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Environmental **LAW**

Cooling tower deadline looms

This region has many opportunities for environmental education, but one of the premier events is an annual day-long environmental education seminar co-sponsored by the Genesee Finger Lakes Chapter of the Air & Waste Management Association and the New York Water Environment Association.

At the conference held on Feb. 10, more than 250 environmental professionals heard presentations on a variety of environmental topics, one of which conveyed an urgent message for the owners of buildings equipped with cooling towers. Presented by Kenneth Naugle, a professional engineer with the Monroe County Department of Health; Richard Gardner, Chief Engineer with the University of Rochester; and Richard Moll, Rochester Midland Corporation, the session on "Cooling Tower Regulations and Legionella" carried a reminder that emergency regulations have a March 1, 2016 deadline for building owners to have certified plans in place to control the growth of Legionella bacteria in their cooling towers.

A cooling tower is a heat exchanger that circulates water and is used to remove excess heat generated as part of a building's heating, ventilation and air conditioning system. Cooling "towers" come in a variety of shapes and sizes, and put air into contact with water to extract the excess heat into the atmosphere. The cooled water is then pumped back into the HVAC equipment where it absorbs more heat and repeats the cycle. Cooling towers are common equipment, both in New York City, where there are thousands, and across the State.

We have been reminded on a number of occasions that failure to inspect, maintain and treat cooling towers can lead to the growth of colonies of Legionella bacteria, which can then lead to sudden outbreaks



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of illness, specifically Legionellosis (Legionnaires' Disease).

Legionnaires' disease is a constant presence, with 8,000 to 18,000 confirmed cases annually, but it is acquired by direct exposure to Legionella bacteria; it is not transmitted person-to-person. As a result, an outbreak in a community can

often be traced to a specific, contaminated source. In July 2015, an outbreak of community acquired Legionnaires' disease occurred in the Bronx, New York City. Within a short time, there were 133 cases of Legionnaires' disease reported, resulting in 16 deaths. An investigation found the presence of Legionella bacteria in a cooling tower.

In rapid response to the outbreak, the New York State Department of Health (NYSDOH) issued emergency regulations in 10 NYCRR Part 4 requiring registration, testing, inspection and maintenance of cooling towers across the State, and also requiring all general hospitals and residential health care facilities to adopt Legionella sampling plans for their potable water distribution systems.

The emergency regulations became effective Aug. 17, 2015 and were renewed on Nov. 13, 2015. A notice of the emergency rulemaking appeared in the State Register on Dec. 2, 2015. In parallel steps, New York City adopted a local law for cooling towers (Local Law No. 77 of 2015) and proposed its own regulations.

Coincident to the outbreak of Legionnaires' disease in the Bronx, but completely unrelated, the American Society

of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) completed a 10-year development process and on June 25, 2015 issued a state-of-the-art industry standard for Legionellosis: Risk Management for Building Water Systems (Standard 188-2015). The timely appearance of this ASHRAE Standard provided a ready-made building block for the NYSDOH, and was incorporated into the emergency regulations.

What are building owners with cooling towers required to do? First, any owner of a building with a cooling tower was required to register with the NYSDOH by Sept. 16, collect samples and obtain culture testing.

By March 1, 2016, owners must implement a maintenance program and plan developed in accordance with Section 7.2 of ASHRAE Standard 188-2015. The plan must include a schedule for routine bacteriological sampling and analysis, and procedures for emergency testing and disinfection on the occurrence of several conditions, such as a power failure, a loss of biocide treatment and, of course, a case of Legionellosis that "is or may" be associated with the cooling tower.

The maintenance program must include the water treatment needed to control microbiological activity, scale and corrosion. Only biocide products registered by the Department of Environmental Conservation may be used in disinfection and cleaning, and disinfection can only be done by a certified commercial pesticide applicator or pesticide technician.

Owners must keep and maintain the maintenance program and plan on the premises where the cooling tower is located, and must keep records of all inspections, tests, corrective action,

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cleaning and disinfection for at least three years. Violations are subject to civil and criminal penalties for each day a building owner remains out of compliance.

The NYSDOH requires owners to have plans prepared and inspections conducted by a licensed professional engineer, certified industrial hygienist, certified water technologist, or environmental consultant with at least two years of experience in current industry protocol, including the ASHRAE Standard 188-2015.

The ultimate responsibility for registering a cooling tower and complying with the regulations lies with the building owner. Tenants that operate and maintain cooling towers at their location may be responsible to their

landlord to perform inspections, maintenance and treatment under a lease or other form of agreement with their landlord, but it is the building owner that is ultimately responsible for compliance with the regulations; and it will be the building owner that faces penalties or prosecution for not complying with the regulations.

By Nov. 1, 2016 (and by November 1 of each year thereafter), building owners must certify to the NYSDOH that their cooling towers have been inspected, tested, cleaned and disinfected, and that a maintenance program and plan has been developed and implemented in compliance with the regulations.

The parallel New York City local law and regulations have dominated the media and online blogs, but this is not solely

a downstate issue. The outbreak of Legionnaires' disease that gained attention and spurred action occurred in the Bronx, but the new regulations apply across the State, to buildings, hospitals and nursing facilities across this region as well. Given the breadth of the definition of "cooling tower" and that there are no exemptions from coverage, these regulations affect a wide range of facilities across the state.

If you are a building owner with a cooling tower, register your facility if you have not already done so, and circle March 1 on your calendar.

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