



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

Division of State Government Accountability

Responsiveness to Noise Complaints Related to Construction Projects

**New York City Department of
Environmental Protection
New York City Department of Buildings**



Report 2016-N-3

August 2017

Executive Summary

Purpose

To determine whether the New York City Department of Environmental Protection (DEP) and the New York City Department of Buildings (DOB) have effectively enforced the New York City Noise Code (Noise Code) and adequately addressed noise complaints related to construction in New York City. Our audit period was January 1, 2014 through June 30, 2016.

Background

For the period January 1, 2014 through June 30, 2016, a total of 90,861 construction noise complaints were called in to New York City's 311 system. According to the World Health Organization's *Guidelines for Community Noise*, the general population is increasingly exposed to community noise, creating the potential for a significant public health concern. The Centers for Disease Control and Prevention has also outlined the adverse health effects from noise, including: hearing loss; increased stress, anxiety, and fatigue; elevated blood pressure; cardiovascular disease; loss of sleep; increased heart rate; and increased sensitivity to sound.

For purposes of this audit, which pertains to construction noise in New York City, DEP and DOB are the agencies primarily responsible for handling such complaints. The Noise Code states that DEP is responsible for abating a sound source which causes or may cause, by itself or in combination with any other sound source or sources, an unreasonable or prohibited noise. DEP also regulates air quality, hazardous waste, and critical quality of life issues. DOB is responsible for: reviewing and approving building plans; issuing building permits (including those for after-hours work); and conducting building inspections.

Key Findings

- The number of construction noise complaints called in to New York City's 311 system has risen significantly in recent years, from 14,259 in 2010 to 37,806 in 2015. This increase in construction noise complaints was mostly due to the number of after-hours construction variances issued by DOB.
- Between January 1, 2014 and June 30, 2016, 2,044 of the 2,683 construction noise complaints for our sampled locations were for construction before or after hours. During this same time frame, DOB issued 2,632 After Hours Variances (AHVs) for these locations.
- Improvements in communication and coordination between DEP and DOB, as well as an overhaul of the process used by DOB for issuing and renewing AHVs, are necessary to more effectively address persistent noise problems.
- Neither DEP nor DOB accesses New York City's 311 system as a resource to identify locations with multiple construction noise complaints or to identify and analyze the major sources of noise complaints.
- DEP inspection reports indicated that inspectors generally find there is no excessive noise at the location and rarely issue violations for noise. Inspection reports do not include noise meter readings, and at the time of the audit, inspectors were not equipped with noise meters.
- DOB is allowing contractors to obtain extensions of existing AHVs or multiple AHVs for the same construction sites without critical review, which is a significant factor in the rise of construction

noise complaints. Additionally, we found planned construction work that was inconsistent with the reason for the AHV approval.

Key Recommendations

To DEP:

- Improve communication and coordination with DOB, such that pertinent AHV and permit data is made readily available to DEP inspectors.
- Shorten response times to visit construction sites for which noise complaints were received to improve inspectors' ability to witness and assess conditions closer to the time a complaint is made.
- Establish DEP-specific procedures for conducting inspections.
- Include noise meter readings in inspection reports to provide an objective assessment of noise levels, where applicable.

To DOB:

- Formally assess and update processes for issuing and renewing AHVs, taking into account all pertinent information, including the number and nature of noise complaints and their impact on the community.
- Increase the level of review of AHV renewal requests to ensure they are appropriately vetted prior to approval.
- Improve communication, including streamlined sharing of information, with DEP regarding locations with an excessive number of noise complaints.

Other Related Audit/Report of Interest

[New York City Police Department/New York State Liquor Authority: Responsiveness to Noise Complaints Related to New York City Nightlife Establishments \(2016-S-37\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

August 31, 2017

Mr. Vincent Sapienza
Acting Commissioner
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Mr. Rick D. Chandler, P.E.
Commissioner
New York City Department of Buildings
280 Broadway
New York, NY 10007

Dear Commissioner Sapienza and Commissioner Chandler:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government-funded services and 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 a report of our audit entitled *Responsiveness to Noise Complaints Related to Construction Projects*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal 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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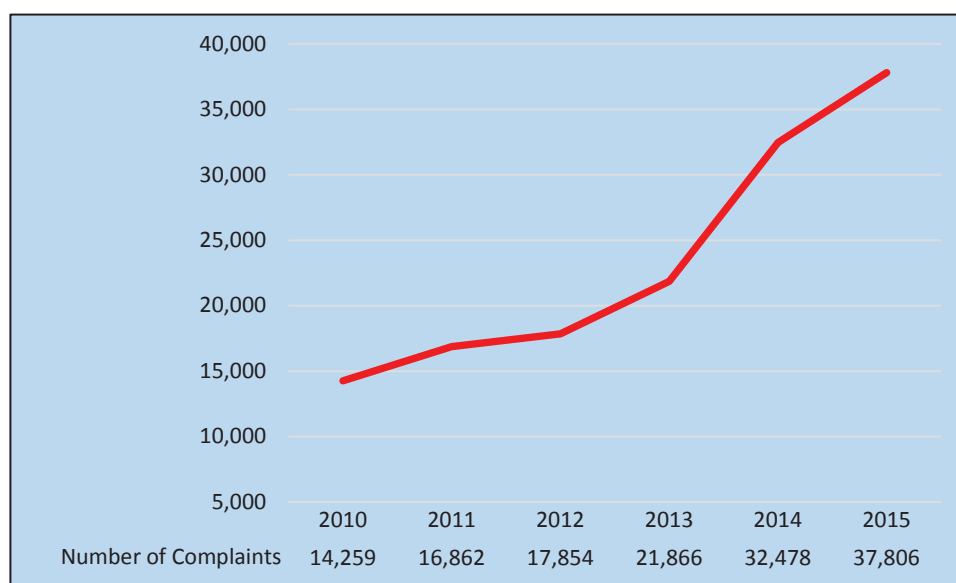
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Background

In 2003, New York City (NYC) launched a 311 telephone service with the mission of providing the public with quick, easy access to all NYC government services and information. According to NYC's 311 public database, for the period January 1, 2010 through December 31, 2015, 141,125 complaints pertained to construction noise, most of which were for after-hours construction noise. According to the New York City Noise Code (Noise Code), allowable construction hours are weekdays between 7:00 a.m. and 6:00 p.m. Construction activities during hours beyond this are in violation of the Noise Code, unless the New York City Department of Buildings (DOB) issues an After Hours Variance (AHV). As shown in Chart 1, the annual number of construction noise complaints submitted to 311 has risen significantly in recent years, from 14,259 in 2010 to 37,806 (or about 165 percent) in 2015.

Chart 1 – Construction Noise Complaints 2010-2015



According to the World Health Organization's *Guidelines for Community Noise*, exposure to excessive levels of community noise can have adverse health effects for residents. The general population is increasingly exposed to community noise, creating the potential for a significant public health problem. The Centers for Disease Control and Prevention has also outlined the adverse health effects from noise. In addition to hearing loss, noise can lead to: increased stress, anxiety, and fatigue; elevated blood pressure; cardiovascular disease; loss of sleep; an increased heart rate; and an increased sensitivity to sound. Further, excessive noise during pregnancy may damage a newborn's hearing and lead to other harmful effects. Untreated, hearing loss can lead to social isolation, depression, dementia, falls, inability to work or travel, and lower physical activity.

For purposes of this audit, which pertains to construction noise in NYC, the New York City Department of Environmental Protection (DEP) and DOB are the agencies primarily responsible

for handling such complaints. The Noise Code states that DEP is responsible for abating a sound source which causes or may cause, by itself or in combination with any other sound source or sources, an unreasonable or prohibited noise. DEP also regulates air quality, hazardous waste, and critical quality of life issues, and is the agency responsible for responding to 311 construction noise complaints in NYC. DOB is responsible for reviewing and approving building plans; conducting building inspections; and issuing permits, including those for after-hours work. Construction activities before 7:00 a.m. and after 6:00 p.m. and any time on weekends require AHVs.

Audit Findings and Recommendations

The number of complaints about construction noise in NYC has increased greatly in recent years. Nonetheless, DEP and DOB, the agencies primarily responsible for addressing such noise complaints, collectively had limited impact in mitigating protracted noise problems. Communication and coordination between DEP and DOB were extremely limited, and neither agency adequately leveraged pertinent noise complaint data from NYC's 311 system. DEP investigations rarely resulted in violations for unreasonable noise, and DOB issued a considerable number of AHVs for construction work, including sites for which multiple noise complaints had been submitted. As a result, certain locations, which have had numerous noise complaints lodged against them, continued to operate without having to address those issues. There is a material risk that persistent noise problems negatively affected the quality of life for residents in communities in the vicinity of certain construction projects.

We conclude that improvements in communication and coordination between DEP and DOB, as well as an overhaul of the process used by DOB for issuing and renewing AHVs, are necessary to improve the efficiency and effectiveness of efforts to address persistent noise problems.

DEP Enforcement Activities

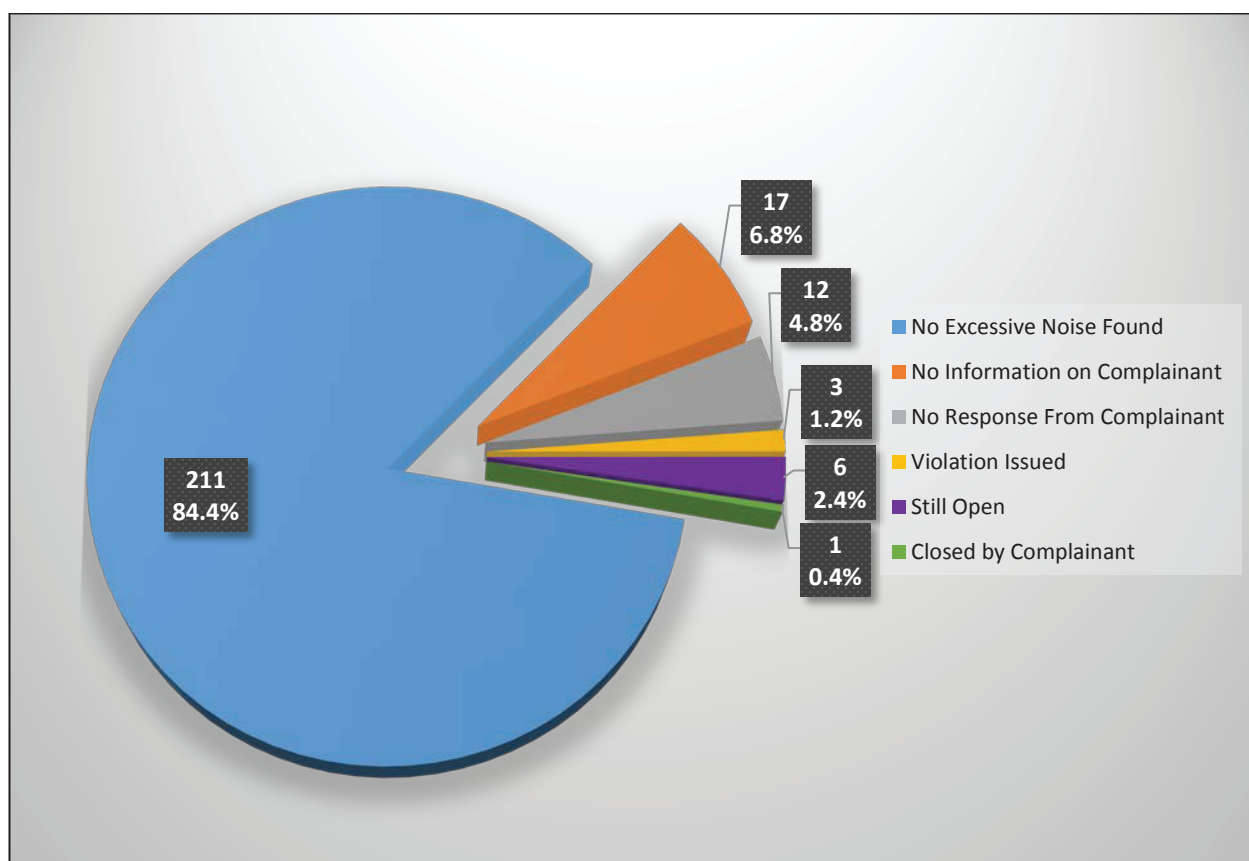
DEP is responsible for regulating air quality, hazardous waste, and critical quality of life issues, including noise in NYC. As part of DEP's function to protect the public health and the environment by, among other things, reducing noise, inspectors investigate construction noise complaints made to 311 to assess whether that work is appropriately permitted, a noise mitigation plan is in place, and the Noise Code is being complied with. Between January 1, 2014 and June 30, 2016, there were 90,861 construction-related noise complaints filed with the 311 system; 67,282, or 74 percent, of the complaints were for construction noise before or after permitted hours.

Construction noise complaints to 311 are routed to DEP's Info Public Sector (IPS) system. These complaints are then assigned to one of DEP's eight Senior Inspectors based on the borough in which the construction site is located. After an initial assessment, each complaint is assigned to a field inspector. DEP also has an after-hours unit dedicated to investigating complaints received on the weekend and outside normal construction hours (6:00 p.m.–7:00 a.m.). After investigating each noise complaint, the inspectors close out the complaints in IPS with one of several resolution codes used by DEP for the 311 system. Consistent with our sample, our analysis of DEP's inspection resolutions indicated that since 2010, the most common resolutions are that DEP did not observe a violation or could not contact the complainant. For the time period we reviewed, DEP set a target of ten days to investigate a construction noise complaint.

We selected a judgmental sample of noise complaints lodged between January 1, 2014 and June 30, 2016 for 50 incident addresses. The 50 addresses included the 30 locations with the highest number of construction noise complaints in NYC (29 of these locations were in Manhattan) and an additional 5 locations with the most complaints each from the Bronx, Brooklyn, Queens, and Staten Island.

As noted in Exhibit A, 2,683 construction noise complaints were made regarding these 50 locations during our audit period (January 1, 2014 through June 30, 2016), and 2,044 (76 percent) of these complaints were for construction before or after hours. During the same period, DOB issued 2,632 AHVs for these same 50 locations. From our review of the five most recent noise complaints for each of these 50 locations (total of 250 complaints), we found that for 84.4 percent (211) of the complaints, inspectors determined that there was “no excessive noise,” and only three complaints (1.2 percent) resulted in violations being issued by DEP. Chart 2 summarizes the results of DEP’s investigations of the 250 instances.

Chart 2 – Investigation Outcome Totals



DEP investigations that concluded there was “no excessive noise” did not indicate whether construction was active at the time of the inspection or the level of noise that was present, if any. Although 197 of the 250 (79 percent) sampled complaints pertained to after-hours construction, there was no indication in the 311 database whether the locations had AHVs and the construction noise in question was therefore allowable. Also, there were no indications of the results (if any) of meter readings performed at the sites to determine if noise levels were excessive.

DEP, as the lead agency responsible for enforcing the Noise Code, should have a formal process to periodically analyze the 311 noise complaints to identify patterns and issues, and to share the results of their analysis with the responsible NYC agency and discuss possible solutions to address the cause of the noise. However, we found that DEP did not have a formal process to

regularly analyze 311 data to identify locations for which multiple complaints are received, or a formal process to provide information regarding problematic locations to DOB as a resource for restricting AHVs. Had DEP officials formally analyzed the 311 noise data, they likely would have observed the overall growth trend in construction noise and, more specifically, the dramatic increase in after-hours construction noise complaints in recent years.

DEP officials provided us with a copy of a memo they sent to DOB in March 2016 regarding DOB's issuance of AHVs. The memo followed up on a DEP/DOB meeting related to after-hours construction noise complaints and the issuance of AHVs. The memo contains an analysis performed by DEP of the AHVs issued by DOB for ten locations of concern that DEP identified due to repeated complaints about after-hours construction noise. DEP questioned DOB's issuance of AHVs for these locations. The memo also indicated that DEP looked forward to discussing the results of DOB's review of the information provided. However, according to DEP officials, they did not receive a response from DOB. (This matter is discussed in further detail subsequently in this report.)

According to the 2016 Mayor's Management Report (MMR), DEP had a limit of ten days to close out construction noise complaints. For fiscal year 2017, the limit was shortened to nine days. From January 1, 2010 through July 6, 2016, the average time for responding to weekday complaints received was about five days, and just over seven days for weekend complaints. Thus, both averages were well within the targets established by the MMR. However, we believe a response time of that many days directly influences the results of the inspection. For instance, as seen in Chart 2, inspectors observed no excessive noise for 84.4 percent of the complaints; this is the likely result of an inspector getting to the location an average of five days after the noise was reported. Furthermore, in these cases, the inspection reports did not contain noise meter readings. Consequently, there was insufficient assurance that noise levels were adequately assessed for tolerance and reasonableness.

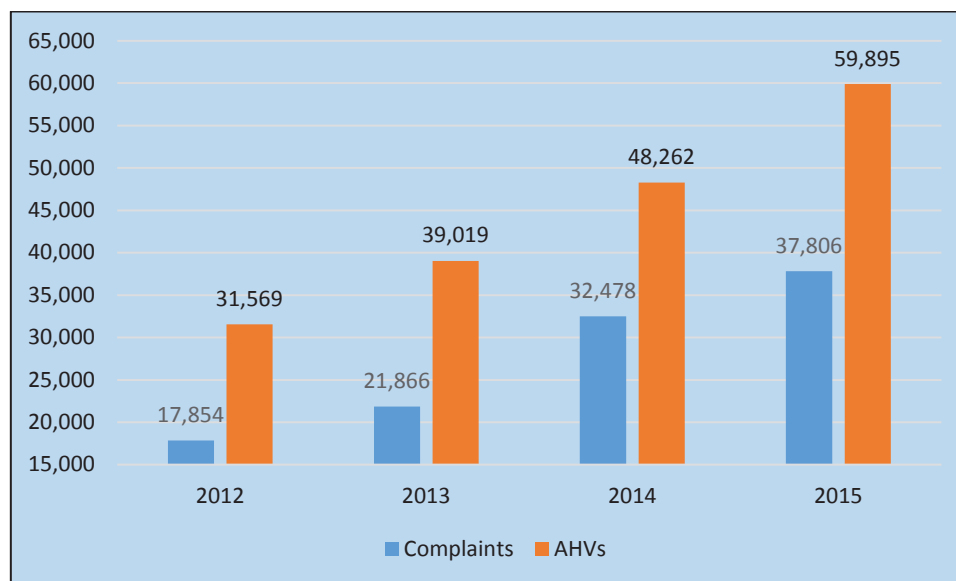
At the time of our audit fieldwork, DEP did not have noise meters for each of their field inspectors. In response to our preliminary report, DEP officials informed us that they were in the process of purchasing additional meters. They also later informed us that a "mobile device initiative" (hand-held) was being implemented to allow inspectors to receive complaints in the field and enter inspection results in real time.

DOB Enforcement Activities

DOB promotes the safety of people who build, work, and live in NYC by regulating the lawful use of over 1 million buildings and construction sites across the five boroughs. DOB is responsible for enforcing NYC's construction codes, zoning resolutions, and the New York State Multiple Dwelling Law. DOB enforces compliance with these regulations and promotes worker and public safety by: reviewing and approving building plans; performing inspections; issuing building permits and AHVs; and performing various licensing functions. As shown in Chart 3, in recent years, the number of noise complaints has increased as the number of AHVs granted by DOB has also increased. Specifically, AHVs increased by 89 percent from 2012 through 2015, and noise complaints (mostly related to after-hours construction) went up by 112 percent during the same period. Further,

there was a fairly consistent correlation between the annual number of AHVs and complaints. From 2012 through 2015, the annual percentages of complaints to AHVs ranged from 56 to 67 percent.

Chart 3 – Noise Complaints and AHVs 2012-2015

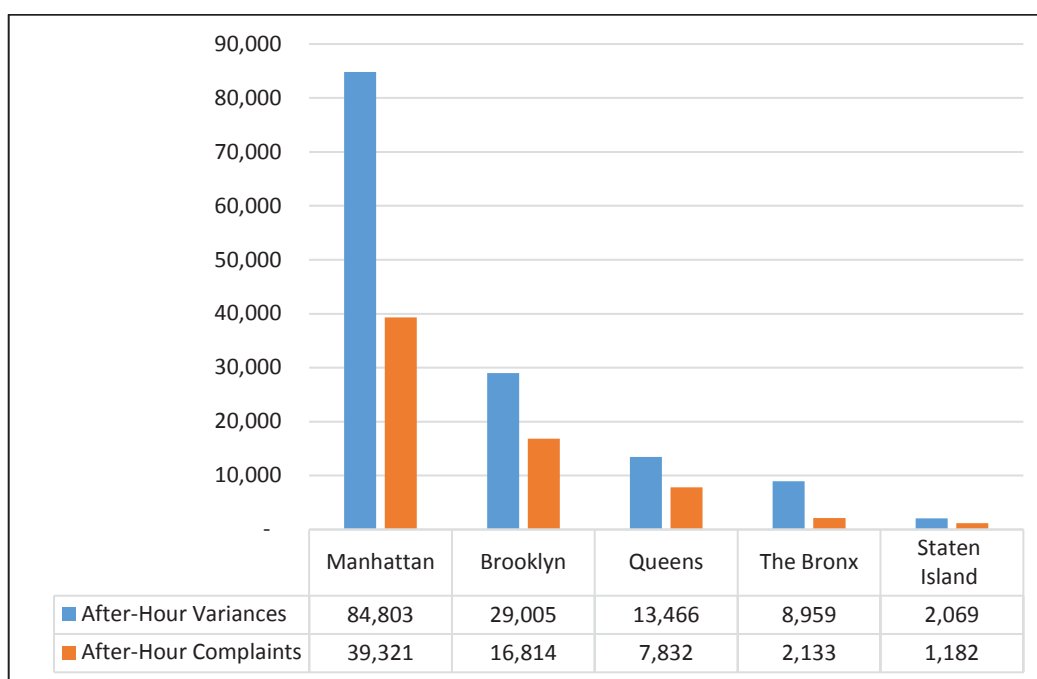


General information on a property in NYC, including recorded complaints and violations, actions, applications, and inspections, is contained in DOB's Buildings Information System. The public can access this information through DOB's online query system. AHV applications can be submitted via hard copy or electronically, and can be reviewed by DOB administrative staff. DOB's computer reporting system, B-Smart, performs an initial scan of electronic applications for key words and checks for stop work orders, open DOB complaints, and DOB notices of violation relating to the job sites. If an application does not meet the standards set forth in the Noise Code, the application should be referred to a Borough Administrator for appropriate follow-up. Renewals of AHVs are submitted electronically by the contractors on DOB's website, and are not subject to critical review. The AHVs are granted for up to 14 days at a time, at a cost of \$500, plus \$80 for each day of work.

According to the Noise Code, construction hours are weekdays between 7:00 a.m. and 6:00 p.m. Construction activities outside these hours violate the Noise Code, unless DOB issues an AHV for such work. According to Section 24-223 (e) of the Noise Code, an AHV can allow construction to occur during specified hours after 6:00 p.m., before 7:00 a.m., and/or on weekends. However, the Noise Code allows DOB to issue variances only under limited circumstances, including for emergency work, public safety, NYC construction projects, construction activities with minimal noise impact, and undue hardship. (See Exhibit B for definitions of the allowable AHV categories.)

There were 138,302 AHVs issued between January 1, 2014 and June 30, 2016. Chart 4 summarizes the numbers of AHVs by borough and the corresponding numbers of before- or after-hours noise complaints for the same period.

Chart 4
AHVs and Complaints by Borough January 1, 2014 - June 30, 2016



Despite the number of complaints (2,044) received by DEP for the addresses listed in Exhibit A, there were only 27 violations issued by DEP, with only 2 due to unreasonable noise. Although this could suggest that the after-hours construction was approved or the related noise was not excessive, drawing such a conclusion is tenuous. The time lags in DEP inspections and the lack of sufficient detail in 311 data limited auditors' (as well as DEP/DOB officials') ability to confirm the reasons why violations were not cited. Further, at the time of our fieldwork, DOB officials did not consider construction noise complaints made to 311, nor did they consider construction noise citations issued by DEP, when making AHV decisions. As such, we concluded that DOB should subject AHV requests and renewals for construction activities related to material numbers of noise complaints to more in-depth reviews prior to granting them.

Also, it appeared that many AHVs were not issued as intended by the Noise Code. For several projects (addresses) in which DOB approved AHVs and renewals, we questioned whether the work description was consistent with the prescribed Noise Code rationales for AHVs. As a result, there is significant risk that residents were subjected to excessive amounts of after-hours noise, beyond what the variances were intended to cover.

For example, an AHV was issued for 100 East End Avenue in August 2015, and DOB subsequently approved 24 consecutive electronic renewals that lasted through July 2016, even though the work site was within 200 feet of a residence and had 112 noise complaints regarding after-hours construction. The initial AHV application and all renewals stated the justification was public safety. However, the description of work included "select interior demo, drywall installation, door installation, general clean up, and housekeeping." (See Exhibit C for initial application.) There was no indication that DOB staff assessed the continuing need, particularly for public safety concerns, for the AHV renewals.

Similarly, DOB granted a project at 225 Liberty Street ten consecutive AHVs from August 2014 through December 2014 for the demolition, general construction, and interior renovation of a commercial space. There was a total of 490 AHVs granted for this address during our audit period, and there were 49 complaints regarding noise from after-hours construction. Nevertheless, it was unclear that the AHVs were granted for any of the aforementioned acceptable reasons, as prescribed by the Noise Code.

As previously noted, there was minimal communication between DEP and DOB regarding noise complaints, and there was no formal process for sharing information about problematic construction sites, particularly those for which there was a high number of complaints. Also, as previously noted, DEP officials provided us documentation showing that they met with DOB officials in October 2015 to discuss the relationship between after-hours construction noise complaints and the issuance of AHVs. Based on an analysis of 311 noise complaint data, DEP recommended an increased level of scrutiny and accountability for AHV applications. This included: disclosing work within 50 feet of residences; enhanced scrutiny of work descriptions that use public safety or minimal noise as justification; and further analyses of complaint frequency, AHV classifications, and year-to-year changes in relationships between complaints and AHVs. We concluded that DEP officials had certain concerns about the approvals of AHVs and their renewals that were similar to ours.

For example, for 225 Liberty Street (an address included in Exhibit A), DEP officials stated:

“Reason for approval- public safety. A variance was given for dry wall and other exterior work, but from 12AM until 11:59PM, why is that public safety, when the same work is transpiring during the day time hours. Well over a dozen complaints.”

Also, for 45 East 60th Street, DEP officials noted that the variance was for 24 hours of construction daily, due to public safety concerns. However, it was unclear why round-the-clock construction was required to address public safety matters. Often, intervals of a certain number of hours are carved out of the day to address such matters. Moreover, DEP officials told us that DOB did not respond to their memo, and DOB officials did not respond to our related inquiry as well, other than to state that there is no centralized process at DOB to collect and act on information provided by DEP.

Based on our testing, including work performed by DEP, we concluded that the continual extensions of existing AHVs (or approval of multiple AHVs for the same construction sites) without critical review is a significant factor in the rise of construction noise complaints. Additionally, we identified inconsistencies between construction work actually performed and related AHVs. For example, an AHV was issued and subsequently renewed for “construction activities with minimal noise impact” at 103 8th Avenue, despite documentation referencing “noisy work,” including demolition, welding, chopping, and drilling (see Exhibit D). As such, we conclude that DOB should enhance its scrutiny of AHV applications and renewals so that ample consideration is given to the number of construction noise complaints related to the projects in question.

In response to our preliminary findings, DOB officials indicated that they were in the process

of making changes to the AHV program. Specifically, they plan to: perform enhanced scrutiny of the work descriptions used for AHV justification; require applicants to attest the work is in conformance with the code and cannot be done during regular working hours; and audit a percentage of AHVs issued to ensure the work conforms to the application.

Recommendations

To DEP:

1. Improve communication and coordination with DOB, such that pertinent AHV and permit data is made readily available to DEP inspectors.
2. Formally analyze 311 system data to identify locations where multiple construction noise complaints are received. Periodically share analyses, as well as recommendations, with DOB officials so they can use this information when deciding whether to grant AHV renewals. Establish a formal streamlined process to share information.
3. Shorten response times to visit construction sites for which noise complaints were received to improve inspectors' ability to witness and assess conditions closer to the time a complaint is made.
4. Establish DEP-specific procedures for conducting inspections.
5. Include noise meter readings in inspection reports to provide an objective assessment of noise levels, where applicable.
6. Revise existing complaint disposition codes to indicate that a location has an AHV, which is the basis for not issuing a violation.

To DOB:

7. Formally assess and update processes for issuing and renewing AHVs, taking into account all pertinent information, including the number and nature of noise complaints and their impact on the community.
8. Increase the level of review of AHV renewals to ensure they are appropriately vetted prior to approval.
9. Improve communication, including streamlined sharing of information, with DEP regarding locations with an excessive number of noise complaints.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether DEP and DOB adequately addressed noise complaints related to construction in NYC. Our audit period was January 1, 2014 through June 30, 2016.

To accomplish our objective and assess related internal controls over noise data collection and mitigation procedures, we interviewed DEP and DOB officials and staff and reviewed the Noise Code, DEP procedures, and DOB procedures. In addition, we reviewed and analyzed NYC Open Data construction noise complaints, DEP inspection reports, and DOB construction application forms. We also accompanied DEP field inspectors during their investigation of complaints.

NYC Open Data contained 141,125 construction noise complaints for the calendar years 2010-2015, and 90,861 during our audit scope period from January 1, 2014 through June 30, 2016; 67,282 were complaints for before- or after-hours construction work. During this same scope period, DOB issued a total of 138,302 AHVs for construction work.

We selected a judgmental sample of noise complaints for 50 incident addresses between January 1, 2014 and June 30, 2016. The 50 addresses included: the 30 locations with the highest number of construction noise complaints in NYC (29 of these locations were in Manhattan) and 20 locations across the Bronx, Brooklyn, Queens, and Staten Island (the 20 locations comprised the top 5 complained-about locations from each of these four boroughs). A total of 2,683 construction noise complaints were received regarding these 50 locations during our audit scope period, 2,044 of which were for before- or after-hours construction work.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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.

As is our practice, we notified DEP and DOB officials at the outset of the audit that we would be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at DEP and DOB have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from DEP and DOB officials that all relevant information was provided to us during the audit.

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 organizational independence under generally accepted government auditing standards. In our opinion, these management 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 as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

Reporting Requirements

We provided draft copies of this report to DEP and DOB officials for their review and formal comment. We considered officials' comments in preparing this final report and have attached them in their entirety to it. In their response, DOB officials agreed with the three recommendations addressed to DOB, including one to improve communication and coordination with DEP.

In their response, DEP officials agreed with three of the report's six recommendations made to that agency. In particular, officials noted that actions had been taken to address construction noise complaints, including the hiring of additional inspectors and the purchase of additional noise meters. Officials also stated that improved communication and coordination with DOB is a priority, and they are looking for ways to improve enforcement.

However, DEP disagreed with three recommendations, including one to revise existing complaint disposition codes in the 311 system. As noted in our report, the resolution of more than 80 percent of construction noise complaints was that no noise code violation occurred, because no excessive noise was found. For a significant number of these complaints, there was no violation because an AHV was in place; however, such AHV data is not integrated within the 311 system. We maintain that making this information available to the public would be valuable, especially for citizens who had filed noise complaints. This information could also enhance operational efficiencies and the effectiveness of pertinent DEP and DOB oversight and monitoring functions.

In addition, our rejoinders to certain DEP comments are included in the report's State Comptroller's comments.

Within 90 days after final release of this report, we request that the Commissioner of the New York City Department of Environmental Protection and the Commissioner of the New York City Department of Buildings report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

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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 A

Sample of 50 Locations With Complaints Lodged Between January 1, 2014 and June 30, 2016

Complaints, AHVs, and Violations						
Sample #	Address	Complaints		AHV	Violations	Borough
		Total	Before/After Hours			
1	100 East End Avenue	122	112	100		Manhattan
2	261 West 25 th Street	116	100	57		Manhattan
3	20 East End Avenue	101	86	44		Manhattan
4	11 Madison Avenue	99	91	218	4	Manhattan
5	45 East 60 th Street	98	79	118		Manhattan
6	324 Grand Street	96	28	17	4	Manhattan
7	220 Central Park South	77	58	118		Manhattan
8	23 Gramercy Park South	75	20	138		Manhattan
9	205 East 92 nd Street	72	61			Manhattan
10	175 West 95 th Street	70	3			Manhattan
11	360 East 89 th Street	69	49	85	1	Manhattan
12	153 Remsen Street	68	63	29	4	Brooklyn
13	15 Renwick Street	65	64	56		Manhattan
14	327 East 64 th Street	64	52	129	1	Manhattan
15	60 East 86 th Street	64	44	81		Manhattan
16	30 East 64 th Street	63	53			Manhattan
17	328 East 59 th Street	63	63			Manhattan
18	301 West 46 th Street	57	50	41		Manhattan
19	38 West 33 rd Street	57	52	2		Manhattan
20	106 West 58 th Street	56	50			Manhattan
21	215 Sullivan Street	56	50			Manhattan
22	45 East 22 nd Street	56	46	58		Manhattan
23	2 Gold Street	55	45	15		Manhattan
24	225 Liberty Street	54	49	490	1	Manhattan
25	135 Eldridge Street	53	5	9	1	Manhattan
26	356 East 89 th Street	53	37			Manhattan
27	50 West 30 th Street	53	50			Manhattan
28	111 8 th Avenue*	52	50	134		Manhattan
29	20 East 92 nd Street	52	36	72		Manhattan
30	328 Grand Street	50	25	10		Manhattan

* 103 8th Avenue and 111 8th Avenue are the same property.

Sample #	Address	Complaints		AHV	Violations	Borough
		Total	Before/After Hours			
31	333 Schermerhorn Street	50	46	175	1	Brooklyn
32	505 St. Marks Avenue	50	44	53		Brooklyn
33	626 Flatbush Avenue	50	46	56	1	Brooklyn
34	47-53 39 th Street	41	41		1	Queens
35	64-35 102 nd Street	38	37	72		Queens
36	2149 East 27 th Street	37	37			Brooklyn
37	365 Bond Street	37	14	87	1	Brooklyn
38	5 Milbank Road	35	34			Staten Island
39	55-27 Myrtle Avenue	30	28	5	1	Queens
40	3975 Sedgwick Avenue	29	3	1		Bronx
41	524 East 236 nd Street	28	5		2	Bronx
42	19 Milbank Road	28	24		2	Staten Island
43	42000 Union Street	25	23			Queens
44	44-27 Purves Street	25	18			Queens
45	3333 Henry Hudson Parkway	24	22	11	1	Bronx
46	105 Hamilton Avenue	19	19	103		Staten Island
47	2600 Netherland Avenue	16	2	10	1	Bronx
48	413 East 154 th Street	13	9			Bronx
49	120 Stuyvesant Place	12	11	28		Staten Island
50	58 Lawrence Avenue	10	10	10		Staten Island
Totals	50	2683	2044	2632	27	

Note: There may be additional complaints, AHVs, violations, and permits for associated addresses due to similar building identification numbers.

Exhibit B

Descriptions of After-Hours Construction Variance Categories Section 24-223(e) of the Administrative Code of the City of New York

Authorization for after-hours construction work may only be issued in the following circumstances:

1. **Emergency work.** Agencies shall authorize such after-hours construction work for emergency conditions, inside or outside the property line, involving a threat to public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise. An emergency authorization issued pursuant to this paragraph shall expire as determined by the agency but no later than the ninetieth day after its issuance and shall be renewable in accordance with agency procedures while the emergency continues.
2. **Public safety.** Agencies may authorize such after-hours work, inside or outside of the property line, where the agency determines that the work cannot reasonably or practicably be performed on weekdays between the hours of 7 a.m. and 6 p.m. because of traffic congestion and/or concern for worker and/or public safety. An authorization issued pursuant to this paragraph shall expire as determined by the agency, but no later than the ninetieth day after its issuance and shall be renewable in accordance with agency procedures.
3. **City construction projects.** Agencies may authorize after hours work by or on behalf of city agencies for projects that are judicially mandated or the subject of consent orders and/or where a project is necessary in the public interest including but not limited to facilities, equipment, and infrastructure for the provision of water, sewerage, sanitation, transportation and other services necessary for the health or safety of the public. An authorization issued pursuant to this paragraph for a city construction project shall remain in effect for the duration of the project.
4. **Construction activities with minimal noise impact.** The commissioner shall promulgate rules setting forth a list of construction activities with minimal noise impact and specific noise mitigation measures applicable to such activities. Agencies may authorize the performance of such construction activities afterhours in accordance with such rules.
5. **Undue hardship.** Agencies may authorize after-hours work if the commissioner certifies that the permit holder has substantiated a claim of undue hardship resulting from unique site characteristics, unforeseen conditions, scheduling commitments and/or financial considerations outside the control of the permit holder and that the applicant has received approval from the department of an alternative noise mitigation plan pursuant to section 24-221 of this subchapter, specifying the activities and devices that will be used for such after-hours construction and setting forth the additional mitigation measures, above and beyond those measures otherwise required for such devices and activities pursuant to the department's rules, that the applicant will use to significantly limit noise emissions from the site of such after-hours work. Applications for such certification shall be submitted

to the department in a form and manner to be set forth in the rules of the department. The applicant for an after-hours authorization under this paragraph shall submit such certification to the issuing agency.

Exhibit C

100 East End Avenue - Initial AHV Request

NYC Department of Buildings			
After Hours Variance Permit Data			
Premises: 100 EAST END AVENUE MANHATTAN BIN: <u>1081314</u> Block: 1581 Lot: 23			Job No: <u>122211052</u> Reference Number: 00688453
1 Filing Status Information			
Work Permit No: <u>122211052</u>	Status: AHV SUCCESSFULLY ISSUED		
eFiled: No	Entry Date: 05/14/2015		
Job Type: A1	Filing Type: Initial	Decision Date: 05/14/2015	
Fee Exempt: No	Number of Days Billed: 14	Total Fee: \$1,620.00	
2 Location Information (Filed At)			
House No(s): 100	Street Name: EAST END AVENUE		
Borough: MANHATTAN	Block: 1581	Lot: 23	BIN: <u>1081314</u> CB No: 108
Work on Floor(s): CELLAR, 1ST FLOOR		Apt/Condo No(s):	
3 Contractor			
Name: ANDY FRANK			
Business Name: IBEX CONSTRUCTION CO. LLC		Business Phone: 646-366-6200	
Business Address: ONE WHITEHALL STREET 7TH FL NEW YORK NY 10004			
E-Mail:			
Licence Type: GC		Licence Number: <u>603125</u>	
5 Variance Information			
Is a residence within 200 feet of the site?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is all work being done within an enclosed building?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve full or partial demolition?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve crane use?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Total Days Requested: 14			
Total Days Approved: 14			
Approved for:			
Start Day:	Days:	Hours From:	Hours To:
05/14/2015	Thursday	6:00 PM	12:00 AM
05/15/2015	Friday	6:00 PM	12:00 AM
05/16/2015	Saturday	8:00 AM	12:00 AM
05/17/2015	Sunday	8:00 AM	12:00 AM
05/18/2015	Monday	6:00 PM	12:00 AM
05/19/2015	Tuesday	6:00 PM	12:00 AM
05/20/2015	Wednesday	6:00 PM	12:00 AM
05/21/2015	Thursday	6:00 PM	12:00 AM
05/22/2015	Friday	6:00 PM	12:00 AM
05/23/2015	Saturday	8:00 AM	12:00 AM
05/24/2015	Sunday	8:00 AM	12:00 AM
05/25/2015	Monday	6:00 PM	12:00 AM
05/26/2015	Tuesday	6:00 PM	12:00 AM
05/27/2015	Wednesday	6:00 PM	12:00 AM
eRenew? Yes			
Apply Reason: PUBLIC SAFETY			
Approved: TRAFFIC CONGESTION (PEDESTRIAN AND/OR VEHICULAR)			
eRenewal Authorized Day(s)/Time(s): Monday 6:00 PM to 12:00 AM, Tuesday 6:00 PM to 12:00 AM, Wednesday 6:00 PM to 12:00 AM, Thursday 6:00 PM to 12:00 AM, Friday 6:00 PM to 12:00 AM, Saturday 8:00 AM to 12:00 AM, Sunday 8:00 AM to 12:00 AM			
Description of Work: SELECT INTERIOR DEMO, LT. GAGE METAL INSTALLATIONS, DRYWALL INSTALLATION, DOOR INSTALLATION, GLAZING, TEMPORARY PROTECTION, GENERAL CLEAN UP AND HOUSEKEEPING, EXCAVATION, INSTALLING REBAR, INSTALLING FORMS, POURING CONCRETE, BACKFILLING, WELDING, SHORING, UNDERPINNING AND STRUCTURAL STEEL INSTALLATION.			

Exhibit D

111 Eighth Avenue - Initial and Renewal AHV Requests*

NYC Department of Buildings			
After Hours Variance Permit Data			
Premises: 103 8 AVENUE MANHATTAN		Job No: <u>122193704</u>	
BIN: <u>1013043</u> Block: 739 Lot: 1		Reference Number: 00582681	
1 Filing Status Information			
Work Permit No: <u>122193704</u>		Status: AHV SUCCESSFULLY ISSUED	
eFiled: Yes		Entry Date: 04/24/2015	
Job Type: A2	Filing Type: Initial	Decision Date: 04/27/2015	
Fee Exempt: No	Number of Days Billed : 12	Total Fee: \$1,460.00	
2 Location Information (Filed At)			
House No(s): 111	Street Name: EIGHTH AVENUE		
Borough: MANHATTAN	Block: 739	Lot: 1	BIN: <u>1013043</u> CB No: 104
Work on Floor(s): 010	Apt/Condo No(s):		
3 Contractor			
Name: WILLIAMS REYNOLDS			
Business Name: BENCHMARK BUILDERS INC		Business Phone: 212-766-8800	
Business Address: 237 W. 35TH ST SUITE 901 NEW YORK NY 10001			
E-Mail:			
License Type: GC		License Number: <u>039625</u>	
5 Variance Information			
Is a residence within 200 feet of the site?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is all work being done within an enclosed building?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve full or partial demolition?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve crane use?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Total Days Requested: 13			
Total Days Approved: 12			
Approved for:			
Start Day:	Days:	Hours From:	Hours To:
04/29/2015	Wednesday	6:00 AM	2:00 AM
04/30/2015	Thursday	6:00 AM	2:00 AM
05/01/2015	Friday	6:00 AM	2:00 AM
05/02/2015	Saturday	7:00 AM	7:00 PM
05/04/2015	Monday	6:00 AM	2:00 AM
05/05/2015	Tuesday	6:00 AM	2:00 AM
05/06/2015	Wednesday	6:00 AM	2:00 AM
05/07/2015	Thursday	6:00 AM	2:00 AM
05/08/2015	Friday	6:00 AM	2:00 AM
05/09/2015	Saturday	7:00 AM	7:00 PM
05/11/2015	Monday	6:00 AM	2:00 AM
eRenew? No			
Apply Reason: CONSTRUCTION ACTIVITIES WITH MINIMAL NOISE IMPACT			
Approved: E-FILED AHV: AUTO-APPROVAL			
Description of Work: NOISY WORK, SELECTIVE DEMOLITION, WELDING, BRAZING, CHOPPING, DRILLING. (6AM-8AM / 6PM-2AM MONDAY THRU FRIDAY) NOTE: AHV FOR FULLY ENCLOSED WORK PER DBC. <<OT PERMIT DOES NOT AUTHORIZE CONCRETE WORK>>			

*103 8th Avenue and 111 8th Avenue are the same property.

NYC Department of Buildings			
After Hours Variance Permit Data			
Premises: 103 8 AVENUE MANHATTAN			Job No: 122193704
BIN: 1013043 Block: 739 Lot: 1			Reference Number: 00628793
1 Filing Status Information			
Work Permit No: 122193704	e-Renewed based on: 00582681	Status: AHV SUCCESSFULLY ISSUED	
eFiled: Yes		Entry Date: 12/14/2015	
Job Type: A2	Filing Type: Renewal		
Fee Exempt: No	Number of Days Billed : 9	Total Fee: \$1,020.00	
2 Location Information (Filed At)			
House No(s): 111	Street Name: EIGHTH AVENUE	Lot: 1	BIN: 1013043
Borough: MANHATTAN	Block: 739		CB No: 104
Work on Floor(s): 010	Apt/Condo No(s):		
3 Contractor			
Name: WILLIAMS REYNOLDS			
Business Name: BENCHMARK BUILDERS INC		Business Phone: 212-766-8800	
Business Address: 237 W. 35TH ST SUITE 901 NEW YORK NY 10001			
E-Mail:			
License Type: GC		License Number: 039625	
5 Variance Information			
Is a residence within 200 feet of the site?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is all work being done within an enclosed building?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve full or partial demolition?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does any of the work involve crane use?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Total Days Requested: 9			
Total Days Approved: 9			
Approved for:			
Start Day:	Days:	Hours From:	Hours To:
12/21/2015	Monday	6:00 AM	2:00 AM
12/22/2015	Tuesday	6:00 AM	2:00 AM
12/23/2015	Wednesday	6:00 AM	2:00 AM
12/24/2015	Thursday	6:00 AM	2:00 AM
12/25/2015	Friday	6:00 AM	2:00 AM
12/28/2015	Monday	6:00 AM	2:00 AM
12/29/2015	Tuesday	6:00 AM	2:00 AM
eRenew? No			
Apply Reason: CONSTRUCTION ACTIVITIES WITH MINIMAL NOISE IMPACT			
Approved: E-FILED AHV: AUTO-APPROVAL			
Description of Work:	NOISY WORK, SELECTIVE DEMOLITION, WELDING, BRAZING, CHOPPING, DRILLING. (6AM-8AM / 6PM-2AM MONDAY THRU FRIDAY) NOTE: AHV FOR FULLY ENCLOSED WORK PER DBC. <<OT PERMIT DOES NOT AUTHORIZE CONCRETE WORK>>		

Agency Comments - New York City Department of Environmental Protection



Vincent Sapienza
Acting Commissioner

Angela Licata
Deputy Commissioner
Sustainability
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June 30, 2017

Mr. Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane - 21st Floor
New York, NY 10038

Re: Responsiveness to Noise Complaints Related to Construction Projects
Report Audit

Dear Mr. Sifontes:

Thank you for the opportunity to comment on the New York State Comptroller's draft report, Responsiveness to Noise Complaints Related to Construction Reports (the Report), concerning NYC Department of Environmental Protection's responsiveness to noise complaints related to construction projects. This is an important quality of life concern for the residents of New York City and for DEP.

The Department still has some concerns about how its response to and resolution of complaints related to construction noise are portrayed in the Report.

As a matter of background, the Department of Environmental Protection (DEP) is responsible for managing New York City's water supply, providing more than one billion gallons of water each day to over nine million residents, including eight million in New York City, as well as regulating air quality, asbestos and noise. An integral component of how DEP regulates noise, is contained in the Noise Pollution Control Code (Code), Title 24, Chapter 2 of the Administrative Code, and for construction, a comprehensive set of rules, set forth in 15 RCNY Chapter 28, specifically for citywide construction noise mitigation. It is critical to understand that as this audit focuses on construction noise, DEP derives its authority from this section of the Administrative Code.

DEP made significant changes to the Noise Code in 2005, and 2007 with special attention to construction noise rules that took effect in 2007. DEP required all construction sites to have a noise mitigation plan on-site. These changes have successfully increased the construction community's awareness of construction noise, and has resulted in the noise mitigation industry developing new and improved ways to baffle sound.

DEP is aware of the increase in after-hours noise complaints and that many of these complaints correlate with After House Variances for construction. With a boom in construction in recent years, some neighborhoods have seen a rise

in construction-related complaints, and it is for this reason that, DEP is increasing the number of inspectors on staff in 2017 by five from 57 to 62 inspectors, with more increases in previous years. (Note that DEP inspectors respond to both noise and air complaints.) DEP is also in the process of introducing hand-held computer tablets to all field inspectors. Hand-held tablets will help provide inspectors more information about noise complaints, reduce clerical responsibilities related to noise report writing, and improve communication between inspectors and headquarters. In terms of policy, DEP is considering improvements to enforcement and requirements to better and more quickly respond to construction-related noise complaints.

Improved communication and coordination with DOB is a priority for DEP. Indeed DEP continues to hold high-level coordination meetings with DOB regarding improving coordination on construction noise and before/after hours noise complaints. Both agencies identified key contacts to lead coordination and data sharing, and continue to discuss options for better responding to noise concerns in After House Variance permit requests.

- In the first paragraph on page 7, the Report states “...neither agency leveraged pertinent noise complaint data from the 311 system.”
 - This is incorrect. DEP works daily with 311 complaint data, which is automatically input into DEP’s Infor Public Sector (IPS) system. DEP analyzes this data and tracks before and after hours noise complaints by mapping the complaints. DEP has shared its analysis with DOB. DEP also uses 311 data to create reports and analyze other noise and air complaints to identify patterns, hotspots and create targeted enforcement.
- In the same paragraph, the Report states “...certain locations, which have had numerous noise complaints lodged against them, continued to operate without having to address those issues.”
 - As set forth in 24-223(d) of the Noise Code, measurements are required from the complainant’s premises to determine if noise levels would enable DEP to contact DOB to revoke an After Hours Variance (AHV). Pursuant to protocols established in the Noise Code, so long as there is a Noise Mitigation Plan (NMP) that the contractor is following, the contractor may take additional precautions to further reduce noise levels or file an alternative noise mitigation plan without being found in violation of the Noise Code. An AHV-related complaint that does not result in a violation may still result in a hold on the AHV until a reduction in sound levels is achieved. Only failure to amend the NMP within the prescribed timeframe is a violation of the Noise Code, *see* 24-223(d).
- On page nine, the report states “According to the 2016 Mayor’s Management Report (MMR), DEP had a limit of 10 days to close out construction noise complaints. For fiscal year 2017, the limit was shortened to 9 days. From January 1, 2010 through July 6, 2016, the average time for responding to weekday complaints received was about 5 days and just over 7 days for weekend complaints. Thus, both averages were well within the targets established by the MMR. However, we believe a response time of that many days directly influences the results of the inspection. For instance, as seen [sic] Chart 2, inspectors observed no excessive noise found for 84.4 percent of the complaints; this is the likely

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* See State Comptroller’s Comments, Page 32.

result of an inspector getting to the location an average of 5 days after the noise was reported.”

- The following section of the statement above is incorrect: “the average time for responding to weekday complaints received was about 5 days and just over 7 days for weekend complaints.” The 2016 MMR states “average days to close” and not “average time for responding” as appears in the above statement.
- The 10-day (now 9-day) target in the MMR is the goal DEP set to complete its investigation of complaints. Completing investigations includes necessary administrative work as well as site inspections. DEP’s initial response to complaints occurs in a shorter timeframe than the MMR reflects. Factors that can limit how quickly DEP can respond to construction noise complaints include but are not limited to: if the complaint is made at the time of noise production; requirement of access to complainant’s residence; and time of complaint. It is important to highlight that when DEP receives a complaint, the complaint may not be made at the time when the noise is actually happening.
- Also on page nine, the Report states “At the time of our audit fieldwork, DEP did not have noise meters for each of their field inspectors. In response to our preliminary report, DEP officials informed us that they were in the process of purchasing additional meters. They also later informed us that a “mobile device initiative” (hand-held) was being implemented to allow inspectors to receive complaints in the field and enter inspection results in real time.”
 - Inspectors work in teams of two and in situations where inspectors need meters they always have access to meters, such as if inspectors will analyze noise levels from inside a home. Moreover, not every inspector needs a meter for every noise complaint. The Noise Code delineates which situations require noise measurements; please see Subchapter 5 of Chapter 2 of Title 24 of the Code for details on which situations require noise measurements.
 - In 2016, DEP purchased additional noise meters with the goal of having a meter available for each inspector to increase operational efficiency. Increasing the number of meters will reduce issues that can arise where an inspector may be unavailable and has the meter with him/her; a meter malfunctions; is damaged, lost, or even stolen.

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Please find DEP’s comments below on the recommendations contained in the Report.

- Recommendation 1 – Improve communication and coordination with DOB, such that pertinent AHV and permit data is made readily available to DEP inspectors.
 - Agree. As stated above, DEP and DOB hold high-level coordination meetings regarding improving coordination. Following these meetings, DEP continues to work to coordinate with DOB on data sharing and permit development.
- Recommendation 2 – Formally analyze 311 system data to identify locations where multiple construction noise complaints are received. Periodically share analyses, as well as

recommendations, with DOB officials so they can use this information when deciding whether to grant AHV renewals. Establish a formal streamlined process to share information.

- Agree. DEP currently analyzes 311 data by mapping out these complaints, and had discussed with DOB how to better target locations with multiple construction-related noise complaints. A goal of DEP's and DOB's is to have a streamlined data sharing process.
- Recommendation 3 – Shorten response time to visit construction sites for which noise complaints were received, to improve inspector's ability to witness and assess conditions closer to the time a complaint is made. Adjust target response times in the Mayor's Management Report, as warranted.
 - Disagree. Mayor's Management Report (MMR) data does not illustrate day-to-day efforts of DEP inspectors to respond to construction complaints in a timely manner. As noted above in DEP's response to page nine of the Report, complainants do not always submit a complaint when the actual noise condition is occurring so it is necessary for DEP staff to analyze the complaint and determine when to inspect. MMR metrics do not capture when the initial inspection occurs. DEP response times are situational, variable and not easily captured by overall average response times. To improve initial response times, DEP is currently testing hand-held computer tablets for inspectors in the field, which will improve response times and reduce clerical tasks.
- Recommendation 4 – Establish DEP-specific procedures for conducting inspections.
 - Agree. DEP is in the process of hiring an outside consultant to review some of the Department's protocols and develop standard operating procedures for complaint report writing related to construction noise. Please note, however, that there is currently a noise course manual provided to each inspector, which provides training on how to calibrate and read meters as well as guidelines for conducting noise inspections. It is important to understand conditions inspectors encounter in the field are variable, and procedures and guidelines cannot account for every scenario that is not clearly defined in the Noise Code.
- Recommendation 5 – Include noise meter readings in inspection reports to provide an objective assessment of noise levels.
 - Disagree. There are many circumstances where noise measurements would not provide useful information. If a construction site's Noise Mitigation Plan is complete and accurate and all required mitigation is in place, there is no requirement to take noise measurements during regular construction hours, which are 7AM until 6PM. However, noise inspectors do take informational measurements to determine if there is additional mitigation that can be done to further reduce sound from construction equipment. In the case of an AHV-related complaint, if DEP cannot gain access to a complainant's residence, DEP cannot take measurements as per the Noise Code. If the activity is sanctioned by an AHV, and measurements are able to be taken from the dwelling and present elevated noise levels, then DEP will request that DOB revoke the AHV. For certain complaints, the Noise Code requires measurements to

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be taken as set forth in chapter 2, subchapter 5 24-225, *Specific Noise Sources*, which requires sound level standards for specific situations.

- Recommendation 6 – Revise existing complaint disposition codes to indicate that a location has an AHV, which is the basis for not issuing a violation.
 - Disagree. This is not necessary because a violation is automatically issued for not having an AHV pursuant to 24-222 of the Code. In addition, having an AHV does not preclude issuing a violation if the work that is being done is not a listed activity on the AHV permit.

Issue disposition codes provide limited information and creating a separate disposition code indicating a location has an AHV provides limited analytical capability for DEP. Alternatively, DEP is including presence of AHV in the inspection form on the hand-held tablets that DEP is testing and introducing into the field. Inspectors will have a check box to explicitly show if an AHV was issued. The specific information regarding presence of AHV permits, including the permit number, will be presented in inspector noise reports. Having these details will allow DEP to perform sophisticated analysis of reports and trends. For example, a location may have an AHV, but be performing an unauthorized activity. Noise inspection reports will contain this information and DEP believes that this information will be more useful to inspectors and the process than the Report's current recommendation.

Mindful of certain legal constraints in the Noise Code that impact the issuance of violations and even decibel measurements, the Department is working to draft amendments to the Code and subsequently the rules. DEP looks to improve enforcement and enable the Department to take measurements from the street rather than from a complainant's home. This will have the added benefit of improving response time. DEP also plans to amend the Code to allow for violations to be given if there is an exceedance of a certain decibel standard. DEP and DOB are in the process of collaborating on how to improve noise levels surrounding construction sites to alleviate this pressing quality of life concern residents of New York City have.

Thank you for your time and attention to our written responses. DEP is pleased to point out the robust measures in place to address noise concerns, and we are available to respond to assist with any questions you may have.

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Sincerely,

A handwritten signature in black ink, appearing to read "Angela Licata". The signature is fluid and cursive, with the first name "Angela" being more prominent than the last name "Licata".

Angela Licata
Deputy Commissioner, Bureau of Sustainability
NYC Department of Environmental Protection

Cc:
Vincent Sapienza, Acting Commissioner, DEP
Michael DeLoach, Deputy Commissioner, DEP
Michael Gilsean, Assistant Commissioner, DEP

Agency Comments - New York City Department of Buildings



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June 30, 2017

Mr. Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th. Floor
Albany, New York 12236

RE: Audit Draft Report: Responsiveness to Noise Complaints Related to Construction Projects (2016-N-3)

Dear Mr. Sifontes:

The Department welcomes the auditors' recommendations and the opportunity to refine our process and further improve our services. We view your input as assistance in furthering our commitment to providing quality public service while maximizing our resources.

As your report indicates, the objective of the audit was to assess New York City's efforts to enforce selected aspects of New York City laws related to noise control. It is important to note that the Department is already exploring some of the options suggested in your report, specifically to strengthen scrutiny of After Hour Variance (AHV) requests.

Recommendation Responses:

The following are the Department's responses to your recommendations.

Recommendation 1: *Formally assess and update processes for issuing and renewing AHVs, taking into account all pertinent information, including the number and nature of noise complaints and their impact on the community.*

DOB's Response: The Department agrees with this recommendation, and has made enhancements to the After Hours Variance program.

1. The Department currently employs computer logic geared toward preventing After Hour Variances on jobs with active Stop Work Orders and Vacate Orders.
2. The Department currently uses application review guidelines that include reviewing ECB violation data as part of the application screening process. It provided additional training on these guidelines to staff members who conduct AHV application reviews.
3. The Department is also open to receiving noise complaint, violation, and/or inspection data from DEP to review during the application screening process.

build safe | live safe

Mr. Kenrick Sifontes
June 30, 2017
Page Two

Recommendation 2: *Increase the level of review of AHV renewals to ensure they are appropriately vetted prior to approval.*

DOB's Response: The Department agrees with this recommendation. In an effort to improve the process for reviewing AHV permit applications, the Department is planning to implement or has already implemented the following:

1. The Department currently employs computer logic geared toward preventing renewals on jobs with active Stop Work Orders and Vacate Orders.
2. The Department has reviewed and streamlined its processes to further ensure that variance reasons and approval codes are accurately and appropriately applied.
3. Applicants are required to attest that the work to be performed is in conformance with code and cannot be done during regular working hours.

Recommendation 3: *Improve communication, including streamlined sharing of information, with DEP regarding locations with an excessive number of noise complaints.*

DOB's Response: The Department agrees with this recommendation, and is in communication with DEP.

Thank you for giving us the opportunity to respond to the draft audit report. We look forward to receiving your final version.

Sincerely,



Thomas Fariello, R.A.
First Deputy Commissioner

cc: George Davis, III
Archana Jayaram
Germain Difo
Kerry Castro

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State Comptroller's Comments

1. As detailed on pages 8 and 9 of the report, DEP did not have a formal process to regularly analyze 311 data to identify locations for which multiple complaints were received, or a formal process to provide information regarding problematic locations to DOB. As such, we maintain that DEP should improve efforts to leverage 311 system data. We also note that DEP officials agreed with Recommendation 2, which addresses the formal analysis of 311 data and the sharing of such analysis with DOB.
2. We acknowledge that provisions exist for Noise Mitigation Plans (NMPs) and revisions to NMPs, when warranted. Nonetheless, as acknowledged by DEP, most construction noise complaints pertain to work done after hours by contractors that have AHVs, as granted by DOB. Further, as detailed in our report, the numbers of noise complaints have grown dramatically in recent years, along with the increased number of AHVs. Thus, we maintain that DEP should improve efforts to analyze data and provide information to DOB officials, so that DOB can provide the appropriate level of scrutiny to requests for AHVs and their extensions/renewals.
3. We acknowledge the distinction between response times and close-out times. Further, we acknowledge that a complaint could be made when the noise is not occurring. Nevertheless, with average response times of nearly five days for weekday noise complaints and seven days for weekend complaints, there was material risk that inspectors did not observe the conditions that prompted noise complaints in the first instance. When noise-related conditions are not observed, DEP has limited ability to address the corresponding complaints.

Also, we deleted the reference to the MMR from Recommendation 3, and laud DEP's efforts to pursue strategies, including the use of handheld devices, to improve the timeliness and effectiveness of its inspections.

4. Based on DEP's response, we made a minor modification (adding "where applicable") to the end of the recommendation.
5. DEP officials overlook the intent and merit of the recommendation. If a complaint resolution indicated that a location had an AHV and was therefore authorized for after-hours construction, such data should be noted in 311 rather than a resolution that simply states: "The Department of Environmental Protection did not observe a violation of the New York City Air/Noise Code at the time of inspection." This resolution was cited for more than 80 percent of construction noise complaints, mostly because AHVs were in place. As such, we maintain that an AHV indicator could help DEP improve the efficiency of inspections by providing data that could: enhance staff resource allocations and the timeliness of investigations; and better inform DOB about requests to extend AHVs. Also, providing the reason for not citing a violation could be valuable to the public, particularly citizens who filed 311 noise complaints.