



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Health and Safety Regulations at Public Pools, Beaches, and Spray Grounds

**Department of Health
Office of Parks, Recreation and Historic
Preservation
Department of Environmental Conservation**



Report 2016-S-55

June 2017

Executive Summary

Purpose

To assess the extent that State agencies responsible for operating and regulating public pools, beaches, and aquatic spray grounds ensure that these facilities are properly maintained, equipped, staffed, and safe for public use. Our audit excluded public pools, beaches, and spray grounds located in New York City. The audit covers the period April 1, 2015 through December 14, 2016.

Background

The Office of Parks, Recreation and Historic Preservation (Parks), the Department of Environmental Conservation (DEC), and the Department of Health (DOH) are each responsible for regulating – and in some cases operating – public pools, beaches, and spray grounds available for use by residents and visitors of New York State. These agencies provide oversight to more than 7,000 pools, beaches, and spray grounds throughout the State, including those on the Atlantic Ocean and the Great Lakes and in remote locations such as the Adirondack and Catskill parks.

All public pools, beaches, and spray grounds, except those located at DEC campgrounds and State parks, are regulated by DOH. The New York State Sanitary Code (Sanitary Code) stipulates health and safety requirements for all facilities under DOH’s jurisdiction. While DEC and Parks facilities are not required to comply with the Sanitary Code, both of these agencies have their own safety manuals, which include many of the same requirements as the Sanitary Code, such as safety equipment and lifeguard requirements.

Key Findings

- All three agencies have appropriate controls in place and are providing adequate oversight to ensure that public pools, beaches, and spray grounds under their jurisdiction are safe for public use.
- Each agency has developed procedures to address health and safety issues at each of the facilities it operates or oversees. These procedures vary slightly based on the specific needs of each agency’s facilities; however, we found the reasons for the variances are appropriate and do not diminish the agencies’ ability to provide appropriate oversight and safety measures.
- We visited 373 facilities (262 DOH, 88 Parks, and 23 DEC) throughout the State. Of the 373 facilities, 312 were open and 61 were closed. We found minor exceptions at some facilities, but generally found they were in compliance with agency standards, clean, and meeting safety requirements at the time of our visits.

Key Recommendations

- None

Agency Response

A draft copy of this report was provided to officials from each agency for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety to it. Officials from DOH and DEC said they are pleased with the audit findings. DEC

officials also indicated they developed a water quality testing program which will be implemented in the summer of 2017. Parks officials did not respond.

Other Related Audit/Report of Interest

[Office of Parks, Recreation and Historic Preservation: Safety of Infrastructure \(2012-S-29\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

June 21, 2017

Howard Zucker, M.D., J.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12242

Ms. Rose Harvey
Commissioner
Office of Parks,
Recreation and Historic
Preservation
625 Broadway
Albany, NY 12238

Mr. Basil Seggos
Commissioner
Department of
Environmental
Conservation
625 Broadway
Albany, NY 12233

Dear Dr. Zucker, Commissioner Harvey, and Commissioner Seggos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is the report of our audit entitled *Oversight of Health and Safety Regulations at Public Pools, Beaches, and Spray Grounds* operated or regulated by the Department of Health, the Department of Environmental Conservation, and the Office of Parks, Recreation and Historic Preservation. The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Office of Parks, Recreation and Historic Preservation (Parks), the Department of Environmental Conservation (DEC), and the Department of Health (DOH) are responsible for ensuring resident and visitor safety at the more than 7,000 pools, beaches, and spray grounds located throughout the State, ranging from the Atlantic Ocean and the Great Lakes to urban areas and remote locations in the Adirondack and Catskill parks.

DOH is responsible for overseeing the majority of the State's water recreation facilities, including all municipal beaches and pools, public and private campgrounds, and water parks and private pools at hotels and resorts. DEC operates campgrounds located in the Adirondack and Catskill parks and, as such, is responsible for beaches at 27 of these campgrounds. Parks oversees the State's parks outside the Adirondack and Catskill forest preserves, and thus is responsible for the 88 locations that have pools or beaches.

The New York State Sanitary Code (Sanitary Code) stipulates both health and safety requirements for beaches, pools, and spray grounds under DOH's jurisdiction. Unlike DOH, DEC and Parks are not required to comply with the Sanitary Code, and are allowed to establish procedures regulating their facilities. Both agencies have developed their own safety manuals, which include many of the same provisions as the Sanitary Code, such as safety equipment and lifeguard requirements, as well as provisions tailored to address their facilities' unique needs.

Audit Findings

During August 2016, auditors visited a total of 373 water recreation facilities located throughout the State not only to examine their general condition and cleanliness, but also to verify compliance with the health and safety requirements set forth in the Sanitary Code and other relevant public policies and regulations. Our visits included 262 facilities operated under DOH jurisdiction, which included public and commercial swimming pools, beaches, and spray grounds; State facilities, including pools and beaches operated by Parks at 88 locations around the State; and all 23 DEC-operated campground and park facilities that have beaches and were still open at the time of our site visits (four DEC campgrounds had already closed for the season). Of the 373 facilities that auditors visited, 312 were open at the time of the visits. A summary of the numbers of open facilities that were visited, by county and type of facility (pool, beach, or spray ground), is included in the Exhibit at the end of the report.

Although we identified minor issues at some locations, as a rule, we found the facilities were in compliance with laws and agency standards, were clean and in good repair, and met the necessary safety requirements specified in law and regulation at the time of our visits. We did observe some specific safety conditions that we considered questionable at five of the 373 locations, none of which were operated by Parks or DEC. In each case, we immediately brought these issues to the attention of State and local health officials, who responded promptly and took appropriate action to remedy the safety concern and ensure that the conditions were corrected.

Our review of each State agency's policies and oversight procedures also found that all three have appropriate controls in place, and are maintaining adequate oversight of the facilities under their jurisdiction, to provide assurance that pools, beaches, and spray grounds are safe for public use. Each agency has procedures to address health and safety concerns at each of its facilities, including lifeguard staffing and safety equipment requirements, as well as facility cleanliness standards. Although the standards and procedures vary slightly based on the specific needs of each agency's facilities, we determined the reasons for these variances are appropriate and do not diminish the ability of each agency to provide appropriate oversight and ensure safety.

Site Visit Observations

During August 2016, we visited 373 water recreation facilities located in every region of the State, with the exception of New York City. Our sample included 262 public and commercial swimming pools, beaches, and spray grounds that are regulated by DOH; all 88 State pool and beach facilities operated by Parks; and 23 of the 27 campground and park facilities with beaches operated by DEC within the Adirondack and Catskill parks. We did not visit four other DEC facilities that had already closed for the season at the time of our review.

At each location, auditors observed the general condition and cleanliness of the facilities, including the bathrooms and changing facilities, and were alert for apparent conditions that could pose a risk to the health or safety of patrons – particularly children. We also used a series of checklists, developed from the regulatory requirements that each agency has developed, to

evaluate compliance with appropriate regulations and public health standards. Many of these requirements are similar across locations (e.g., the use of lifeguards and appropriately posted signage), while others vary based on the type of attraction (pool, beach, or spray ground), its relative size and depth, or its physical location (e.g., ocean, lake, or river). We also checked to see that the facilities had the proper safety equipment on hand and available, and that they had been properly permitted and inspected, where required.

We were able to fully verify compliance with all requirements for 312 of the 373 sampled facilities. When we visited the other 61 (373 – 312) locations, the swimming areas were closed – in some cases for the remainder of the season, but often due to reduced hours of operation because college-age lifeguards had returned to school and the required qualified personnel were no longer available. This included 45 facilities overseen by DOH, 12 State parks, and another four DEC campgrounds. At these locations, we determined that appropriate signage was in place indicating the site was closed and warning of the dangers of unauthorized use of the facility. If the facility was not gated and locked, we verified to the extent possible that required safety equipment was on site and that there were reasonable barriers in place to restrict unauthorized use.

Generally, we found the facilities were in compliance with agency standards, were clean and in good repair, and met safety requirements at the time of our visits. Although we did find some minor exceptions in certain categories, no one location had a significant number of exceptions. Additionally, we did not identify any systemic problems, nor any apparent life-threatening safety concerns that would prompt immediate closure. We did, however, identify questionable conditions at the following five DOH-regulated facilities that were of sufficient concern to warrant immediate notification of State and local health officials for their consideration. In each instance, DOH staff at either the State or local level took immediate and appropriate action to investigate and remedy the situation.

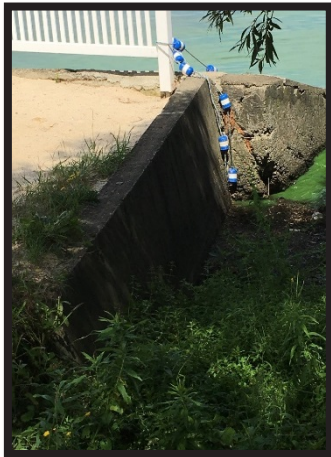
- At the South End municipal pool in Troy, Rensselaer County, auditors observed a pool slide with a step in a metal ladder that had apparently rusted, resulting in a jagged hole in the step. Also, bolts securing the slide to the pool deck appeared to be rusted and were loose. The slide was open and in use at the time of our visit. County health officials contacted the operator and had the slide closed until repairs could be made and verified by subsequent inspection.



- At the Knickerbocker Pool and Spray Ground, also located in Troy, auditors observed a relatively large amount of sand that had settled in an area on the bottom of the pool, possibly due to a filter malfunction or a crack in the pool's wall. Local health officials had the pool closed and drained for inspection and repair.



- At Lakewood Village Beach in Chautauqua County, auditors found concrete steps with no railing leading into the swimming area. There was also a potentially hazardous drop-off area at the side of the beach which did not have any barriers to prevent patrons (especially small children) from inadvertently straying into the area and falling. Local health officials met with the operator and reported the matter. Although there are no specific regulations requiring railings or barriers, all parties agreed that the situation was hazardous and plans will be made to rectify the problems during the off-season.



- At the Leisurewood Recreation Community Pool, located in Akron in Erie County, auditors noticed obstructions (weighted traffic cones) that were placed on a rubber mat at the bottom of the pool. Subsequent investigation by local officials determined that the cones and mat were placed on the pool's floor to cover an area that was chipped and deteriorating. Officials determined this was not a public health hazard, but the cones were removed to eliminate the risk of tripping, and the operator agreed to repair the surface of the pool floor at the close of the season.



- Finally, at Philip Healy Beach, located in Massapequa, Nassau County, auditors experienced a bee infestation that appeared to be emanating from nests in the sand. Staff later indicated that the condition had existed for a considerable portion of the summer and had yet to be resolved despite several eradication efforts. Local health officials inspected the site, but did not identify specific nests that were the source(s) of the problem. According to health officials, the operator (the Town of Oyster Bay) was aware of the situation, but was reluctant to apply pesticides in the sandy areas frequented by patrons. Instead, the Town took preventive measures to help make the area less attractive to bees, including daily raking, frequent removal of litter and debris, and banning of food and sugary drinks. Town officials also agreed to contact an exterminator when and if specific nest sites were identified.

Health and Safety Regulations

As previously discussed, the water recreation facilities overseen by Parks, DEC, and DOH are not all required to follow precisely the same health and safety regulations. DOH largely requires operators to adhere to the Sanitary Code, whereas DEC and Parks each have their own safety manuals that guide operations at their facilities. In addition, because Parks and DEC facilities are State operated, they do not need to obtain the same annual operating permit that is required for commercial sites or local municipal beaches or public pools, which are all under DOH's jurisdiction. Still, we found the regulations and requirements are relatively similar among the three agencies, with differences generally relating to the types of equipment required at each location. We found the explanation for the differences to be reasonable, and did not identify any significant safety or health impact due to any of the differences.

In total, we identified 13 regulations or operating requirements that varied in any significant way among the three agencies, as presented in the following table.

Required Equipment or Action	DOH	Parks	DEC
Valid, posted permit to operate (for beaches and pools)	Yes	No	No
Thermometer (water)	No	Yes	Yes
Bloodborne Pathogen/Isolation Kit	No	No	Yes
Automated External Defibrillator	Limited	Yes	Yes
Backup Backboard	No	Yes	No
Bag Valve Mask Device/AMBU Bag	No	Yes	Yes
Life Jackets (personal flotation devices for boating)	No	Yes	Yes
Reach Pole	Yes	No	Yes
Ring Buoy (w/50-ft. rope)	Yes	No	Yes
Masks and Fins	No	Yes	Yes
Snorkel (optional)	No	Yes	Yes
Air Horn	No	No	Yes
Water Testing (beaches)	No	Yes	No

The differences in each of the requirements are generally due to the unique needs and characteristics of each agency's facilities. Facilities under DOH jurisdiction are generally operated by private companies or local governments, and can vary greatly in size and in type of amenities they offer. Capacity at these facilities can range from fewer than five people in some small pools and spas to as many as 7,000 at some larger commercial operations, municipal beaches, and spray parks. The facilities must have a current operating permit issued by DOH and must comply with the Sanitary Code, which is set by the Public Health Law. The Sanitary Code distinguishes different health and safety requirements based not only on type of facility (e.g., spray parks, pools, ocean beaches), but also on the size of the facility and its water depths (sometimes requiring buoys marking different water depths).

In contrast, Parks and DEC facilities are State owned and operated. Parks also operates some very large facilities, particularly on the Atlantic coast of Long Island, and some of the pools at its larger parks also have a significant capacity. In contrast, DEC tends to operate comparatively smaller beach facilities that are usually co-located with campgrounds. DOH requires that pools be tested three times a day for pH and chlorine levels; Parks and DEC have the same requirement. However, only Parks performs routine bacterial tests at all its facilities. This testing is not universally required by the other agencies, in part because testing at remote locations, including many municipalities under DOH's purview, may not be logistically feasible. Testing beach water for bacteria such as E. coli is a highly time-sensitive process, requiring that samples be drawn, properly stored, and brought to a certified lab for analysis within a few hours' time to ensure accuracy. For this reason, DOH allows municipalities to determine the frequency of water testing that fits their needs. DOH officials indicated that about 85 percent of the beach facilities they oversee conduct some level of periodic water testing, although it is not required. Also, DEC officials indicated they have developed a water quality testing program which will be implemented in the summer of 2017.

Audit Scope, Objective, and Methodology

The objective of our audit was to assess the extent that State agencies responsible for operating and regulating public pools, beaches, and aquatic spray grounds are ensuring that these facilities are properly maintained, equipped, staffed, and generally safe for public use. Our audit included visits to all counties in New York State, except those within New York City. The audit scope was from April 1, 2015 through December 14, 2016.

To accomplish our objective, we reviewed relevant regulations and agency policies. We held several meetings with DOH, Parks, and DEC personnel to better understand their roles and the nature of the services provided to their customers and constituents. We became familiar with, and assessed the adequacy of, each agency's internal controls as they related to monitoring, performance, and other aspects of our audit objective.

We conducted site visits to various facilities operated, overseen, and/or monitored by each agency. We judgmentally selected 373 sites to review based on various criteria, including all 88 Parks facilities, all 23 DEC facilities that were open (four were closed for the season), and 262 of the 7,116 facilities regulated by DOH that we considered readily accessible to the general public.

We selected sites from each county in the State; the number of facilities for each county was based on the percentage of total population that each county accounted for. Within each county, we then selected the facilities with the highest capacities, and randomly selected the remaining locations.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to officials from each agency for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety to it. Officials from DOH and DEC said they are pleased with the audit findings. Also, as previously noted, DEC officials indicated they have developed a water quality testing program which will be implemented in the summer of 2017. Parks officials, however, did not respond.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Number of Open Facilities That Auditors Visited by County and by Facility Type

County	Beach	Pool	Spray Ground
Albany	1	3	1
Allegany		1	
Broome	4	2	
Cattaraugus	1	2	
Cayuga	4	1	
Chautauqua	2		
Chenango	2	2	
Clinton	3		
Columbia	5		
Cortland	1		
Delaware	3	4	
Dutchess	2	1	
Erie	4	5	1
Essex	8		
Franklin	3		
Fulton	3		
Genesee	1	1	
Greene	1		
Hamilton	7		
Herkimer	2		
Jefferson	6	4	
Lewis	1		
Madison	1	1	
Monroe	2	2	
Montgomery		1	
Nassau	12	24	2
Niagara		4	
Oneida	3	4	
Onondaga	2	4	1

County	Beach	Pool	Spray Ground
Ontario	1		
Orange	7	1	
Oswego	2	2	
Otsego	2	2	
Putnam	6		
Rensselaer	2	3	1
Rockland		6	2
Saratoga	2	4	
Schenectady		2	
Schoharie		2	
Schuyler		1	
Seneca	5	1	1
St. Lawrence	8		
Steuben	2	1	
Suffolk	30	5	1
Sullivan	1	2	
Tioga		1	
Tompkins	3	2	
Ulster	2	2	
Warren	10	1	
Washington	2		
Wayne	2		
Westchester	4	15	2
Wyoming		2	
Yates	4		
Totals	179	121	12

Note: Counties not visited include Chemung, Livingston, and Orleans.

Agency Comments - Department of Health



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 28, 2017

Mr. John Buyce, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Re: OSC Draft Audit Report 2016-S-55, entitled, "Oversight of Health and Safety Regulations at Public Pools, Beaches, and Spray Grounds"

Dear Mr. Buyce:

The Department of Health is pleased your audit found that we have appropriate controls in place, and that we are providing adequate oversight to ensure that public pools, beaches, and spray grounds under our jurisdiction are safe for public use. Thank you for the opportunity to respond.

Sincerely,

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Brad Hutton
Ellen Anderson
Mike Cambridge
Jeffrey Hammond
Jill Montag
Diane Christensen
Lori Conway

Agency Comments - Department of Environmental Conservation

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Response to the Office of the State Comptroller's
Audit Report 2016-S-55**

**Oversight of Health and Safety Regulations at Public Pools, Beaches and
Spray Grounds**

The Department is pleased that the Comptroller's report found that the following:

- DEC has appropriate controls in place and is providing adequate oversight to ensure that public beaches under its jurisdiction are safe for public use.
- DEC has developed procedures to address health and safety issues at each of the facilities it operates or oversees.
- The 23 DEC facilities that were visited were found to be in compliance with agency standards, clean and meeting safety requirements at the time of visit.

Response:

DEC makes proper management and maintenance of its swimming facilities a priority and regularly remind our Regional staff of the importance of maintaining equipment, inventories and reviewing procedures. Consistent with our overall concern for the health and safety of those who swim at our beaches, DEC has recently developed a water quality testing program which will be implemented in the summer of 2017.