they are unable to supply copies of these standards for each of our campuses and it is, therefore, necessary for orders to be placed directly by you to:

Superintendent of Documents  
U. S. Government Printing Office  
Washington, D. C.  20402

The two volumes which you should obtain are:

Code of Federal Regulations, Labor Title 29

Parts 1900 to 1910  ($9.00 per copy)  
Parts 1920 to End  ($8.50 per copy)  
Revised as of July 1, 1981
When a campus is presented with a Notice of Violation and Order to Comply, you should be aware that two formal options are available to the University:

1. A compliance order may be appealed within sixty days of its issuance by filing a petition for review with the Industrial Board of Appeal of the State Labor Department. Grounds for appeal generally consist of showing that:

   --The University is in compliance with the cited regulation at the time of the Labor Department inspection;

   --The standard cited as being violated is not a safety and health standard promulgated by the New York State Department of Labor, and does not constitute a recognized hazard likely to cause serious physical harm to employees;

   --The compliance order does not describe particularly the nature of the violation including a reference to the section, standard, regulation or order alleged to have been violated and does not fix a reasonable time for compliance.

2. Under certain conditions the University may apply to the State Industrial Commissioner for a temporary variance order. In applying for a variance order, the University would, among other things, have to show its inability to comply because of lack of personnel, funds or materials, indicate steps being taken to safeguard employees and establish a date when compliance could be achieved.

In addition to these formal procedures the University could, informally, request an extension of time to comply based on present efforts to comply. This request, however, would not extend the sixty days time limit for filing an appeal, so this step would be taken only if the appeal option was not feasible.

If in the University's judgment a compliance order should be challenged by appeal or a temporary variance requested, it will be handled by University Counsel in consultation with the appropriate campus officials. Compliance Orders against community college facilities must be handled by representatives of the college or local sponsor.

Please keep in mind that if a state-operated campus does receive a notice of violation and compliance order and the campus cannot correct the violation within its own means and an appeal or variance is required, it must be done quickly.
Please keep us informed. Our offices will keep you posted as additional developments occur. Any questions for now may be directed to Lindo Signorelli, Assistant Vice Chancellor for Plant Management (518-473-1144) or Thomas H. Winfield, Associate Counsel (518-473-7591).

cc: Vice Presidents for Administration
  State-operated Campuses

This Memorandum addressed to:

  Presidents, State-operated Campuses

Copies for information only to:

  Presidents, Community Colleges