STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

Final Report
October 17, 2007

Investigation Faults Department of State on Fire Inspections

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Office of the State Inspector General's investigation determined that the Division of Codes Enforcement and Administration of the New York State Department of State for an extended time failed to conduct periodic Uniform Fire Prevention and Building Code inspections in county structures in more than half of the 15 counties within its jurisdiction. In four of the counties, no inspections were conducted for nearly 12 years, from 1995 to late 2006. Buildings that went without inspections included nursing homes and other public use facilities. The Inspector General's Office recommended that Department of State executive management review the conduct of Codes Division officials responsible for this failure, and that the Codes Division take steps to ensure that inspections are conducted in a timely manner. As a result of the Inspector General's initial findings, DOS established and implemented a policy to provide for inspections of public assembly buildings and other major occupied structures on an annual basis, and inspection of all other structures on a three-year cycle.

ALLEGATION

The Inspector General's Office received a complaint in February 2006 indicating that the Division of Codes Enforcement and Administration of the Department of State had failed to conduct Uniform Fire Prevention and Building Code inspections in counties that are not required to conduct their own inspections.

SUMMARY OF INVESTIGATION

The New York State Uniform Fire Prevention and Building Code (Uniform Code) establishes minimum standards for the construction, occupancy, and fire safety of most publicly and privately owned buildings in the state. The legislative intent of this code was to address the lack or inconsistency of municipal codes, and inadequate code

provisions and enforcement at various levels of state and local government so as to provide a minimum level of protection from the hazards of fire in every part of the state.

The Department of State (DOS) is required to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Code. Title 19 of the New York Codes, Rules and Regulations (NYCRR) Sections 1203 and 1204 provide the minimum features of a program for administration and enforcement of the Uniform Code by a local government or agency. Among other provisions in these sections are those requiring that structures within the control of a local government or state agency be inspected.

DOS has promulgated regulations which require localities and state agencies to routinely inspect structures under their control at minimum specified intervals, including annual inspections of buildings likely to be occupied by the public. With respect to local government, DOS regulations require Uniform Code inspections of buildings containing an area of public assembly at least once a year.[1] Similarly, DOS regulations require that State agencies conduct fire safety inspections in all buildings in their custody at least once a year.[2] (An exception applies to certain storage structures, which requires inspections at least once every three years.)

In general, local governments are responsible for enforcement of the Uniform Code. However, a local government has the option to decline the responsibility by adopting a local law to that effect, in which case responsibility for code enforcement passes to the respective county. County governments are afforded a similar option. If a county exercises this option, responsibility for enforcement of the Uniform Code is vested in DOS. Specific responsibility for enforcing the Uniform Code in those counties is assigned to the DOS Division of Code Enforcement and Administration (Codes Division).[3] In inspecting buildings for compliance with the Uniform Code, according to DOS officials, the primary concern is the adequacy of fire safety systems and equipment.

Since approximately 1994, a total of 15 counties have adopted local laws shifting code enforcement responsibility to DOS. The counties are Allegany, Cattaraugus, Chautauqua, Clinton, Essex, Greene, Hamilton, Herkimer, Madison, Oneida, Oswego, St. Lawrence, Saratoga, Schoharie, and Wayne. As no villages, towns, or cities within the 15 counties opted out of code enforcement, those local governments retain responsibility for their own code enforcement. Thus, DOS's enforcement responsibility applies to all county-owned structures in the 15 counties. Currently, more than 700 county buildings fall under DOS's inspection responsibility. They include approximately 100 buildings of public assembly and/or institutional occupancies and approximately 100 buildings where

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[1] 19 NYCRR Section 1203.3(h)(1) and (h)(2). This section became effective January 1, 2007, replacing an earlier repealed version of Section 1202.3. The former Section 1203.3(d)(3) reads, "Provisions shall be made for fire safety inspections of areas of public assembly defined in Part 606 of Title 9 of the *Official Compilation of Codes, Rules and Regulations* at least once per year"; and (d)(4) required, "[F]ire safety inspections of all multiple dwellings and all nonresidential occupancies at intervals consistent with local conditions."

[2] 19 NYCRR Section 1204.12(a).

[3] Inspections of buildings which are under the jurisdiction of a college are conducted by a separate office, the DOS Office of Fire Prevention and Control, and were not reviewed as part of this investigation.

the public may enter on business. Included in these groupings are nursing homes and other health care facilities, government office buildings, court houses, children's camps, libraries, youth detention facilities, jails, animal kennels, as well as other structures.

In regard to its own obligations to conduct inspections of county-owned structures in opt-out counties, DOS regulations provide, in pertinent part, "Buildings shall be subject to periodic inspections for compliance with the Uniform Code on a yearly basis."[4] As distinct from the regulations that DOS imposes on localities and state agencies requiring annual inspections of structures with areas of public assembly, DOS has interpreted the regulation applicable to itself as providing notice to regulated parties that covered buildings *may* be inspected, but not more frequently than once a year. DOS does not interpret this regulation to require itself to conduct inspections at any minimum defined interval much less to conduct annual inspections, even of major occupied structures. Regardless of the validity of this interpretation, under any reasonable view, the Codes Division failed to enforce this regulation and neglected their obligation to conduct "periodic" inspections. Notably, as a result of the Inspector General's investigation and findings, the Codes Division has amended its policy to hold itself to the same standard it imposes on state agencies and municipalities including inspections of "public assembly buildings and other major occupied structures" on an annual basis, and inspection of all other structures on a three-year cycle.

From a review of records obtained from the Codes Division, the Inspector General's investigation determined that between 1995 and late 2006, DOS did not conduct, or conducted very few, periodic Uniform Fire Prevention and Building Code inspections in county structures in more than half of the 15 counties that are within its coverage. During this almost 12-year period, according to its own records, DOS did not conduct a single inspection in any structure, including occupied buildings, in four of the 15 counties: Clinton, Essex, St. Lawrence and Saratoga. In addition, DOS records showed that during the same period only sporadic inspections were conducted in seven other covered counties: Allegany, Cattaraugus, Chautauqua, Greene, Oneida, Schoharie and Wayne.

When interviewed by the Inspector General's Office, DOS Codes Division officials conceded that required inspections by DOS staff were not conducted for an extended period in many of the 15 counties. As one official admitted, inspection of buildings in the opt-out counties was "not a program that got a lot of attention." This official claimed that layoffs and other reductions in staff at DOS in the early 1990s "made it difficult to fulfill our missions." None of the officials, however, attempted to defend the lack of inspections.

The DOS officials said they recalled no inquiries or complaints from any of the 15 counties at any time about the fact that inspections were not being performed. Further, they said they were aware of no fires, other than two minor incidents, having occurred in any of the buildings that should have been inspected.

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[4] 19 NYCRR Section 1202.4(b).

Not until the Inspector General's investigation alerted the DOS Codes Division to these deficiencies did the Codes Division commence what officials there described as an "aggressive" program to complete fire safety code inspections of all buildings in the custody of the 15 opt-out counties. DOS reported that the program commenced in December of 2006 and was substantially complete by the writing of this report. The Office of the Inspector General reviewed a sampling of records created as part of this program and noted that inspections had been conducted and violations had been discovered.

The Inspector General's investigation identified additional shortcomings in the operations of the DOS Division of Code Enforcement and Administration with respect to the inspection of county buildings. When asked for records of inspections, DOS Codes Division initially provided this Office with incomplete and inaccurate records and a poorly-maintained database. Additionally, the Office of the Inspector General found that because most activities associated with Uniform Code enforcement are conducted by DOS regional staff, many inspection records were maintained only in regional offices, and, in some instances, in the homes of regional staff members. DOS central office in Albany often lacked even copies of these records.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation determined that the Division of Codes Enforcement and Administration of the Department of State did not conduct periodic Uniform Fire Prevention and Building Code inspections in certain of 15 counties where it was required to do so over an extended period. This neglect created a public safety risk, as numerous routinely occupied buildings, such as nursing homes, office buildings, and libraries, among others, remained without inspection for lengthy periods. Upon discovery, the Inspector General's Office recommended that Department of State Codes Division commence a new round of inspections at covered buildings, with priority given to occupied dwellings. The Codes Division began this process early in 2007 and now reports that less than 3 percent of the total inventory of buildings in custody of the opted-out counties remains to be inspected. In addition, the Codes Division established a policy imposing on themselves the same standard which they place on state agencies and municipalities including inspections of "public assembly buildings and other major occupied structures" on an annual basis, and inspections of all other structures on a three-year cycle.

The Inspector General's Office recommends that executive management review the conduct of Codes Division officials responsible for the deficiencies identified in this investigation and take appropriate action.

Also during the course of this investigation, the Inspector General's Office noted several deficiencies in the Codes Division inspection program, namely: the failure to maintain a comprehensive database of the status of inspections in buildings in the 15 opted-out counties and; the Albany office of the Codes Division was without supporting

documentation, physical or electronic, related to regional inspections. The Inspector General's Office recommended to DOS that remedies be immediately implemented. The DOS Codes Division responded affirmatively to the suggestions and advice that the Inspector General's Office provided and has acted to address these shortcomings. DOS reports that its database currently contains the status of all buildings in its jurisdiction, that this database is monitored to ensure that buildings are being inspected in a timely manner, and that regional staff members have been instructed to copy the office on all inspections and supporting documentation.