



Seneca County

Consumer Protection: Accuracy of Weights and Measures

S9-24-2 | September 2024

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Report Highlights

Seneca County

Audit Objective

Determine whether the Seneca County (County) Department of Weights and Measures (Department) completed required testing of all weighing and measuring devices used to price goods and whether complete records were maintained.

Key Findings

The Director of Weights and Measures (Director) did not complete all required testing of weighing and measuring devices or maintain complete inspection and investigation records as required by New York State Department of Agriculture and Markets regulations and article 16 of the New York State Agriculture and Markets Law (AML). As a result, consumers are at increased risk of paying more than necessary for goods and services.

Specifically:

- Sixteen of 111 devices that we reviewed were not inspected as required.
- There was no system in place to maintain a complete and accurate master list of businesses or update the inventory of devices.
- All six complaints did not include documentation to show the results of the Director's investigation.

In addition, the Director did not seek reimbursement of approximately \$5,600 for fuel octane testing during our 21-month audit period.

Key Recommendations

- Perform required testing in accordance with New York State Department of Agriculture and Markets regulations and AML.
- Maintain complete records, including an inventory of devices and consumer complaints.

County officials agreed with our findings and indicated they plan to initiate corrective action.

Audit Period

January 1, 2022 - September 30, 2023

Background

The County, located in the Finger Lakes region, is governed by an elected 14-member Board of Supervisors (Board).

The appointed County Manager (Manager) is responsible for the overall administration of County government at the Board's direction.

The Director is responsible for the day-to-day operations of the Department.

Quick Facts

County Population	33,814
Number of Devices ^a	1,492
Businesses on Department Master List ^b	199
Department Budget	
Revenues	\$1,500
Expenditures	\$93,530

a) As reported in the Department's 2022 Annual Report

b) As provided by the Department

Accuracy of Weights and Measures

New York State's weights and measures program is a cooperative effort of State and local offices enforcing article 16 of the AML. The New York State Department of Agriculture and Markets' State Bureau of Weights and Measures (Bureau) has jurisdiction over the State for the enforcement and monitoring of compliance with the statutory requirements related to weights and measures as set forth in the AML.

In accordance with the AML, each county should have a weights and measures inspection function (department). County departments are responsible for inspecting and testing weighing and measuring devices used commercially to ensure the devices accurately weigh or dispense commodities in correct amounts, as well as testing packaged commodities to verify the accuracy of vendor pricing. The AML also gives the county department's director (director) the authority to inspect and test fuel octane ratings.

Although counties are permitted to pass their own local laws relating to weights and measures, regulations developed in conjunction with the AML require county directors to inspect commercial weighing and measuring devices at least annually.¹ The AML also requires a director to submit an Annual Report of work completed each year to the Bureau. In addition, certain records are to be maintained by the director, including:

- A complete record of any establishments that utilize commercial weighing and measuring devices in their jurisdiction (by type of device),
- A file composed of devices inspected, and
- A complete record of all complaints received, and results of complaints investigated by the department.

How Should Departments Help Ensure Consumers Are Protected?

Department directors should implement procedures to provide reasonable assurance that the county is adequately protecting consumers by conducting all required device inspections. These procedures should include:

- Annually reviewing a master list of businesses located within the county and updating the inventory of all scanning, weighing and measuring devices used at each business that are required to be annually inspected,
- The periodic testing of gasoline and diesel fuel octane ratings,
- Evaluations of businesses' progress remedying any noted deficiencies, and, if appropriate, any enforcement actions, and

¹ New York Codes of Rules and Regulations (NYCRR) Section 220.5

-
- Recording all consumer complaints received, as well as the results of the complaints that were investigated.

Departments may also elect to develop processes for retesting devices that failed inspection, and testing new or replacement devices installed by businesses.

Additionally, county directors are authorized by the AML to perform retail price accuracy testing at any retail business within the county to help ensure retail stores are accurately pricing goods. If price accuracy testing is conducted, the AML specifies that 98 percent of items in a selected sample should be accurately priced. Directors may impose civil penalties when testing does not meet the standard specified in the AML.

Testing Was Not Always Completed and Inventory, Inspection and Investigation Records Were Not Complete

The Director did not test all required devices, implement a system to maintain a complete and accurate master list of businesses or update the inventory of devices required for inspection. Additionally, the Director did not maintain complete records of all complaints or the results of any subsequent investigations and did not submit for reimbursement for fuel octane testing.

Inspections – We reviewed inspection documentation and performed site visits at 20 establishments and identified 111 commercial weighing and measuring devices that were required to be tested during the audit period, including:

- Computing and platform scales,
- Vehicle scales,
- Linear measuring devices,²
- Petroleum pumps, and
- Timing devices.³

The Director did not test or have documentation for 16 of the 111 devices we identified that required testing, including:

- Twelve diesel exhaust fluid (DEF) pumps,
- Two weighing devices,
- One linear measuring device, and
- One timing device.

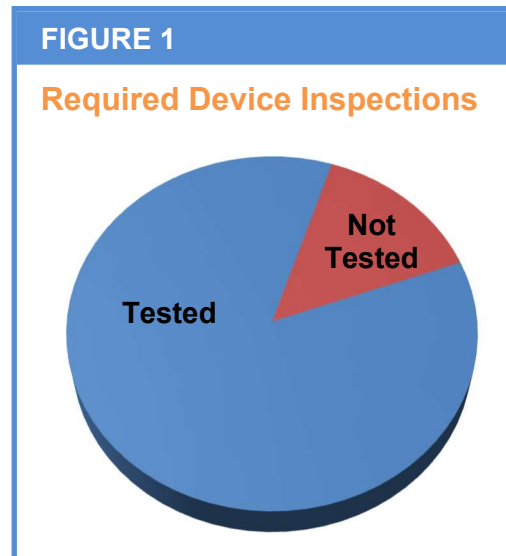
2 Linear measuring devices are those that involve a single dimension in a straight line (e.g., the length of rope or wire in a hardware or home improvement store).

3 A timing device involves a transaction in which the consumer purchases a predefined amount of time (e.g., a dryer in a laundromat).

Although the other 95 devices were tested, these 16 untested devices represent 14 percent of all required device inspections in our sample (Figure 1).

The Director told us:

- She does not have the specific equipment required to test the caustic products in the DEF pumps. However, she did not ensure they were tested by a third party.
- She was not notified by an existing business that the two weighing devices had been put into service.
- She was unaware of the linear measuring device at the business.
- The timing device was broken during her inspection of the business, and she did not return to reinspect the device once it was repaired.



According to regulations developed in conjunction with the AML, each of the untested devices should have been tested annually.

According to the 2022 annual report, the Director collected 82 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed three samples and determined the octane rating was at least equal to the amount reported on the pump for all three tests.

Although the County participates in a grant program administered by the Bureau that allows for reimbursement for fuel octane tests, the Director did not submit for any such reimbursement because she stated the paperwork was difficult and time consuming. The County may have missed the opportunity for reimbursement of fuel octane testing totaling up to \$5,600 during our audit period.

Inventory List – The Director has no reliable process to help ensure the master list of businesses with weighing and measuring devices is complete and accurate. She does not work with other County departments to find out when new businesses have opened to update the master list. Instead, the Director adds businesses when she is driving to locations to conduct testing to the master list and if she finds a business has ceased operations when she goes to conduct device tests, she will indicate the business has closed for future removal from the list.

Complaints – The Director said six consumer complaints were received in 2022 and told us she resolved those. However, she was unable to support she conducted any investigations because she did not retain documentation or

the results of her investigations for any of the six complaints. She told us most complaints are resolved by phone by explaining the weights and measures process, and complaints are typically the result of a misunderstanding and not a violation by the business.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Director did not conduct any price accuracy inspections during the 21-month audit period. The Director told us she does not believe price accuracy tests are of value and she does not have time to complete them with the other required testing that needs to be completed.

Consumers are at risk of paying more than necessary for purchases when all weighing and measuring devices are not inspected annually to help ensure these devices are in working order, complaints are not investigated and resolved or when complete records are not maintained.

What Do We Recommend?

The Director should:

1. Work with other County departments to ensure the master list of businesses is complete and accurate.
2. Perform weights and measures testing to help ensure all weighing and measuring devices are tested in accordance with regulations set forth by the New York State Department of Agriculture and Markets.
3. Maintain complete records, including:
 - A master list of businesses with an up-to-date inventory of their devices used for pricing accuracy, weighing and measuring, and
 - A complete log of all consumer complaints with the results of any investigations.
4. Submit for reimbursement for fuel octane testing as outlined in the County's contract with the New York State Department of Agriculture and Markets.
5. Develop and implement procedures for price accuracy testing.

Appendix A: Response From County Officials



Seneca County
BOARD OF SUPERVISORS
1 DIPRONIO DRIVE
WATERLOO, NEW YORK 13165
PHONE: 315-539-1700
FAX: 315-539-0207

July 10, 2024

Chairman
Michael Enslow
Town of Waterloo

Majority Leader
Ernie Brownell
Town of Junius

Board Finance Director
Elizabeth Partee
Town of Tyre

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Michael Reynolds
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Robert Shipley

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Don Trout

Clerk to the Board
Amanda C. Vavra

Deputy Clerk
Jessica Mainville

Office of the State Comptroller
Local Government and School Accountability
110 State Street, 12th Floor
Albany, NY 12236

To Whom it May Concern,

We are in receipt of your draft audit findings and accept, as written, Audit Report Number: S9-24-2.

Sincerely,

Michael Enslow
Chairman of the Board

ME/wsc



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July 10, 2024

Unit Name: Seneca County

Audit Report Title: Consumer Protection: Accuracy of Weights and Measures, Report of Examination

Audit Report Number: S9-24-2

Seneca County Department of Weights and Measures accepts and understands the concerns and issues addressed by the Office of the State Comptroller in this audit. The following corrective actions will be taken in the course of the next year to address the concerns brought forth by the auditors.

- Seneca County Department of Weights and Measures will identify and work with other county departments to update and maintain an accurate list of businesses using various weighing and measuring devices in a commercial capacity within Seneca County.
- Seneca County Department of Weights and Measures will work to ensure that all weighing and measuring devices that are required to be tested will be inspected and tested on a yearly basis.
- Seneca County Department of Weights and Measures will establish a master list of all devices and tools that are being used to test and inspect all weighing and measuring equipment in Seneca County.
- Seneca County Department of Weights and Measures will establish a complete log of all consumer complaints and subsequent investigations.
- As outlined in the county's *Petroleum Product Quality Program Agreement*, the Director of Weights and Measures will submit for fuel reimbursement to cover the costs of fuel octane testing to the NYS Department of Agriculture and Markets.
- Seneca County Department of Weights and Measures will establish procedures and update equipment and software that will allow for retail price accuracy testing.

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We selected the County from a list of all counties (excluding NYC counties) and not currently in the Office of the State Comptroller's audit process at the time of selection. We stratified counties into three bands based on sales tax revenue reported in the 2021 fiscal year and judgmentally selected counties from these bands. Our selection considered geographic region for an even representation of counties across the State for this multi-unit audit.
- We interviewed County staff to gain an understanding of the County's Weights and Measures program.
- We reviewed the Department's master list of businesses and the County's 2022 annual report to the Bureau to determine whether the Department's reported information was reasonable.
- We selected six businesses located within County limits and attempted to trace these to the Department's master list and selected six businesses from the master list and visited these locations to determine whether the master list was accurate and complete.
- We selected 20 out of 199 businesses recorded on the Department master list to determine whether required devices were annually inspected. Using a representative sample based on the business categories listed in the County's 2022 annual report, we selected a judgmental sample from the different categories reported, omitting categories of a seasonal nature or for medical privacy concerns. We reviewed inspection records and physically observed devices at businesses.
- Using a non-biased judgmental sample, we selected three out of 82 fuel octane tests recorded on petroleum product sampling reports and compared to third party lab reports to determine whether tests conformed with standards. We also interviewed County officials to determine whether the Department submitted octane testing costs to the Bureau.
- We reviewed the 2022 annual report and all documentation for consumer complaints, if available, to determine whether the Director resolved the complaints.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the County Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.ny.gov/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.ny.gov/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.ny.gov/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.ny.gov/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.ny.gov/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.ny.gov/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.ny.gov/local-government/academy

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
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<https://www.osc.ny.gov/local-government>

Local Government and School Accountability Help Line: (866) 321-8503

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[osc.ny.gov](https://www.osc.ny.gov)

