



City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER



AUDITS AND SPECIAL REPORTS

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Department of
Environmental Protection's
Administration of the Exemption from
Water and Sewer Charges Granted to
Property Owners

SR19-079A

June 17, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

June 17, 2021

To the Residents of the City of New York:

My office has audited the Department of Environmental Protection (DEP) to determine whether DEP is properly administering the exemption from water and sewer charges granted to property owners and requiring property owners to recertify for the exemptions. We audit entities such as the DEP as a means of increasing accountability and ensuring that City resources are used effectively, efficiently and in the best interest of the public.

The audit found that DEP generally granted eligible organizations in New York City water and sewer exemptions in accordance with its policies and procedures and with the New York City Water Board Water and Wastewater Rate Schedule. However, we identified 265 accounts that appeared to be ineligible to receive the water and sewer exemptions that DEP had granted to them because they were missing proof of tax-exempt status, had a change of ownership, did not qualify under any of the 17 types of exemptions established by the previously cited State law, or did not meet the requirements established in DEP's *Application for Exemption from Water and Sewer Charges*. Of the 265 accounts whose exemptions DEP revoked, 107 were back-billed by DEP for \$1,253,618; 69 were not back-billed by DEP because it determined that the accounts were either inactive or that the responsible organizations were already being charged for their water and sewer usage through different accounts; and 89 were not back-billed by DEP at its discretion because it determined that the accounts had been and were still being used for exempt purposes. Accordingly, since the accounts were missing eligibility documentation, DEP could have back-billed them for up to four prior years' of improperly granted exemptions and potentially recovered as much as \$1,047,969 in revenue. The audit also found that DEP had not previously conducted a timely review of 124 of the 265 accounts whose exemptions DEP revoked. Consequently, DEP lost the opportunity to collect additional revenue of as much as \$2,369,488 because the charges would have applied to water and sewer usage that predated DEP's four-year limit on back-billing.

The audit made nine recommendations including that DEP should collect the remaining \$510,227 that it back-billed to 107 customers; before granting an exemption; that the applying organization submits the required documentation in accordance with DEP's *Application for Exemption from Water and Sewer Charges*; and that DEP review the 89 accounts whose exempt status was revoked and reconsider whether they should be back-billed for up to four years for a total of \$1,047,969.

The results of the audit have been discussed with DEP officials, and their comments have been considered in preparing this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER AUDITS AND SPECIAL REPORTS

Audit Report on the Department of Environmental Protection's Administration of the Exemption from Water and Sewer Charges Granted to Property Owners

SR19-079A

EXECUTIVE SUMMARY

The New York City Department of Environmental Protection (DEP) delivers 1 billion gallons of drinking water on average each day to New York City's (the City's) 8.3 million residents, 200,000 businesses, and thousands of schools and other institutions. DEP also maintains the City's water supply system, which includes 19 reservoirs and 3 controlled lakes situated north and west of the City and protects the City's environment by treating an average of 1.3 billion gallons of wastewater per day at 14 water pollution control plants.

In connection with these vital services, DEP is responsible for monitoring and controlling customers' connections to the City's water and sewer systems, reading water meters, and charging and collecting water and sewer fees from property owners in the City and the surrounding communities that DEP serves. Pursuant to New York City Water Board regulations, DEP can back-bill accounts for up to four years but is prohibited from billing for a previously unbilled service period or upwardly adjusting a previously billed charge more than four years after the service covered by the charge was provided.

As mandated by the New York City Charter, DEP determines the water and sewer charges for properties using those municipal systems. According to DEP, New York State (State) Law establishes exemptions from water charges for 17 types of organizations, and where they qualify, they receive exemptions from DEP for water and sewer charges.¹ DEP grants the exemptions

¹ DEP's *General Instructions and Information on Exemption from Water and Sewer Charges* cites Chapter 696 of the Laws of 1887, as amended by Chapters 893 and 894 of the laws of 1980, also known as the "Silver Bill." According to DEP the following types of organizations may qualify for an exemption from water and sewer charges under that State law: day care centers or nursery schools, dispensaries, emergency relief centers, free circulation libraries, free school societies, homes for the aged, hospitals, medical research centers, military veterans associations, non-public schools pre-k to grade 12, orphan asylums, places of public worship, public baths, shelters, social settlements, veteran firemen's

from such charges under the conditions defined in the State law and the New York City Administrative Code.

DEP's Bureau of Customer Services manages 835,000 water and sewer customer accounts, which included 4,557 accounts where exemptions were granted to property owners as of December 3, 2018.

We conducted this audit to determine whether DEP is properly administering the exemption from water and sewer charges granted to property owners and requiring property owners to recertify for the exemptions.

Audit Findings and Conclusion

For the period of July 1, 2017 through January 21, 2021, DEP generally granted eligible organizations in New York City water and sewer exemptions in accordance with its policies and procedures and with the New York City Water Board Water and Wastewater Rate Schedule. However, we identified 265 accounts that appeared to be ineligible to receive the water and sewer exemptions that DEP had granted to them because they were missing proof of tax-exempt status, had a change of ownership, did not qualify under any of the 17 types of exemptions established by the previously cited State law, or did not meet the requirements established in DEP's *Application for Exemption from Water and Sewer Charges*.

After we informed DEP of our preliminary findings, the agency reviewed the 265 accounts and determined that it would revoke each of their exempt statuses. Of those accounts whose exemptions DEP revoked:

- 107 were back-billed by DEP for \$1,253,618;
- 69 were not back-billed because DEP determined that the accounts were either inactive or the locations were already being charged for their water and sewer usage through different accounts; and
- 89 were not back-billed by DEP at its discretion because it determined that the accounts had been and were still being used for exempt purposes. However, DEP revoked the exemptions because the accounts were missing some of the documentation necessary to establish their eligibility. Accordingly, since the accounts were missing eligibility documentation, DEP could have back-billed them for up to four prior years' of improperly granted exemptions and potentially recovered as much as \$1,047,969 in revenue.

The audit also found that DEP had not previously conducted a timely review of 124 of the 265 accounts whose exemptions DEP revoked as a result of our audit. Consequently, DEP lost the opportunity to collect additional revenue of as much as \$2,369,488 because the charges would have applied to water and sewer usage that predated DEP's four-year limit on back-billing.

Audit Recommendations

Based on the audit findings, we make the following nine recommendations.

associations, and voluntary ambulance corps. DEP's above-referenced publication further stated that the cited State law also places limits on the exemption if an organization's water use exceeds certain levels or if the organization is eligible to receive reimbursement for water and sewer charges.

DEP should:

1. Continue to track outstanding charges for water and sewer usage.
2. Ensure that it collects the remaining \$510,227 that it back-billed to 107 customers as a result of this audit.
3. Ensure, before granting an exemption, that the applying organization submits the required documentation in accordance with DEP's *Application for Exemption from Water and Sewer Charges*.
4. Ensure that it grants exemptions only to organizations that meet all the requirements in accordance with DEP's *Application for Exemption from Water and Sewer Charges*.
5. Establish, subject to Water Board approval, written policies and procedures that set forth the circumstances in which DEP should back-bill accounts whose exemptions have been revoked and clearly detail in the procedures how the pertinent information and resulting determination should be documented and recorded in its billing system.
6. Review the 89 accounts whose exempt status was revoked and reconsider whether they should be back-billed for up to four years for a total of \$1,047,969. In any case in which DEP chooses to forgo back-billing for all or any part of the full four-year period the rules allow, DEP should document the specific justification in BCIS. Further, DEP should document in the relevant BCIS customer account records its justification for back-billing any of the properties this audit identified for only two years and not four years.
7. Review accounts in a timely manner to ensure the agency timely back-bills accounts that are ineligible for exemptions to prevent further revenue losses based on its four-year limit on back-billing.
8. Consider using an automated system that would alert DEP that an account is due for the two-year recertification.
9. Consider requiring the owners of the exempt properties to file for a recertification every two years.

Agency Response

In its response, DEP generally agreed with the audit findings and stated that it is “pleased with the positive results of your audit and will take care to ensure the continued progress with managing the exemption process and billing properties for water and sewer usage accurately.” DEP did not respond to the audit’s recommendations. However, after carefully reviewing DEP’s response, we determined that DEP appears to have agreed with three recommendations that it states are DEP’s current practice, did not fully address one recommendation and did not address the remaining five.

AUDIT REPORT

Background

DEP delivers 1 billion gallons of drinking water on average each day to the City's 8.3 million residents, 200,000 businesses, and thousands of schools and other institutions. DEP maintains the City's water supply system, which includes 19 reservoirs and 3 controlled lakes situated north and west of the City. This upstate water system also provides about 110 million gallons of drinking water each day to approximately one million residents in the counties of Westchester, Putnam, Orange, and Ulster, in addition to the water it provides to the residents, businesses, and institutions of the City. DEP also protects the City's environment by treating an average of 1.3 billion gallons of wastewater per day at 14 water pollution control plants.

In connection with the abovementioned vital services, DEP is responsible for monitoring and controlling customers' connections to the City's water and sewer systems, reading water meters, and charging and collecting water and sewer fees from property owners in the City and the surrounding communities that DEP serves. Pursuant to New York City Water Board regulations, DEP can back-bill accounts for up to four years but is prohibited from billing for a previously unbilled service period or upwardly adjusting a previously billed charge more than four years after the service covered by the charge was provided.

DEP is mandated by the New York City Charter to determine the water and sewer charges for properties using the municipal water and sewer systems. According to DEP, New York State (State) Law establishes exemptions from water charges for 17 types of organizations that may qualify, and accordingly, they receive exemptions from DEP for water and sewer charges. DEP grants the exemptions from such charges under the conditions defined in the State law and the New York City Administrative Code. To obtain an exemption, qualifying organizations must submit a notarized *Application for Exemption from Water and Sewer Charges* to DEP's Bureau of Customer Services - Exemption Unit, which is responsible for reviewing the application and determining the organization's eligibility.

A water and sewer exemption is not permanent since it is based on the usage and organization using the building. Accordingly, exemption statuses are subject to periodic recertification at the request of DEP. In accordance with DEP's Supporting Operating Procedures, DEP can request that an organization recertify for the exemption when the agency "becomes aware of known changes regarding the customer and/or property they occupy," when "exempt organizations inform DEP of changes regarding their organization and/or property they occupy," or when DEP "follows up on [a] frontage account to ensure a meter is installed and at the same time requires a recertification." Apart from those particular grounds to initiate a recertification review, however, DEP's goal is to contact *all* exempt organizations by letter every two years to request recertification.

Once DEP notifies an organization that its water and sewer exemption is subject to review for recertification, the organization is required to notarize and file an application to continue receiving the exemption.² Failure to comply with DEP's recertification request may result in an exemption being revoked. DEP can deny or revoke an exemption for any of the following reasons:

- Incomplete documentation;

² There is no separate form for recertification. DEP sends its *Application for Exemption from Water and Sewer Charges* to organizations to fill out, notarize, and submit with required documents to DEP's Bureau of Customer Services – Exemption Unit.

- Organization does not qualify as the exempt category for which it applied;
- Organization type is not an exempt category;
- No NYC Department of Finance (DOF) Property Tax Exemption;
- Does not meet funding requirements;
- Non-compliant with metering, ownership, property use, or caretaker requirements; or
- Access denied (DEP inspection of property cannot be completed).

DEP's Bureau of Customer Services manages 835,000 water and sewer customer accounts, which included 4,557 accounts related to exemptions granted to property owners as of December 3, 2018.

Objectives

The objectives of this audit were to determine whether DEP is properly administering the exemption from water and sewer charges granted to property owners and requiring property owners to recertify for the exemptions.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered exemptions from water and sewer charges granted to organizations and recertifications from July 1, 2017 through January 21, 2021.

Discussion of Audit Results

The findings in this report were discussed with DEP officials during and at the conclusion of this audit. A preliminary draft report was sent to DEP and discussed with DEP officials at an exit conference held on May 12, 2021. On May 20, 2021, we submitted a draft report to DEP with a request for written comments. We received a written response from DEP on June 4, 2021. In its response, DEP generally agreed with the audit findings and stated that it is "pleased with the positive results of your audit and will take care to ensure the continued progress with managing the exemption process and billing properties for water and sewer usage accurately." DEP further stated that "[w]e appreciate that your office's identification of 107 accounts that are no longer eligible for an exemption [which] allowed DEP to back-bill \$1,253,618. While it is unfortunate that an additional \$2,369,488 is potential revenue for those accounts is beyond the Water Board's four-year back-billing period, we believe that the introduction of DEP's new billing system as well as improved levels of staffing in the Exemption Unit will limit future losses of revenue." DEP did not respond to the audit's recommendations. However, after carefully reviewing DEP's response, we determined that DEP appears to have agreed with three recommendations that it contends are DEP's current practice (#3, #4, and #7), did not fully address one recommendation (#6), and did not address the remaining five (#1, #2, #5, #8, and #9).

The full text of DEP's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DEP generally granted eligible organizations located in New York City their water and sewer exemptions in accordance with its policies and procedures and with the New York City Water Board Water and Wastewater Rate Schedule. However, we found that 265 accounts appeared not to be eligible to receive the water and sewer exemptions that DEP had granted to them.³ These accounts were either missing a property tax exemption, had a change of ownership, did not qualify under any of the 17 types of exemptions established by the previously cited State law, or did not meet the requirements established in DEP's *Application for Exemption from Water and Sewer Charges*.

After we informed DEP of our preliminary findings, the agency reviewed the 265 above-mentioned accounts and determined that it would revoke each of their exempt statuses. Of the 265 accounts whose exemptions DEP revoked:

- 107 were back-billed by DEP for \$1,253,618;
- 69 were not back-billed by DEP because it determined that the accounts were either inactive or that the responsible organizations were already being charged for their water and sewer usage through different accounts; and
- 89 were not back-billed by DEP at its discretion because it determined that the accounts had been and were still being used for exempt purposes. However, their exemptions were revoked because they were missing some of the required documentation necessary to establish their eligibility for the exemption. Accordingly, since the accounts were missing eligibility documentation, DEP could have back-billed them for up to four prior years' of improperly granted exemptions and potentially recovered as much as \$1,047,969 in revenue.

We also found that, of the 265 accounts whose exemptions DEP revoked as a result of our audit, the audit found that DEP had not previously conducted a timely review of 124 of them. As a result, DEP lost the opportunity to collect additional revenue of as much as \$2,369,488 because the charges would have applied to water and sewer usage that predated DEP's four-year limit on back-billing. These findings are discussed in more detail below.

Accounts Did Not Meet the Requirements to Receive the Water and Sewer Exemption

Our review of DEP's Browser Customer Information System (BCIS) records found that 265 accounts were not eligible to receive the water and sewer exemption in accordance with DEP's policies and procedures. These accounts were either missing proof of charitable 501(c)(3) status, did not have a property tax exemption on file, had changed ownership, did not meet the requirements established on DEP's *Application for Exemption from Water and Sewer Charges*, or did not qualify for exempt status under the previously cited New York State law.

After we shared the information we had compiled regarding these accounts with DEP, the agency reviewed the accounts and confirmed that the 265 accounts did not qualify for the water and

³ Our initial review of DEP records found that 321 accounts appeared not to be eligible to receive the water and sewer exemption. After we informed DEP of these preliminary findings, it revoked the exempt status of 265 of those accounts and inspected the remaining 56 accounts. As of January 21, 2021, DEP found 55 of those 56 accounts eligible for exempt status, and 1 account was still pending an inspection.

sewer exemption. DEP determined it would revoke and back-bill 107 of these accounts up to four years, a total of \$1,253,618. As of January 21, 2021, DEP has collected a total amount of \$743,391 out of the \$1,253,618 that was back-billed.

DEP Did Not Back-Bill Some Accounts after Revoking Their Exempt Status Resulting in Loss of Potential Revenue Totaling \$1,047,969

As noted above, DEP back-billed 107 of the 265 accounts whose exemptions from water and sewer charges were revoked. Regarding the other 158 accounts whose exemptions it revoked, DEP determined it would not back-bill 69 of the accounts because they were either inactive or the responsible organizations were already being charged for water and sewer usage through other accounts. DEP did not back-bill the remaining 89 accounts because it determined that they had been and were still being used for exempt purposes. However, our review found that those 89 accounts were missing some of the required documentation necessary to establish their eligibility for the exemption and therefore DEP could have back-billed the accounts up to four years for a total potential revenue of \$1,047,969.

When we inquired about this issue, DEP officials stated that even if they revoke an account's exemption, they do not back-bill the account if it is being used for exempt purposes, as was the case with the 89 accounts in question. DEP officials further explained that "there is no requirement that [they] must issue back bills in all circumstances," that "[t]here are many situations in which back bills are inappropriate, including in exempt circumstances," and that "[t]here is no written policy."

The lack of internal written policies detailing the steps for DEP's employees to follow when an account's exemption is revoked but where the property has and is still being used for exempt purposes increases the risk that DEP, and the City by extension, will lose revenue to which it may be entitled. DEP should establish, subject to Water Board approval, a written policy that indicates under what circumstances the agency should back-bill accounts whose exemptions have been revoked. Such a policy is necessary to ensure that DEP staff have clear, correct, and consistent guidance and to ensure that its practices are appropriate and authorized.

DEP Did Not Conduct Timely Reviews of Accounts, Resulting in Loss of Potential Revenue Totaling \$2,369,488

Our review of DEP's BCIS found that 124 of the 265 accounts whose exemptions DEP revoked as a result of our audit had not been previously reviewed by DEP in a timely manner. Had DEP reviewed the accounts in accordance with its two-year recertification outreach process, the agency could have recovered potential revenue of \$2,369,488 from accounts with exemption dates that preceded the four-year back-billing limitation.

For example, the audit team's review of BCIS account # 119603001 found the following. According to DEP's entries dated January 28, 1999 in the "customer notes" field, the property required an inspection "to determine eligibility" for exemption. Thereafter, DEP's notes from March 11, 1999, following the inspection, indicated that the building was a residential property—not a religious property as indicated in BCIS—and therefore DEP should not have granted the exemption. Nevertheless, even though DEP had noted in BCIS—in 1999—that the account should not have received the exemption, it was not until the audit team brought this information to the attention of DEP officials in 2018, 19 years later, that the agency updated and revised the property's status in BCIS to remove the exemption. Had DEP followed its two-year recertification outreach process

and reviewed this account in a timely manner, the agency might have been able to recover \$80,511 for the period of May 6, 1999 to December 11, 2014. However, due to its four-year back-billing limitation, DEP could back-bill this account only up to four years, i.e., the period of December 11, 2014 through December 11, 2018, for a total of \$35,709.

In another example, one of the accounts (# 7000151094001) is for a 146-unit residential property that receives all its funding from government agencies. The property does not qualify for exemption according to the criteria specified in DEP's *Application for Exemption from Water and Sewer Charges* or under the agency's policies and procedures.⁴ Again, had DEP followed its two-year recertification outreach process and reviewed this account in a timely manner, the agency might have been able to recover \$707,769 for the period of February 28, 2002 through April 9, 2015. Moreover, DEP chose to back-bill this property up to only two years for a total of \$132,296 rather than the four years available to the agency under applicable rules. DEP officials cited the agency's internal, unwritten policy to limit back-billing to a period of no more than two years for "customers whose accounts are in good standing and who act in good faith to facilitate the accurate billing and timely collection of water and wastewater charges." Nothing in the notes in BCIS indicates this customer met the above-cited conditions. DEP did not provide any additional documentation for this account.

With respect to its two-year recertification policy, DEP informed us that a backlog of accounts exists and some accounts remain untouched because of insufficient staff. DEP's goal is to continue its two-year recertification process while it continues to review the back-logged accounts and new applications.

Recommendations

DEP should:

1. Continue to track outstanding charges for water and sewer usage.

DEP's Response: DEP did not address this recommendation.

Auditor Comment: DEP should continue to track outstanding charges for water and sewer usage to ensure that it bills and the City collects the revenue to which it may be entitled.

2. Ensure that it collects the remaining \$510,227 that it back-billed to 107 customers as a result of this audit.

DEP's Response: DEP did not address this recommendation. Instead, DEP stated, "We appreciate that your office's identification of 107 accounts that are no longer eligible for an exemption allowed DEP to back-bill \$1,253,618."

Auditor Comment: We are pleased DEP has been able to recoup \$743,391 from back-billing these accounts. DEP's response, however, does not address our recommendation to ensure it collects the remaining \$510,227 and we continue to urge that it do so.

⁴ As stated on DEP's *Application for Exemption from Water and Sewer Charges*, "Organizations which receive reimbursement of water and sewer charges by any governmental agency are not eligible for exemption from water and sewer charges. These organizations must pay their bills and receive reimbursement from the funding agency."

3. Ensure, before granting an exemption, that the applying organization submits the required documentation in accordance with DEP's *Application for Exemption from Water and Sewer Charges*.

DEP's Response: DEP appears to have agreed with this recommendation in that it stated that it is the agency's current procedure. Specifically, DEP stated, "DEP has well-established procedures in place for the review of new exemption applications and re-certification applications to ensure that only eligible properties are billed on the exempt rate."

Auditor Comment: Although DEP stated it has well-established application review procedures in place to ensure that only eligible properties are billed on the exempt rate, our audit identified accounts billed the exempt rate that were not eligible for the exemption because they were missing required documentation. DEP needs to ensure that all applying organizations provide all required documentation in accordance with its *Application for Exemption from Water and Sewer Charges* before granting the exemption.

4. Ensure that it grants exemptions only to organizations that meet all the requirements in accordance with DEP's *Application for Exemption from Water and Sewer Charges*.

DEP's Response: DEP appears to have agreed with this recommendation in that it stated that it is the agency's current procedure. Specifically, DEP stated, "DEP has well-established procedures in place for the review of new exemption applications and re-certification applications to ensure that only eligible properties are billed on the exempt rate."

Auditor Comment: As noted above, despite DEP's assertion that it has well-established application review procedures in place, our audit revealed that DEP's application review procedures need improvement. As discussed in the report, our audit identified accounts that did not qualify for the exemption because they did not meet the requirements established on DEP's *Application for Exemption from Water and Sewer Charges*, or did not qualify under New York State law, but which were being billed at the exempt rate nonetheless. We therefore continue to urge DEP to implement this recommendation.

5. Establish, subject to Water Board approval, written policies and procedures that set forth the circumstances in which DEP should back-bill accounts whose exemptions have been revoked and clearly detail in the procedures how the pertinent information and resulting determination should be documented and recorded in its billing system.

DEP's Response: DEP did not address this recommendation.

Auditor Comment: DEP should establish, subject to Water Board approval, a written policy that indicates under what circumstances the agency should back-bill accounts whose exemptions have been revoked. Such a policy is necessary to ensure that DEP staff have clear, correct, and consistent guidance and to ensure that its practices are appropriate and authorized.

6. Review the 89 accounts whose exempt status was revoked and reconsider whether they should be back-billed for up to four years for a total of \$1,047,969. In any case in

which DEP chooses to forgo back-billing for all or any part of the full four-year period the rules allow, DEP should document the specific justification in BCIS. Further, DEP should document in the relevant BCIS customer account records its justification for back-billing any of the properties this audit identified for only two years and not four years.

DEP's Response: DEP did not fully address this recommendation. DEP stated, "Your staff identified 89 such accounts that lost their exemptions for various reasons, such as failure to submit all required documents or usage at their properties that was not permitted by the governing exemption statute and regulations. While DEP agrees that any such properties should not remain eligible for water and sewer exemptions and should be removed from the exempt rate, DEP believes that such properties should be removed from the rate prospective from the date of the revocation without any back-bill. This is a carefully considered policy decision to avoid creating a massive burden on not-for-profit entities. Although, the draft report characterized the decision by DEP not to back-bill those 89 properties as a loss of as much as \$1,047,969 in revenue, the relatively small revenue impact is greatly outweighed by the potential negative impact of back-billing not-for-profit entities."

Auditor Comment: In its response, DEP did not fully address the recommendation. Rather, DEP disagreed with the part of the recommendation that it reconsider back-billing the 89 accounts whose exempt status was revoked. As DEP acknowledges, these 89 accounts were not eligible for exempt status and should have been charged for water and sewer usage. However, DEP erroneously allowed these 89 accounts to be exempt. It is inappropriate for DEP to not charge ineligible properties for water and sewer services. Therefore, we reiterate our recommendation that DEP reconsider its decision and back-bill these accounts for up to four years for a total potential revenue in the amount of \$1,047,969.

DEP did not address the second part of the recommendation that, with regard to the 89 accounts identified in this audit, it document in BCIS its specific justifications for any property that it does not back-bill or where it back-billed for less than the four years. We continue to urge DEP to document its decisions for each of the 89 accounts where it decides not to back-bill the full amount that should have been charged to help ensure the appropriateness of its decisions and consistency in agency actions.

7. Review accounts in a timely manner to ensure the agency timely back-bills accounts that are ineligible for exemptions to prevent further revenue losses based on its four-year limit on back-billing.

DEP's Response: DEP appears to have agreed with this recommendation in that it stated that it is the agencies' current procedure. DEP stated "While it is unfortunate that an additional \$2,369,488 in potential revenue for those accounts is beyond the Water Board's four-year back-billing period, we believe that the introduction of DEP's new billing system as well as improved levels of staffing in the Exemption Unit will limit future losses of revenue."

8. Consider using an automated system that would alert DEP that an account is up for the two-year recertification.

DEP's Response: DEP did not address this recommendation.

Auditor Comment: In its response DEP did not address this recommendation. We urge DEP to consider having an automated system that would alert it when an account is up for the two-year recertification. This will allow DEP to review accounts in a timely manner and recover any potential revenue.

9. Consider requiring the owners of the exempt properties to file for a recertification every two years.

DEP's Response: DEP did not address this recommendation.

Auditor Comment: In its response DEP did not address this recommendation. We urge DEP to consider requiring the owners of the exempt properties to file for a recertification every two years. This will facilitate the recertification process and review of accounts for DEP.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers the period of July 1, 2017 through January 21, 2021.

To obtain an understanding of the policies and procedures governing DEP's billing process and collection process we reviewed DEP's *Back Billing for Underestimated Charges Policies and Procedures*, *Application for Exemption from Water and Sewer Charges*, *Customer Information System (CIS) Inquiry Manual*, DEP's *Supporting Operating Procedures*, and *Customer Information System Flat Rate Plan Codes*. We also conducted walk-throughs with DEP officials, and reviewed the *New York City Water Board and Wastewater Rate Schedule*. We also reviewed sections of the New York City Charter, the New York City Administrative Code, and the "Silver Bill" concerning DEP's granting an exemption and assessing the charges.

We requested and obtained from DEP a list of 5,346 accounts receiving the water and sewer exemption. To determine the total population, we removed all duplicate accounts and accounts with a fire exemption and obtained a total population of 4,557 accounts.

To determine the reliability of the list provided by DEP, we compared all 4,557 accounts against DOF's Assessment Value Roll for Fiscal Year 2019 to determine whether these accounts were receiving a property tax exemption.

We judgmentally selected a sample of 580 accounts, which included 381 accounts that we had identified as not having a property tax exemption and an additional 199 accounts for which, based on the building classification code, we could not determine eligibility to receive the water and sewer exemption. To determine whether these 580 accounts were eligible to receive a water and sewer exemption, we obtained the property ownership information from DOF's Automated City Register Information System (ACRIS). We reviewed the property ownership information to determine whether the property owner had proof of a charitable 501(c)(3) status from the Internal Revenue Service. We determined that the exempt status of 321 of the 580 accounts was questionable because they were missing evidence of a 501(c)(3) status or did not have a property tax exemption.

To determine whether DEP was properly back-billing and making appropriate efforts to collect all the back-billed water and sewer charges in accordance with the New York City Water Board water and sewer rates, we reviewed the 107 accounts (of 265 revoked accounts) that DEP back-billed for water and sewer charges. We reviewed the water and sewer rates up to 2015, the total water usage, and the total amount DEP back-billed for the 107 accounts. We also reviewed the BCIS Metered Billing screen to obtain the meters' read types. We calculated the dollar amount DEP should have back-billed these 107 accounts and determined whether the back-billed amounts reconciled with the amounts that we calculated should have been billed. We also reviewed DEP's BCIS Account Summary screen and calculated the amount DEP collected as of January 21, 2021.

To determine the potential lost revenue DEP could have recovered, we tested 89 out of the remaining 158 accounts whose exemptions DEP had revoked because the organizations did not

provide required documentation. We reviewed DEP's BCIS Customer Notes for additional information on the purpose of the property and Meter Billing information. We then determined the potential lost revenue amount in accordance with the water and sewer rates for the 89 accounts up to 2015.

To determine whether DEP reviewed accounts in a timely manner and whether DEP had lost revenue, we tested the 265 revoked accounts and determined that 124 accounts were not eligible to receive the water and sewer exemption because they changed ownership or did not have a property exemption. We calculated the 124 accounts' water and sewer usage between 2015 and the date the account was no longer eligible to receive the water and sewer exemption. We then determined the lost revenue amount in accordance with the water and sewer rates for the 124 accounts from 2015 back to 1999.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis for us to assess whether DEP properly administered the exemption from water and sewer charges granted to property owners and required property owners to recertify for those exemptions.



June 4, 2021

Ms. Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Draft Audit Report on the Department of Environmental Protection's Administration of the Exemption from Water and Sewer Charges Granted to Property Owners

Vincent Sapienza, P.E.
Commissioner

SR19-079A

Dear Ms. Landa:

Jeff Lynch
Deputy Commissioner
Customer Services
CustomerService@dep.nyc.gov

Thank you for the opportunity to comment on the New York City Comptroller's Draft Audit Report on the Department of Environmental Protection's Administration of the Exemption from Water and Sewer Charges Granted to Property Owners (the Report). We have reviewed the Report and are extremely pleased with your office's findings that:

- 1) DEP has well-established procedures in place for the review of new exemption applications and re-certification applications to ensure that only eligible properties are billed on the exempt rate; and
- 2) Of the 4.557¹ accounts that were being billed on the exempt rate as of December 3, 2018, the overwhelming majority of those accounts were being billed correctly.

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We are further pleased to note the vast improvement in DEP's record keeping and exempt account management practices and procedures since a prior Comptroller audit in 2009. We appreciate that your office's identification of 107 accounts that are no longer eligible for an exemption allowed DEP to back-bill \$1,253,618. While it is unfortunate that an additional \$2,369,488 in potential revenue for those accounts is beyond the Water Board's four-year back-billing period, we believe that the introduction of DEP's new billing system as well as improved levels of staffing in the Exemption Unit will limit future losses of revenue.

We are concerned, however, with the analysis and recommendations regarding not-for-profit entities whose exemptions are revoked after attempting to recertify, but remain not-for-profit entities. Your staff identified 89 such accounts that lost their exemptions for various reasons, such as failure to submit all required documents or usage at their properties that was not permitted by the governing exemption statute and regulations. While DEP agrees that any such properties should not remain eligible for water and sewer exemptions and should be removed from the exempt rate, DEP believes that such properties should be removed from the rate prospective from the date of the revocation without any back-bill. This is a carefully considered policy decision to avoid creating a massive burden on not-for-profit entities. Although, the draft report characterized the decision by DEP

not to back-bill those 89 properties as a loss of as much as \$1,047,969 in revenue, the relatively small revenue impact is greatly outweighed by the potential negative impact of back-billing not-for-profit entities.

Thank you for your time and attention to our written responses. DEP is pleased with the positive results of your audit and will take care to ensure the continued progress with managing the exemption process and billing properties for water and sewer usage accurately. We are available to respond to and assist with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Jeff Lynch". The signature is written in a cursive, flowing style.

Jeff Lynch
Deputy Commissioner
NYC Department of Environmental Protection