MEMORANDUM

To:  City/County Directors of Environmental Health  
State District Directors

From:  Roger C. Sokol, Ph.D., Director  
Bureau of Water Supply Protection

Date:  July 11, 2016

Subject:  Final Regulation: Part 4 - Protection Against Legionella

Part 4 of the New York State Sanitary Code Protection Against Legionella, became effective on July 6, 2016, and can be viewed in full at http://www.health.ny.gov/regulations/recently_adopted/docs/protection_against_legionella.pdf (beginning on page 11). The regulations were released for public comment on April 20, 2016 and the comments and the Department’s responses can be viewed in the Assessment of Public Comment at the link above, on page 59. The permanent regulations replace the emergency regulations which have been in effect since August 17, 2015.

Subpart 4-1 establishes provisions for cooling towers and includes the following requirements for owners of cooling towers:

- Register cooling towers in the statewide electronic system prior to initial operation and whenever ownership changes.

- Establish and implement an updated maintenance program and plan by September 1, 2016, that includes a schedule for routine Legionella culture sampling and analysis, routine bacteriological culture sampling and analysis, and immediate Legionella sampling and analysis under specific conditions. Specifically, the plan shall include a schedule to conduct:
  - Routine Legionella culture sampling and analysis within two weeks after start-up for seasonal towers or within two weeks after start-up following maintenance for year-round towers and at intervals not to exceed 90 days, while the cooling tower is in use.
  - Routine bacterial culture sampling and analysis at intervals not to exceed 30 days while the cooling tower is in use.
  - Immediate Legionella sampling following a determination by the Department or local health department that one or more cases of legionellosis is or may be associated with a tower, or following other conditions specified in the regulations.
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• Use a laboratory approved by the New York State Environmental Laboratory Approval Program (ELAP) to perform all *Legionella* culture analyses collected for regulatory compliance. Currently, there are laboratories with interim certification. For information regarding these laboratories, please direct questions to elap@health.ny.gov

• Notify the local health department within 24 hours of receiving a *Legionella* culture sample result exceeding 1,000 colony-forming units (CFU) per milliliter (mL). The local health department shall then notify the Department within 24-hours of receipt of such report. The owner of the cooling tower must notify the public in a manner determined by the local health department or the Department.

• Use only pesticide applicators or technicians certified by the NYS Department of Environmental Conservation to apply biocides for disinfection. The certification requirement does not apply to cleaning with detergents or other non-pesticide products.

• Inspect cooling towers prior to seasonal start-up, following maintenance, and at intervals not to exceed 90 days while the cooling tower is in use.

• Provide appropriate response actions, in accordance with the provisions of Subpart 4, Appendix 4-A, when *Legionella* culture sampling results are equal to or greater than 20 CFU/mL.

• Certify by November 1st of each year that each cooling tower has a maintenance program and plan, that it has been followed, and that all requirements of the regulation have been met.

• Ensure that inspections and certifications are performed by either a New York State licensed professional engineer, certified industrial hygienist, certified water technologist, environmental consultant or water treatment professional, with training and experience performing inspections in accordance with current standard industry protocols.

• Retain records for a minimum of three years of all sampling and analyses, disinfection schedules, inspection findings, deficiencies, corrective actions, and certifications. The maintenance program and plan shall be retained on the premises where the cooling tower is located.

The regulations contained in Subpart 4-2 apply to all general hospitals and residential health care facilities and in summary include requirements to:

• Conduct *Legionella* culture sampling and analysis of the potable water systems;
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- Perform and update an environmental assessment of the building(s) and potable water systems;
- Adopt and implement a *Legionella* sampling and management plan;
- Collect and submit potable water samples for *Legionella* culture analysis to an ELAP approved laboratory; and
- Retain the environmental assessment, the sampling and management plan, and any associated sampling results on the facility premises for a minimum of three years.

The Department will enforce the regulatory requirements of Subpart 4-2 at all general hospitals and residential health care facilities. While local health departments are not responsible for implementing and enforcing the provisions of Subpart 4-2, the Department will continue to share information about illness or outbreaks of legionellosis within a general hospital or residential health care with the local health department.

As outlined during the June 29, 2016 webinar hosted by the New York State Association of County Health Officials (NYSACHO), an environmental health manual (EHM) item, and other guidance that will describe local health department roles and responsibilities related to implementation and enforcement of the regulation, is under development and will be shared with the local health departments for feedback.

If you have questions concerning the regulation or registration of cooling towers, please contact the Bureau of Water Supply Protection at (518) 402-7650 or Cooling.Tower@health.ny.gov.

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