



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

December 28, 2023

Honorable Thomas P. DiNapoli
Comptroller
NYS Office of the State Comptroller
110 State Street
Albany, New York 12236
contactus@osc.ny.gov

Dear Comptroller DiNapoli:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2021-S-39 entitled, "Oversight of Water Supply Emergency Plans."

Please feel free to contact Mischa Sogut, Assistant Commissioner for Governmental Affairs, at (518) 473-1124 or mischa.sogut@health.ny.gov, with any questions.

Sincerely,

Johanne E. Morne, M.S.
Acting Executive Deputy Commissioner

Enclosure

cc: Mischa Sogut

**Department of Health
Comments on the
Office of the State Comptroller's
Final Audit Report 2021-S-39 entitled,
"Oversight of Water Supply Emergency Plans"**

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2021-S-39 entitled, "Oversight of Water Supply Emergency Plans."

Recommendation #1

Develop and implement a method to monitor the timeliness of Water Systems' Plan submissions and to follow up on requested revisions.

Response #1

The Department continues to implement the enforcement policy developed in 2022. In addition to the 51 notices of violation (NOV) previously noted to have been issued in January 2023, 4 NOV were issued in April 2023 and another 29 issued in July 2023. Of the 51 NOV issued in January, 48 resulted in the water system returning to compliance and the remaining 3 systems were issued a second NOV in accordance with the enforcement policy. All systems receiving NOV in April have returned to compliance. The Department continues to monitor the progress of the water systems issued NOV in July, with the next compliance determination point occurring in the fall of 2023.

Seven water systems were also issued a total of nine administrative tribunal hearing notices after each failed to return to compliance following issuance of a second NOV. All water systems accepted stipulation agreements to submit their outstanding documents. The Department continues to monitor their progress.

Recommendation #2

Develop and communicate guidance regarding local health department (LHD) participation at site visits and calls with Water Systems that incorporates consideration of the nature and extent of the risks identified.

Response #2

The Department agrees that local health department participation in calls or site visits conducted by the Department of Homeland Security and Emergency Services (DHSES) with water systems would be beneficial to the overall supervision of the water systems, but also recognizes that local health departments must prioritize activities required by law or regulation. This recommendation to participate in calls and site visits was communicated to the local health department environmental health directors by the Department during the 2023 Conference of Environmental Health Directors meeting. At an August 2023 meeting, DHSES indicated that local health department participation appears to have increased.

Recommendation #3

Provide guidance to local health departments that addresses both effective use of SDWIS in monitoring Plan compliance and practices for reviewing Assessments.

Response #3

Updated guidance documents were issued to local health departments in September 2022 as part of the Department's regular 5-year updates to this program. The guidance included updated review checklists and an overview of entering tracking dates into the Safe Drinking Water Information System (SDWIS). The Department also presented the information to the local health departments during webinars held on December 19, 2022, and January 6, 2023. The guidance and presentations instructed the local health departments to forward, to the Department, a completed review checklist along with the documents being sent for approval.

The Department also remains available to assist local health departments that experience difficulties entering data into SDWIS and has responded to several requests from local health department staff since the trainings were held.

Recommendation #4

Take action to determine, on a sample basis, whether Water Systems issue the required public notice of Plan availability for review and comment.

Response #4

While the recommendation made by OSC indicates the public notice of Plan availability for review and comment is a requirement of public health law, the "State Comptroller's Comment" in the final report acknowledges that public health law is silent about the frequency at which public notice must be made. It is our interpretation that paragraph 3 of public health law section 1125, which requires notification of availability for public comment, applies to the initial water supply emergency plan, which was required to be submitted to the Department by December 31, 1990. Public health law section 1125 does not provide an ongoing public notification requirement. As such, this recommendation is not relevant for the audit's scope period of January 2017 to January 2023.

Recommendation #5

Establish a method to strengthen the follow-up on recommendations that DHSES communicates to Water Systems.

Response #5

The Department and DHSES met on August 22, 2023, to discuss the recommendations made in the final audit report. Quarterly reports are now provided to the Department on the water systems with which DHSES conducted follow up phone calls or site visits. These reports include any recommendations made by DHSES to the water system. The Department will use these reports to provide feedback to the local health departments and water systems on common or significant recommendations. Annual feedback will be provided, with the first targeted for the spring of 2024.