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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

February 4, 2020

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

Ms. Melanie E. La Rocca  
Commissioner  
New York City Department of Buildings  
280 Broadway  
New York, NY 10007

Re: Responsiveness to Noise  
Complaints Related to Construction  
Projects  
Report 2019-F-37

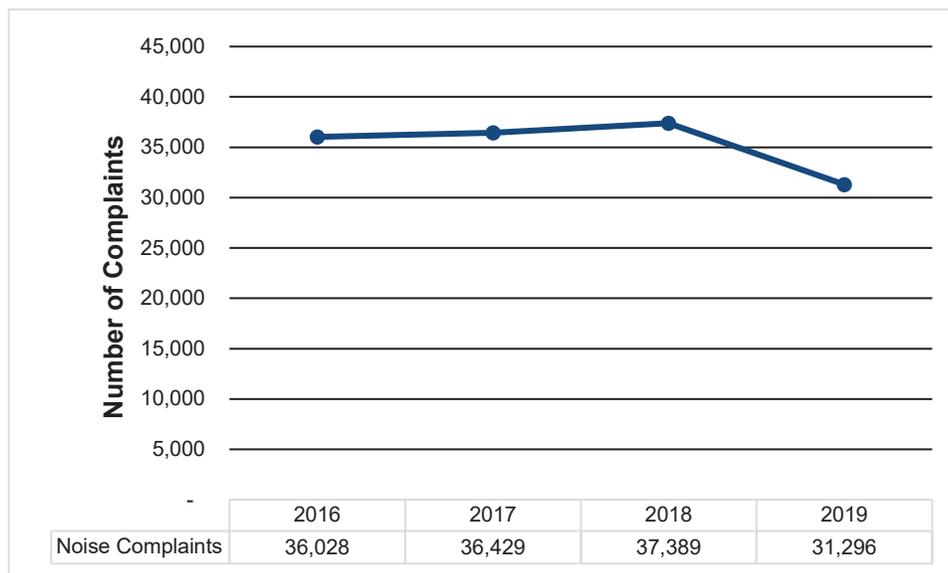
Dear Commissioner Sapienza and Commissioner La Rocca:

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, we have followed up on the actions taken by officials of the New York City Department of Environmental Protection (DEP) and the New York City Department of Buildings (DOB) to implement the recommendations contained in our audit report *Responsiveness to Noise Complaints Related to Construction Projects* (Report [2016-N-3](#)).

**Background, Scope, and Objective**

For the period January 1, 2016 through November 30, 2019, a total of 141,142 construction noise complaints were called in to New York City's 311 system – most of these complaints were for after-hours construction noise. For purposes of this review, which pertains to construction noise in New York City, DEP and DOB are the agencies primarily responsible for handling such complaints. As shown in the following chart, the annual number of construction noise complaints submitted to 311 remains high.

## Noise Complaints 2016 – 2019\*



\*As of November 30, 2019.

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 beyond these hours violate the Noise Code, unless DOB issues an After Hours Variance (AHV). According to data provided by DOB officials, for the period of January 1, 2018 through September 30, 2019, DOB issued 119,983 AHVs.

Our initial audit report, issued on August 31, 2017, examined whether DEP and DOB effectively enforced the Noise Code and adequately addressed noise complaints related to construction in New York City. The audit covered the period January 1, 2014 through June 30, 2016.

Our initial audit found the number of construction noise complaints in New York City had increased greatly in recent years. DEP and DOB collectively have had limited impact on mitigating protracted noise problems, as communication and coordination between the two agencies were extremely limited, and neither agency adequately leveraged pertinent noise complaint data from the 311 system. DEP’s investigations rarely resulted in violations for unreasonable noise. Moreover, DOB issued a considerable number of AHVs for construction work, including for sites with multiple noise complaints. Additionally, DOB allowed contractors to obtain extensions of existing AHVs or multiple AHVs for the same construction site without critical review. As a result, certain sites, which had numerous noise complaints lodged against them, continued to operate without having to address those complaints.

The objective of our follow-up review was to assess the extent of implementation, as of December 10, 2019, of the nine recommendations included in our initial report.

## **Summary Conclusions and Status of Audit Recommendations**

We found that DEP officials made significant progress in addressing the problems identified in the initial audit report. Of the report's six recommendations to DEP, three were implemented, two were partially implemented, and one was not implemented.

We found that DOB officials made some progress in addressing the problems identified in the initial audit report. Of the report's three recommendations to DOB, one was implemented and two were partially implemented.

### **Follow-Up Observations**

#### **To DEP:**

#### **Recommendation 1**

*Improve communication and coordination with DOB, such that pertinent AHV and permit data is made readily available to DEP inspectors.*

Status – Implemented

Agency Action – DEP has improved communication and coordination with DOB by assigning a liaison to facilitate communication related to AHVs and permits. The DEP liaison and DOB correspond mainly through emails. Additionally, DEP inspectors are provided with handheld tablets to utilize in the field. AHV and permit data is readily available to them on these tablets.

#### **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.*

Status – Partially Implemented

Agency Action – DEP uses the Info Public Sector (IPS) system and Geographic Interface System (GIS) to review and analyze 311 data related to construction noise complaints. GIS visualizes IPS data and identifies locations with multiple 311 complaints. While DEP officials review and analyze 311 system data to identify locations that have multiple construction noise complaints to determine where inspectors should be assigned, they have not established a formal streamlined process to share their analyses with DOB.

#### **Recommendation 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.*

Status – Implemented

Agency Action – DEP has shortened response times to visit construction sites for which noise complaints were received. Our initial audit found that, from January 1, 2010 through July 6, 2016, the average times for responding to weekday and weekend construction noise complaints were about five days and seven days, respectively. For the period September 1, 2017 to September 30, 2019, the average response times were reduced to about three days and six days, respectively.

#### **Recommendation 4**

*Establish DEP-specific procedures for conducting inspections.*

Status – Implemented

Agency Action – DEP officials have established DEP-specific procedures for conducting inspections. In October 2018, DEP developed standard operating procedures detailing the requirements for conducting after-hours construction noise complaint inspections. Additionally, as of October 14, 2018, Chapter 52, Title 15 of the Rules of the City of New York (Rules) prescribed specific time frames for inspections in response to after-hours noise complaints. According to the Rules, DEP will first determine whether an AHV has been issued by DOB and then conduct the inspection based on this information. The Rules also state that DEP will prioritize inspections based on the number of complaints received per location on any given day.

#### **Recommendation 5**

*Include noise meter readings in inspection reports to provide an objective assessment of noise levels, where applicable.*

Status – Partially Implemented

Agency Action – DEP officials indicated that inspectors now include noise meter readings in inspection reports, where applicable. DEP field inspectors began using handheld devices in March 2018; the data entered into the handheld devices is included in the inspection reports. The handheld devices include a field to indicate whether a sound meter was used during inspections. Prior to the implementation of the handheld devices, inspection reports were handwritten and did not include a field to indicate if a meter reading was conducted.

To verify whether inspection reports now include meter readings, we judgmentally selected a sample of 50 complaints (10 per borough) lodged between September 1, 2017 and September 30, 2019 for which the inspector gained access and the complaint resulted in a violation. We reviewed the inspection reports for each of the 50 complaints and found that 16 (32 percent) included the results of the meter reading. However, because the inspection reports do not indicate where a

meter reading was applicable, we could not determine whether all required meter readings were recorded.

### **Recommendation 6**

*Revise existing complaint disposition codes to indicate that a location has an AHV, which is the basis for not issuing a violation.*

Status – Not Implemented

Agency Action – DEP officials disagreed with this recommendation and have not revised existing complaint disposition codes to indicate if a location has an AHV. Instead, DEP has added a section to its inspection reports that indicates if a location has an AHV. We maintain that indicating in the 311 disposition codes if a location has an AHV is a useful way to notify the public that a location has an AHV and is authorized for after-hours construction.

**To DOB:**

### **Recommendation 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.*

Status – Partially Implemented

Agency Action – In 2017, DOB began using DOB NOW, a self-service online tool that includes a module to submit applications for initial or renewal AHVs. Applications for AHVs can be submitted and renewed through either the Buildings Information System or DOB NOW. DOB has also updated its processes for issuing and renewing AHVs. According to its procedures, when approving initial AHV applications, DOB reviewers have the ability to reject renewal of the AHV. Additionally, DOB staff must review all initial AHV applications because they are no longer automatically approved after 24 hours. However, the review does not include evaluating the number and nature of noise complaints and their impact on the community.

### **Recommendation 8**

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

Status – Partially Implemented

Agency Action – While DOB has taken steps to increase its level of review, it continues to issue AHV renewals prior to review. To increase the level of review of AHV renewals, DOB staff began conducting monthly desk audits in February 2018, where they review a sample of renewal work permits to verify that the AHV information submitted conforms to the scope of the work described in the initial application. DOB officials

told us that if an AHV fails the desk audit, the applicant may need to submit a new initial AHV. Additionally, DOB officials stated they perform physical inspections at sites with AHVs, and provided documentation showing that 185 inspections were conducted in September 2019. Similar to the desk audits, physical inspections are conducted after the AHV renewals have been approved.

### **Recommendation 9**

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

Status – Implemented

Agency Action – DOB has improved communication and coordination with DEP by assigning borough contacts, who receive information from DEP as well as from the community. DOB officials provided documentation showing communication with DEP regarding locations with excessive noise complaints.

Major contributors to this report were Diane Gustard, Ryan Wendolowski, and Leanna Dillon.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the New York City Department of Environmental Protection and the New York City Department of Buildings for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Aida Solomon  
Audit Manager

cc: George Davis III, Mayor's Office of Operations  
Florim Ardolli, Mayor's Office of Operations