



Memorial Sloan Kettering
Cancer Center

December 30, 2015

New York City Department of Health and Mental Hygiene
Office of General Counsel
Attn: Svetlana Burdeynik
42-09 28th Street, 14th Floor
Long Island City, NY 11101-4132

Dear Ms Burdeynik:

The following comments are offered with regard to the proposed New York City Department of Health and Mental Hygiene (DOHMH) amendments to Title 24 Rules of New York City (NYC) to add Chapter 8 (Cooling Towers). These comments are two each which are general in nature and four which are specific to the proposed language. First of the general comments is that Hospitals and Hospital Organizations should be listed in Chapter 8 as being exempt from all parts. Second, the DOHMH should strongly reconsider the proposed Chapter 8 structure and its risk of transitional liability placed on DOHMH and NYC. First of the specific comments is the definition of “Qualified person” should be expanded to include individuals who possess greater operational experience than those currently listed. Second, the treatment of rain and recycled water is unnecessary and excessive. Third, water quality testing “daily” is unnecessary and excessive. Lastly, the fine structure associated with the proposed Chapter 8 penalizes for individual specifics of missing process or documentation instead of being performance based.

Hospitals and Hospital Organizations should be listed in Chapter 8 as being exempt from all parts. Hospitals and Hospital Organizations are already heavily regulated by the Centers for Medicare and Medicaid Services (CMS), State and local Departments of Health (DOH) and either The Joint Commission (TJC) or DNV-GL. Each of these accreditation organizations ensures compliance that Hospitals provide a healthy, safe environment for patients, staff and visitors. Effective control of Legionella in ALL water systems, not just cooling towers, is part of the mandate. With conditional accreditation hanging in the balance for non-compliance the motivation to comply is considerably stronger than the fee structure associated with the proposed Chapter 8. At minimum Hospitals and Hospital Organizations are subject to on-site survey where all documentation is reviewed in detail ensuring compliance. This year’s outbreak in the Bronx had only one hospital’s cooling towers, out of 18 sites, show positive for Legionella; indicating successful compliance with the aforementioned organizations for the rest of the hospitals in the outbreak area. Plus, Hospitals and Hospital Organizations are ALREADY required to report any cases, nosocomial or community acquired, of Legionella diagnosed or found in patients while at their locations. For these reasons it is requested that Hospitals and Hospital Organizations be exempt from the proposed Chapter 8 based on redundancy with other authorities having jurisdiction.

The DOHMH should strongly reconsider the proposed Chapter 8 structure and its risk of transitional liability placed on DOHMH and NYC. The intent of the proposed Charter 8 is clear and certainly not without merit. But unlike past cooling tower maintenance and operations documents, including ASHRAE 188-2015, proposed Chapter 8 is very specific and carries specific fines for non-compliance; the document when adopted will become a specific directive and law and not simply a guideline. This

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fact transitions the liability from an individual entity to the DOHMH and or NYC, when the entity is fully compliant and provides full documentation and proof thereof, in the event the entity's cooling tower infects an individual and potentially that person expires. Conversely, if Chapter 8 was a recommendation or guideline the entity would bear full liability. Some more thought should go into the risk management components of Chapter 8 before being adopted to protect both DOHMH and NYC from litigation.

The definition of "Qualified person" should be expanded in the definitions section of Chapter 8 to include individuals who possess greater operational experience than those currently listed. Individuals who are currently listed as qualified individuals may have little or no operational experience with cooling towers operations or maintenance. Additionally, this should not be a task which building owners are required to hire outside contractors to perform when they have qualified individuals already on staff capable of handling. Individuals who possess a current FDNY Certificate of Fitness (COF) as a Refrigeration Machine Operator (QO1) are well qualified to handle these tasks as are NYC Department of Buildings (DOB) licensed high pressure boiler operators. Also qualified to handle these tasks are New York State Department of Environmental Conservation 7-G Pesticide certificate holders. It is requested that these three certificate and license holders be added to the "Qualified person" list in Chapter 8.

Treatment of rain and recycled water is unnecessary and excessive as defined in proposed Chapter 8, § 8-05 (c) (4) (e). Rainwater and or recycled condensate from building steam systems and or air handler coil condensate has zero conductivity and is basically distilled water containing no bacteria. Rain water has minimal propensity from seeding from cooling tower drift. Even if trace amounts of bacteria were to enter the recycling system, when used as makeup water, the rainwater or recycled condensate water is combined and treated once it enters or is combined with the cooling tower water. This makes treatment redundant to that which occurs in the cooling tower system. Hence it is unnecessary and excessive and should be removed as in item in Chapter 8.

Water quality testing "daily" is unnecessary and excessive as defined in proposed Chapter 8, § 8-05 (c) (4) (f) (1). There is not any value to water testing any more often than weekly as outlined in proposed Chapter 8, § 8-05 (c) (4) (f) (2). Anything more is a waste of time, money and resources. As a result proposed Chapter 8, § 8-05 (c) (4) (f) (1) should be eliminated and this section renumbered starting with the current number (2).

The fine structure associated with the proposed Chapter 8 penalizes for individual specifics of missing process or documentation instead of being performance based. Chapter 8, § 8-09 poses specific fines but are strictly punitive based on missing process or administration of records. A more successful rule may be written based on the successes of the chemical water treatment program as monitored by the required legionella culturing every 90 days. While process, documentation and records can be manipulated to produce the desired results and avoid fines third party lab testing reports cannot. It is recommended that the fine structure be revisited to a more effective methodology to achieve the desired intent of this new chapter.

In summary please consider these comments and recommendations to make proposed Chapter 8 (Cooling Towers) a bit more workable, while still enhancing safeguards for the public. The approach we have proposed would be less costly for the many hospitals in New York City, and it would prevent the diversion of important dollars from patient care.

Sincerely,

John T. Letson