



STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE INVESTIGATION REPORT

JANUARY 2023

Matter 21-00825 – In the Matter of the Investigation
of the Acts, Practices, and
Adequacy of Water Pressure
Provided by SUEZ Water New
York, Inc.

Staff Final Report

This Report was prepared by the Department of Public Service, Office of Electric, Gas, and Water and Office of Investigations and Enforcement and does not necessarily represent the views of the Public Service Commission or of the individual Commissioners.

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GLOSSARY OF TERMS, ABBREVIATIONS & ACRONYMS

44 Control	It is a central communications point and dispatch for fire departments in Rockland County. The Rockland County Fire and Emergency - 44 Control Training Center, located in Pomona, Rockland County, NY, provides fire protection and emergency response services including response to medical emergencies, motor vehicle accidents, rescue calls, and incidents involving hazardous materials.
ACF	Adult Care Facility
AWWA	American Water Works Association
CII	Critical Infrastructure Information
CSB	SUEZ Central Service Bureau - Customer service and operations personnel stationed at Lake DeForest.
DHSES	New York State Department of Homeland Security and Emergency Services
DOH	New York State Department of Health
DOS	New York State Department of State
EMS	Emergency Medical Services
ERP	Emergency Response Plan
EPA	U.S. Environmental Protection Agency
Evergreen Facility	Evergreen Court Home for Adults, LLC located at 65 Lafayette Street, Spring Valley, Rockland County, New York
EXC	New York State Executive Law
FCNYS	2020 Fire Code of New York State
FDNY	New York City Fire Department
FOIL	Freedom of Information Law
Inv	Investigator
ISO	Insurance Services Office. The ISO is an independent company that serves insurance companies, communities, fire departments, insurance regulators, and others by providing information about risk. The Insurance Services Office issues the Fire Suppression Rating that provides the methodology for determining the needed fire flow of a structure as well as a Public Protective Summary Report.
JUD	New York State Judiciary Law
M-17	American Water Works Association's Manual for Installation, Field Testing, and Maintenance of Fire Hydrants

M-31	American Water Works Association's Manual of Water Supply Practices – M-31, Fourth Edition Distribution System Requirements for Fire Protection
MOA	Memorandum of Agreement
NFPA	National Fire Protection Association
N.Y.C.R.R.	New York Codes, Rules and Regulations
OEGW	New York State Department of Public Service's Office of Electric, Gas, and Water
OFPC	New York State Department of Homeland Security and Emergency Services Office of Fire Prevention and Control
OIE	New York State Department of Public Service's Office of Investigations and Enforcement
Operations Panel	SUEZ's "Operations Panel" includes the following individual personnel designated by SUEZ: Chris Graziano, John Moolick, Jeff Trezza, and Nick Curcio
OSC	Office of the New York State Comptroller
OSHA	U.S. Occupational Safety and Health Administration
PL	New York State Penal Law
PD	Pressure District
PD 95	The Village of Spring Valley is predominantly located in SUEZ's Pressure District 95. PD 95 is served by four wells located within PD 95, the Ramapo Valley Well Field, and supplemental supply from PD 10.
POL	New York State Public Officers Law
PPC	Public Protection Classification Summary Report prepared by the ISO
PSL	New York State Public Service Law
R-4	Residential Group R-4 Housing designation under the FCNYS
RCDAO	Rockland County District Attorney's Office
RCFCA	Rockland County Fire Chiefs Association
Route 45	Also referred to as North Main Street
SCADA	Supervisory Control and Data Acquisition System
Spring Valley Incident	The fatal fire that was reported on March 23, 2021, at the Evergreen Court Home for Adults in the Village of Spring Valley, Rockland County, NY.
Standpipe	Spring Valley Standpipe Water Storage Tank located in Spring Valley and owned and operated by Suez Water New York, Inc.
SVFD	Spring Valley Fire Department
SVPD	Spring Valley Police Department

Ten State Standards

The Recommended Standards for Waterworks, Policies
for the Review and Approval of Plans and Specifications
for Public Water Supplies

I. EXECUTIVE SUMMARY

This report describes the findings by the Staff of the Department of Public Service related to whether or not actions or inactions of SUEZ Water New York, Inc. (SUEZ or the Company),¹ violated the Public Service Law and contributed to two deaths and multiple injuries resulting from a fire that occurred on the morning of March 23, 2021, at the Evergreen Court Home for Adults, an Adult Care Facility located in the Village of Spring Valley, Rockland County, New York (Evergreen Facility).

As discussed in this report, the direct cause of the fire is alleged to be the reckless and unpermitted use of a blow torch with a 20-pound propane tank and the use and conveyance of multiple large shovelfuls of hot burning coals into the facility during a ritual cleansing in preparation for an upcoming religious holiday conducted in the Evergreen Facility's dairy kitchen ultimately which caused a fire to build within the wall and ceiling above the kitchen, erupting into "a raging inferno"² and spreading to adjacent portions of the facility. Tragically, a resident of the facility, Oliver Hueston, and a volunteer firefighter, Jared Lloyd, a member of Columbian Fire Engine Co. No. 1 in Spring Valley for over 15 years, lost their lives, and multiple firefighters and residents suffered injuries as a result of the fire. Four individuals currently face various criminal charges, including manslaughter,

¹ SUEZ S.A., and SUEZ Water New York Inc., were acquired by Veolia S.A., and Veolia Water North America as of December 16, 2021. See, Case 21-W-0338, SUEZ Water New York Inc., et al. – Franchises, Order Adopting Joint Proposal, (issued December 16, 2021) (Veolia acquisition case). For the sake of clarity, Staff will refer to Veolia Water North America as SUEZ because SUEZ was the owner and operator of the water utility infrastructure at issue at the time of the incident. Consistent with the terms of the Veolia-SUEZ Merger Joint Proposal, Section J, paragraph 1, the parties agreed that, after consummation of the agreement, SUEZ and therefore Veolia will remain subject to the Commission's authority and jurisdiction in this on-going enforcement investigation or case. See, Case 21-W-0338, SUEZ Water New York Inc., et al. – Franchises, Veolia-SUEZ Joint Proposal (filed November 5, 2021), p. 11.

² State of New York v. Nathaniel Sommer and Aaron Sommer, Rockland County Ct., Affirmation in Opposition to Defendants' Omnibus Motion (filed August 22, 2022), pp. 2-3; 64-65 (Rockland County District Attorney's Office (RCDAO) Response to Omnibus Motion).

falsifying business records, reckless endangerment, and obstructing governmental administration in connection with the Spring Valley Incident or related matters.³

When first responders arrived at the Evergreen Facility, they observed an established fire that continued to grow in intensity. Over 100 firefighters ultimately responded to the fire. While combating the fire, firefighters from multiple local Fire Departments connected fire hoses to nearby fire hydrants, owned and operated by SUEZ.⁴ As a growing number of firefighters attempted to extinguish the fire, the water pressure provided from these hydrants, particularly hydrant numbered 1-119 (Hydrant 1-119), located across the street from the Evergreen Facility, began to decrease.⁵ The decrease in pressure required the firefighters to connect their hoses to additional hydrants further away from the Evergreen Facility to continue to fight the fire. The loss of water pressure at hydrants, as the Spring Valley Incident continued into the morning of March 23, 2021, raised issues concerning the sufficiency of the flow and availability of water in SUEZ's water distribution system.

Department of Public Service Staff from the Offices of the Electric, Gas, and Water (OEGW) and the Office of Investigations and Enforcement (OIE) initiated an investigation and engaged with SUEZ, issuing over thirty-five specific information and document requests. Simultaneously, Staff began an extensive e-discovery effort, querying and reviewing over 32,000 SUEZ e-mails, text messages, and other documents from multiple employees dating back to 2016. In addition, Staff conducted four interview sessions with members of the local Fire Departments and municipal government officials. Staff similarly interviewed multiple SUEZ

³ The Rockland County District Attorney's Office (or RCDAO) is currently prosecuting cases against four defendants directly related to, or emanating from the Spring Valley Incident: IND-70294-21 against Nathaniel and Aaron Sommers; IND-70403-21 against Wayne Ballard; and IND 70401-21 against Raymond Canario (Criminal Indictments).

⁴ RCDAO Opposition to Defendants' Omnibus Motion, p. 4.

⁵ Hydrant 1-119 is located directly across the street from Evergreen Court Home for Adults at 65 Lafayette Street, Spring Valley, NY. See, Appendix D, Map of Spring Valley and Hydrants Surrounding Evergreen 65 Lafayette Street.

employees, conducted multiple site visits, and conducted technical meetings with SUEZ's engineers.

As part of its investigation and as discussed in further detail below, Staff also requested documentary information from local governmental entities via Freedom of Information Law (FOIL) requests and subpoenas. Staff's investigation spanned many months due to two primary factors: (1) certain documents regarding the Evergreen Facility were difficult to obtain due to inadequate record keeping practices of the Village of Spring Valley (Village) and its Building Department⁶ and (2) the on-going prosecution of individuals by the Rockland County District Attorney's Office (RCDAO) has necessitated increased discretion so as not to interfere with those proceedings and has delayed obtaining certain information and/or documents from Rockland County, *e.g.*, the official 44 Control recordings from the Spring Valley Incident, and documents from the New York State Department of Homeland Security and Emergency Services Office of Fire Prevention and Control (OFPC).⁷

As a result of Staff's investigatory efforts, and based on currently available information, DPS Staff has determined that SUEZ did not commit any violations of the PSL, the Public Service Commission's (Commission or PSC) Orders, its Rules and Regulations, the Company's Tariff, and/or the Company's Emergency Response Plan (ERP). Staff's investigation revealed that, based on information obtained during its investigation, an extraordinary amount of water was pumped to the area where the Evergreen Facility is located during the early morning hours of March 23. Inspections of the utility's physical assets in the area surrounding 65 Lafayette Street, as well as the facilities that serve water to that area, did not reveal any problems or issues with SUEZ's infrastructure that would have contributed to the reduction in pressure and cessation of flow at the multiple hydrants noted. Further,

⁶ The conduct of certain village officials is a focus of criminal prosecutions.

⁷ See, Criminal Indictments; *see generally*, Sabrail Davenport, as administrator of the estate of Jared Lloyd v. New York State Division of Homeland Security and Emergency Services, Index No. 033008/2022, Rockland County Supreme Court.

Supervisory Control and Data Acquisition (SCADA) reports, provided by SUEZ, showed that SUEZ maintained an adequate supply of water at the Standpipe water storage tank feeding the Spring Valley area, and more specifically the area surrounding 65 Lafayette Street during the Spring Valley Incident.

Beyond the responsibilities and obligations of SUEZ, Staff's review of subpoenaed documents from Rockland County and the Village of Spring Valley highlighted a history of building and fire code violations at the Evergreen Facility, dating back to the 1960's, including faults in the fire suppression systems, inadequate evacuation infrastructure such as emergency lights and fire escapes, and unlicensed contractors performing plumbing and construction work. Further, the Village of Spring Valley was unable to produce records more recent than 2016. During its review of the documents that were produced, Staff observed instances of unresolved violations or recurring violations. These findings seem to indicate serious issues with local building and fire code compliance, a lack of proper code enforcement and oversight, and inadequate record keeping on the part of the Village of Spring Valley, which may be the subject of other ongoing investigations.

DPS Staff is of the shared belief that multiple simultaneous withdrawals from the same main was a contributing factor to the diminished flow during the later phases of the response to the Evergreen fire. Thus, the use of multiple hydrants by multiple fire departments utilizing the same network of hydrants to simultaneously combat the fire at Evergreen continued to divide the available flow amongst the hydrants used. Adding multiple fire engines and tankers to each of the hydrants located in proximity to one another further divided the available flow.

While these findings demonstrated that SUEZ did not commit any PSL-related violations, Staff's investigation identified opportunities for enhancements or improvements that local governmental entities, fire departments, and the utility could consider to improve communications among SUEZ, Rockland County, the Village of Spring Valley, and emergency responders; improve record keeping and operational practices of the Company; and facilitate greater understanding of the water system operation and constraints among first responders and local land use

regulation authorities to improve the efficiency and efficacy of the first response. These recommendations will encourage further cooperation between the Company and local fire departments and municipalities to assist in the execution of the response to future fire-related incidents.

Staff developed 8 recommendations with the intent to improve operational processes and communication between the Company, local fire departments, municipalities, Rockland County, and other key stakeholders.⁸ While Staff did not find any violations requiring further action by the Commission, these recommendations address important issues and may provide enhancements to SUEZ's operations and local communities' response to emergency incidents.

II. BACKGROUND

To understand the utility's role and actions during the Spring Valley Incident, it is important to understand the context and events leading up to the Spring Valley Incident including various municipal and State agencies with their own roles related to the Evergreen Facility as well as the specific events leading up to and including the significant response to the Spring Valley Incident. To be clear, the Department's investigation did not extend to the actions taken by local firefighters and first responders nor opines on the adequacy of their response, nor does this investigation attempt to subrogate the jurisdiction of other local and State agencies, which exercise oversight of various entities involved in the Spring Valley Incident.

The Village of Spring Valley

The Village of Spring Valley is a municipality located in the Towns of Clarkstown and Ramapo in Rockland County having an area of two square miles. The Village of Spring Valley describes itself as:

⁸ A table containing each of Staff's recommendations is appended to this report. See, Appendix A.

a suburb of New York City, a village in the towns of Ramapo and Clarkstown in Rockland County, New York, United States. It is located north of Chestnut Ridge, east of Airmont and Monsey, south of Hillcrest, and west of Nanuet. The population was 31,347 at the 2010 census, making it the 2nd most populous community in Rockland County, after New City.⁹

The Village of Spring Valley is also located approximately five miles from the New York – New Jersey border. The Village of Spring Valley government includes its Mayor and Deputy Mayor, the Village Board of Trustees, the Planning and Zoning Boards, and various departments, including the Building Department and Spring Valley Volunteer Fire Department.¹⁰

The Office of the New York State Comptroller (OSC) 2020 Local Government Census reported the Village had a population of 33,066 with 9,818 households, making it the second most populous area in Rockland County.¹¹ The Village of Spring Valley experienced population growth of 5.4 percent from April 2010 to April 2020. To put matters in perspective, New York State, as a whole, experienced a growth rate of 4.2 percent during the same ten-year period.¹²

The Village is serviced by multiple volunteer fire departments. Further, a significant portion of the Village of Spring Valley, excluding private well owners and other private water sources, receives its water service from SUEZ.¹³

⁹ <https://villagespringvalley.org/faq/> (accessed December 19, 2022).

¹⁰ <https://villagespringvalley.org/village-boards/> (accessed December 19, 2022).

¹¹ <https://www.census.gov/quickfacts/springvalleyvillagenewyork> (accessed December 19, 2022) (2020 Census – Spring Valley).

¹² <https://wwe1.osc.state.ny.us/localgov/2020-census-interactive-dashboard.htm> (accessed December 19, 2022).

¹³ Response to DPS-5.

Until February 14, 2022, the Village of Spring Valley Building Department, through its inspectors, applied the State Uniform Fire Prevention and Building Code for the Village pursuant to Article 18 of the Executive Law.^{14, 15}

Further, the building and fire inspectors within the Village of Spring Valley are also required to investigate “the cause, origin, and circumstances” of every fire occurring in the Village, and to conduct annual fire safety maintenance inspections occur.¹⁶ The Village of Spring Valley Code also contains provisions which require permit or place other restrictions on conducting processes which may produce hazardous conditions to life or property, having or creating outdoor fires, handling readily combustible materials, or using open flames.¹⁷

The Village of Spring Valley also includes a seven-person Planning Board which is responsible for local development, as well as a Zoning Board which regulates the development, use, and occupancy of real estate and structures within the Village boundaries.¹⁸

Rockland County

Rockland County (County) encompasses approximately 176 square miles located on the western side of the Hudson River and is located north of the New York Metropolitan area. Rockland County contains five townships and is further subdivided into nineteen villages, including the Village of Spring Valley.

The County government is comprised of numerous departments including its own Building & Codes Department, the Department of Fire and Emergency Services led by Christopher Kear, and the Rockland County Sheriff’s Department

¹⁴ <http://rocklandgov.com/departments/county-executive/press-releases/2022-press-releases/rockland-launches-new-office-of-buildings-and-codes/> (accessed December 20, 2022); see also NYS DOS Designation Pursuant to Executive Law §381(4)(c) and Second Order Pursuant to Executive Law §381(4)(a) (issued November 16, 2021).

¹⁵ Village of Spring Valley Code §82-2.

¹⁶ Id., §82-11.1.

¹⁷ Id., §§82-15; 82-17; 82-21; 82-24

¹⁸ <https://villagespringvalley.org/village-boards/> (accessed December 20, 2022).

led by Louis Falco that operates the 911, police, Emergency Medical Services (EMS), and fire department dispatch, including but not limited to the Rockland County 44 Control System. The County also has a Water Quality Committee tasked with protecting, conserving, and restoring Rockland County's water resources, and a Task Force on Water Resources Management.^{19, 20}

The County government structure includes a County Executive and a County Legislature. In the State Legislature, the County is represented by two State Senators in the 38th and 39th Senate Districts, and four Assemblymembers in the 96th, 97th, 98th, and 99th Assembly Districts. The Evergreen Facility falls within the 38th Senate District, represented by Senator Elijah Reichlin-Melnick, and the 96th Assembly District, represented by Assemblyman Kenneth Zebrowski.

According to the Office of the New York State Comptroller's Local Government 2020 Census, Rockland County has a total population of 338,329 residents which is an 8.5 percent increase, or an additional 26,642 residents since 2010. In addition, Rockland County has experienced an overall 3.9 percent increase in housing units with a commensurate 3.7 percent increase in occupied housing since 2010.²¹ As of 2020, approximately 77 percent of Rockland County residents and businesses received service from SUEZ.²²

As of February 14, 2022, the Rockland County Legislature unanimously adopted a new local law and approved three resolutions that adopted the terms of the New York State Department of State's Designation and Second Order Pursuant to Executive Law § 381(4), whereby the County assumed responsibility for managing the Spring Valley Village Building Department, established which

¹⁹ <http://rocklandgov.com/departments/environmental-resources/boards-and-committees/water-quality-coordinating-committee/> (accessed December 23, 2022).

²⁰ <http://rocklandgov.com/departments/planning/task-force-on-water-resources-management/> (accessed December 19, 2022).

²¹ <https://wwe1.osc.state.ny.us/localgov/2020-census-interactive-dashboard.htm> (accessed December 19, 2022)

²² https://rocklandgov.com/files/2416/0331/9060/RocklandCo_CompWaterConsPlan-Final_v2.pdf (accessed December 20, 2022).

included a \$1.5M budget amendment, which also included the hiring a Director of Building Administration and Code Enforcement within the Office of the County Executive, and approving an intermunicipal agreement between the County and the Village conducting annual fire safety inspections.²³

The County's 44 Control System

Rockland County's 44 Control emergency communications system is a central communications point and dispatch for fire departments in Rockland County. 44 Control is managed by the Communications Division of the Rockland County Sheriff's Office. The Rockland County Fire and Emergency - 44 Control Training Center, located in Pomona, NY, provides fire protection and emergency response services including response to medical emergencies, motor vehicle accidents, rescue calls, and incidents involving hazardous materials. The County describes 44 Control as:

the sole dispatch point for fire departments and specialty rescue teams in Rockland County. The Emergency Communications Center is electronically linked to dozens of private alarm companies and thousands of residential and commercial fire alarm systems throughout the County. The Division is responsible for approximately 8,000 fire dispatches per year, by radio and digital messaging.²⁴

Further,

The Communications Division is the lead manager of the Rockland County Public Safety Communications System, which provides radio communication to police, fire, EMS, and other emergency responders in Rockland County.²⁵

²³ Rockland County Local Law 1 of 2022, *see also*, https://rocklandgov.com/files/3016/4935/1921/FEBRUARY_1_2022_LEGISLATIVE_MINUTES.pdf (accessed December 23, 2022); Resolutions No. 71, 72, and 73 of 2022, *see also*, https://rocklandgov.com/files/6816/4935/1900/FEBRUARY_8_2022_LEGISLATIVE_MINUTES.pdf (accessed December 20, 2022).

²⁴ <https://www.rocklandcountysheriffoffice.com/communications.html> (accessed December 22, 2022).

²⁵ *Id.*

Fire and smoke alarms within Rockland County and the Village of Spring Valley are required to connect to the 44 Control system.²⁶ This necessary connection allows building fire and smoke alarms to immediately notify first responders of potential emergencies. 44 Control also fields radio communications between first responders. As such, the 44 Control system provides time-stamped, simultaneously recorded information from each event, including the Spring Valley Incident.

The Evergreen Court Home for Adults

The Evergreen Facility was located at 65 Lafayette Street, Spring Valley, NY, 10977. The Adult Care Facility (ACF) was operated by Evergreen Court Home for Adults SP, LCC.²⁷ Evergreen Court Home for Adults SP, LLC is a limited liability company in Rockland County, New York registered to a Phillip Schonberger of Lakewood, NJ.²⁸ As configured in March 2021, the facility had the capacity to house 200 residents and a census of approximately 116 residents and staff on March 22.²⁹ The facility is described as a “long, narrow, multi-story building with residences on elevated floors, common areas on the first floor, and kitchen in the front on the first floor attached to the [facility’s] multi-level space.”³⁰ The Evergreen Facility kitchen area and an activity room were located in a one-story area of the facility to the left of the main entrance.³¹

The structure that became the Evergreen Facility was once the Bader Hotel. The original facility has undergone multiple ownership changes, most recently with its purchase in 2011, and numerous renovations since 1964, but none in recent

²⁶ Village of Spring Valley Code §82-32(A).

²⁷ <https://profiles.health.ny.gov/acf/view/1254888> (accessed December 21, 2022).

²⁸ <https://apps.dos.ny.gov/publicInquiry/EntityDisplay> (accessed December 22, 2022) (search: “Evergreen Court Home for Adults SP”).

²⁹ <https://profiles.health.ny.gov/acf/view/1254888> (accessed December 19, 2022); RCDAO Response to Omnibus Motion, at 5..

³⁰ RCDAO Opposition to Defendants’ Omnibus Motion, p. 2.

³¹ *Id.*, at 11-12, 18, 28, 38, 48-49.

years.³² The earliest reference point in documents obtained via subpoena from the Village of Spring Valley is 1964.³³ As of 1965, the property included a two-story building, of unknown composition, which underwent multiple renovations including additions and the installation and closure of a swimming pool. Records reflect those portions of the structures included fire detection and suppression systems, including an internal sprinkler system.

The Village of Spring Valley Code §82-32 requires all new commercial structures, multiple resident dwellings, schools, and institutions to be equipped with an approved sprinkler system and fire detection alarm system connected to the 44 Control network.³⁴ The system must meet the requirements of National Fire Protection Association (NFPA) -13 or -13R. Village Code §83-3(D) requires annual tests in accordance with NFPA 25 Standards, with written reports provided to the Village Fire Inspector's Office. Testing and reports may also be sought by the Village on as needed basis.³⁵ Based on the number of residents and operations of the Evergreen Facility it appears that the structure would be classified as a Residential Group building, or R-4 classification under the 2020 Fire Code of New York State (FCNYS).³⁶

The Town's records do not indicate make, model, or specific functions of the various building components, and, as a point of concern, the subpoenaed Village records did not contain building plans or blueprints for the facility as a whole. The Village's documents do, however, indicate that the fire suppression system had recurring issues including resets, trips, and potential tampering which resulted in repeated citations by the Village's Building Department. The facility's fire alarm

³² <https://www.firefighterclosecalls.com/ny-lodd-update-spring-valley-fire-investigation-focuses-on-water-supply-cause-whether-entire-building-had-working-fire-sprinklers/> (accessed December 22, 2022). The documents subpoenaed from the Village of Spring Valley do not describe nor refer to any recent expansions or other major renovations.

³³ Village of Spring Valley Response, p. 475.

³⁴ Village of Spring Valley Code §82-32(A).

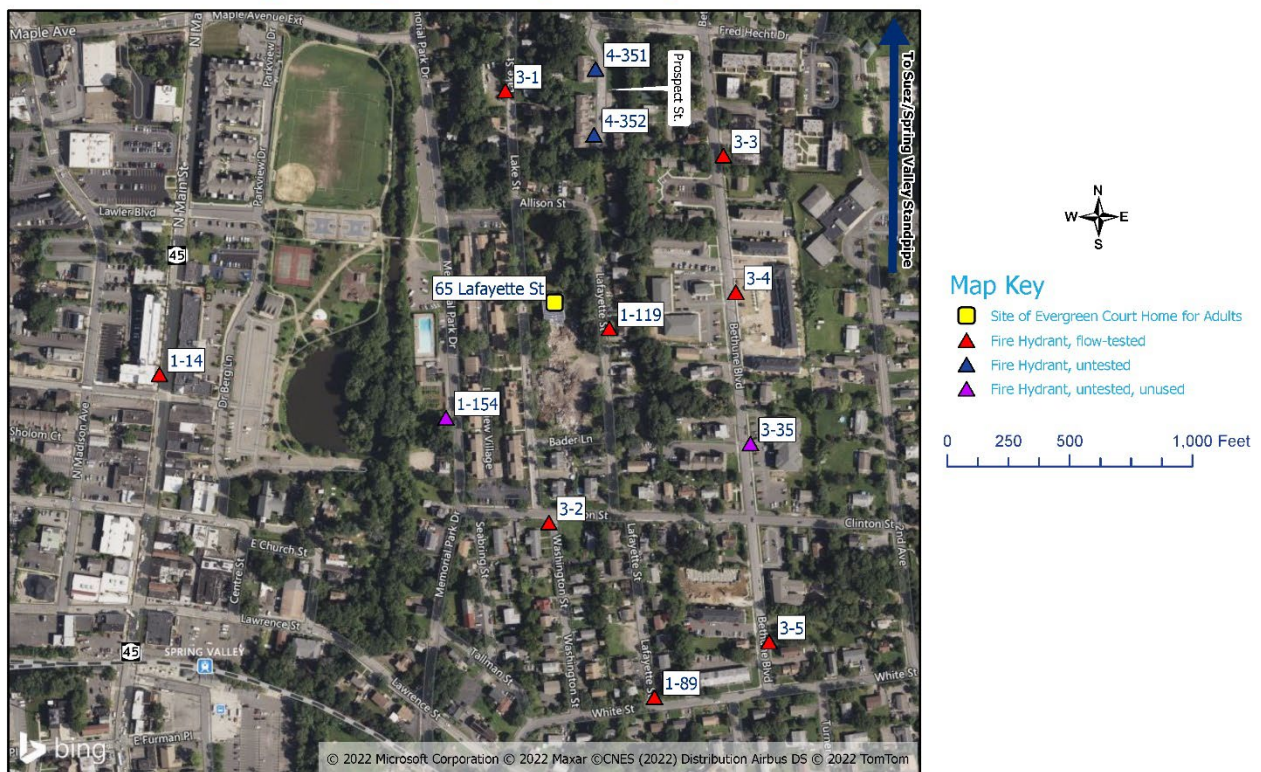
³⁵ *Id.*, §82-32(D).

³⁶ FCNYS, §202, p. 35.

and smoke detection system were designed with the intent, under normal operating conditions, to immediately notify the 44 Control network of a fire incident and thereby facilitate a prompt response by emergency services.

A fire hydrant, Hydrant 1-119, is located on the east side of Lafayette Street across from the Evergreen Facility. At least nine other hydrants are located in the general vicinity of the Evergreen Facility as shown below.³⁷ Included in this report is a map showing nearby hydrants located near the Evergreen Facility.³⁸

Spring Valley Map



DPS GIS Unit/NJH 2023-01-12

This map was prepared for Matter Number: 21-00825

Figure 1 – Spring Valley Map

³⁷ Appendix D.

³⁸ Id.

According to SUEZ, “the in-service dates for these services [those at the Evergreen Facility], to the best of our knowledge, date back as far as 1914 and 1942.”³⁹ Both with SUEZ and the Village, certain records concerning the Evergreen Facilities’ original service connection have been lost due to the facility’s age. In addition, it is generally recognized that the original structure at 65 Lafayette dates back to 1903.

Access to Information Related to On-going Criminal Indictments

The specific cause and origin of the fire will likely be discussed during the on-going criminal prosecutions by the Rockland County District Attorney’s Office and by the Office of Fire Prevention and Control (OFPC), a division of the New York State Department of Homeland Security and Emergency Services (DHSES).⁴⁰ DPS Staff recognizes the on-going and important nature of the criminal prosecutions and the work of OFPC. Staff also recognizes the importance of confirming certain facts related to the response to the Spring Valley Incident, especially regarding SUEZ, which is under the PSC’s jurisdiction.

Further, Staff issued requests to Rockland County Attorney’s Office, the Sheriff’s Office, and the District Attorney’s Office seeking the actual recordings for the Spring Valley Incident from the Rockland County 44 Control system. Those requests were denied.

The Rockland County Attorney and Rockland County Sheriff’s Office indicated that the basis for their denial of access was similar to the Rockland County District Attorney’s Office opposition to release OFPC’s Origin and Cause report.⁴¹ The OFPC’s Origin and Cause report is currently being sought by the

³⁹ Response to DPS-9.

⁴⁰ RCDAO Response to Omnibus Motion, pp. 1; 6.

⁴¹ Appendix E, p. 29. E-mail of Assistant County Attorney Jeanne Gilberg to Assistant Counsel Nicholas Forst (dated December 20, 2022).

family of deceased firefighter Jared Lloyd.⁴² In that proceeding, the Rockland County District Attorney's Office submitted an October 31, 2022, letter, stating:

[O]ur office indicated to DHSES that it was RCDAO's belief that public disclosure of the documents would compromise the criminal prosecution of the defendant's case, including potentially depriving defendants of a fair and impartial trial and tainting of any prospective jury pool.

It remains the position of the RCDAO that public disclosure of the OFPC investigative records would interfere with the prosecution of defendant[s] case. At this point, there have been no hearings or exhibits presented in open court before Honorable Kevin F. Russo in this case. Accordingly, the concerns set forth above which were previously communicated to DHSES remain.

Our office does not desire to create complications or interfere in any pending civil case by the petitioner. We are keenly aware of the scope of the tragedy which occurred on March 23, 2021, and the immense loss suffered by Firefighter Lloyd's family. Please understand that our office's position is based solely on our obligation to ensure the integrity of the criminal case until its completion.⁴³

Similarly, DPS recognizes, understands, and appreciates the Rockland County District Attorney's Office position; delaying the Department's investigation until completion of all criminal prosecutions, however, would create an unknown period of delay. In addition, on August 22, 2022, Rockland County District Attorney's Office filed an Opposition to the Sommer Defendants' Omnibus Motion to Dismiss the Criminal Indictments.⁴⁴ This document was provided to DPS Staff on December 16, 2022.

The RCDAO's Opposition to the Omnibus Motion describes witness testimony obtained under oath and presented during Grand Jury testimony. Further, the presentation recites the observations and expertise of OFPC Investigator Jason Green who testified before a Grand Jury in the criminal proceedings about the OFPC Cause and Origin investigation. The facts as presented in the RCDAO

⁴² See, Criminal Indictments; *see generally* Sabrail Davenport, as administrator of the estate of Jared Lloyd v. New York State Division of Homeland Security and Emergency Services, Index No. 033008/2022, Rockland County Supreme Court.

⁴³ Id., Letter from the Rockland County District Attorney's Office (dated October 31, 2022).

⁴⁴ RCDAO Opposition to Defendants' Omnibus Motion, p. 102

document corroborate and are consistent with information obtained during the Department's own investigation and therefore the Department will highlight relevant facts and information contained in the RCDAO court filing as they relate to the events leading up to the fire and following the arrival of first responders and fire fighters at the Evergreen Facility.

Most importantly, the Department recognizes that the information contained in the court filing identifies that the origin and cause of the fire relates to activities conducted on the premises of 65 Lafayette Street which resulted in a fire migrating in the wall of the Evergreen Facility kitchen, travelling up into kitchen ceiling, and eventually expanding and spreading above the Facility's fire suppression system in the kitchen area.

Furthermore, SUEZ provided in response to a request by the Department the sequence of events involving the Company as they relate to the Spring Valley Incident.⁴⁵ The basis for the time log as it is referred to in the response is a combination of the SUEZ's notifications to its CSB, reports to and interactions with the 44 Control system, data obtained from SUEZ's own systems, *e.g.*, SCADA, and accounts from the SUEZ employees who were on site during the incident.

In addition, SUEZ provided an archived recording of 44 Control radio traffic which is outlined in SUEZ's response.⁴⁶ While this archived recording cannot be verified as complete and accurate as compared to the official recordings withheld by Rockland County, the information contained therein when compared with other data and reports, as well as the testimony of witnesses in the RCDAO's investigation, and interviews conducted by the Department, corroborates the information provided in SUEZ's response. While it would be beneficial to the DPS investigation to receive the entire recording directly from Rockland County, as discussed above, those requests have been denied on a number of occasions.

⁴⁵ Response to DPS-14.

⁴⁶ <https://youtu.be/KJhenfFakS0> (accessed December 24, 2022). See also, <https://www.firehouse.com/safety-health/video/21215828/radio-traffic-captures-fallen-ny-firefighters-mayday> (accessed December 24, 2022).

ISO PPC Summary Report

In mid-2020 the Spring Valley Fire Department received the ISO Public Protection Classification (PPC) Summary Report. The PPC Summary Report prepared by the ISO solicits information from local communities within the United States on their fire suppression infrastructure and capabilities and performs an evaluation which grades municipalities out of a score of 10, with 1 representing an exemplary fire suppression program and 10 indicating that an area's fire suppression program does not meet the ISO's minimum criteria.⁴⁷ The ISO's PPC program evaluates communities based on criteria established by the National Fire Protection Association (NFPA) and the AWWA.⁴⁸ A municipalities' rating or grade depends on (1) Needed Fire Flows; (2) Emergency Communications; (3) Fire Departments; and (4) Water Supply. For the total score, Emergency Communications is weighted at 10 percent, Fire Departments is weighted at 50 percent, and Water Supply is weighted at 40 percent.⁴⁹ The PPC Summary Report classifies Spring Valley as rank 4 out of 10.⁵⁰ (In this ranking metric, rank 1 is the highest or best, and rank 10 is the lowest or worst.) Spring Valley received a significant number of points in the area of emergency communications and many areas regarding its Fire Departments, excluding the "Company Personnel" category as Spring Valley is served by volunteer/ on-call firefighters.⁵¹ Spring Valley has an average of 15 on-call structure fire responders; however, since they are volunteer or on-call, this results in a lower score in this area. As of November 1, 2021, SUEZ had not been provided a copy of the PPC report by the Village.⁵²

⁴⁷ Insurance Services Office, Inc., *PPC Summary Report*, (Jersey City: Insurance Services Office, Inc., 2020) (ISO PPC Summary Report)

⁴⁸ *Id.*, p. 1.

⁴⁹ *Id.*, p. 2.

⁵⁰ *Id.*, p. 23.

⁵¹ *Id.*, p. 16.

⁵² Response to DPS-31.

Concerning Water Supply, municipalities are scored based on three sub-criteria, (1) the Supply System; (2) Hydrants; and (3) Inspections & Flow Testing.⁵³ Spring Valley received maximum points for Hydrants, having 307 hydrants with a “6-inch or larger branch” which reflects the infrastructure SUEZ provides serving those hydrants.⁵⁴

Concerning Inspections & Flow testing, Spring Valley received credit for the regular operational inspections of hydrants but did not receive credit for flow testing as the schedule of testing was ten years or more which ISO does not assign credit to.⁵⁵ DPS Staff addresses the frequency of flow testing within SUEZ’s service territory below.

Finally, concerning Water Supply, ISO awarded points to Spring Valley for providing needed fire flow across the municipalities between 2,500 gpm and 3,500 gpm.⁵⁶ The ISO report makes it clear that specific properties with a needed fire flow greater than 3,500 gpm are evaluated separately and given their own classification and that the ISO’s standard for fire flow is based on the fifth largest fire flow, meaning, it looks at the largest buildings and commercial properties to make such a determination.⁵⁷ The PPC Summary Report does not include which properties were included nor does it indicate how this score relates to properties with installed fire sprinkler or fire suppression systems, such as the Evergreen Facility.

Furthermore, the ISO services are provided to municipal governments and local fire departments. In the course of DPS Staff’s investigation, the Village and the County did not indicate that any actions have been taken or that discussions have occurred with SUEZ concerning the findings in the ISO PPC Summary Report.

⁵³ ISO PPC Summary Report, p. 18.

⁵⁴ Id., p. 20.

⁵⁵ Id., pp. 20-21.

⁵⁶ Id., p. 19.

⁵⁷ Id., p. 12.

III. THE EVERGREEN COURT HOME FOR ADULTS' FACILITY FIRE

The events that directly led to the Spring Valley Incident as alleged, began on March 22, 2021, with Nathaniel and Aaron Sommers (the Sommers) activities at the Evergreen Facility and its nearby “sister” adult care facility, the New Golden Acres Facility.⁵⁸ The Rockland County District Attorney’s Office has charged the Sommers with two counts of manslaughter in the second degree in violation of PL § 125.15(1), two counts of assault in the second degree in violation of PL § 120.05(4), arson in the fourth degree in violation of PL § 150.05(1), seven counts of assault in the third degree in violation of PL § 120.00(2), and two counts of reckless endangerment in the second degree in violation of PL § 120.201.⁵⁹

As alleged by the RCDAO, between the hours of 6:00 p.m. and 11:15 p.m. on March 22, 2021, Nathaniel and Aaron Sommers allegedly accessed the kitchen inside the Evergreen Facility through an exterior door on the left-hand side of first floor of the one-story portion of the Evergreen Facility.⁶⁰ The Sommers allegedly used a 20-pound capacity propane tank and lit asphalt torch to apply heat to appliances and other surfaces, and items within the kitchen of the Evergreen Facility.⁶¹ It is also alleged that the Sommers carried the lit torch and tank in and out of the kitchen several times without extinguishing the open flame.⁶²

In addition, it is also alleged that Aaron Sommers between 9:15 p.m., and 9:31 p.m., on March 22, 2021 used a bag of a substance appearing to be charcoal outside the exterior door of the kitchen at the Evergreen Facility and emptied the contents in a pan which was then ignited with the lit asphalt torch, where it burned unattended outside the kitchen from 9:31 p.m., until 9:53 p.m.⁶³ At approximately 10:15 p.m., through 10:22 p.m., the Sommers used a shovel to transport coals from

⁵⁸ RCDAO Opposition to Defendants’ Omnibus Motion, p. 5.

⁵⁹ RCDAO IND-70294-21 against Nathaniel and Aaron Sommers, Rockland County Cr. Ct.

⁶⁰ RCDAO Opposition to Defendants’ Omnibus Motion, p. 3.

⁶¹ Id.

⁶² Id.

⁶³ Id., pp. 5-6.

the pan into the Evergreen Facility Kitchen ten times.⁶⁴ By 11:15 p.m., the Sommers had left the Evergreen Facility. It is also alleged that “[a]ll of the defendant’s [Aaron and Nathaniel Sommer’s] actions occurred without a mandated fire watch to ensure safety or permitting to conduct said process inside 65 Lafayette Street [the Evergreen Facility].”⁶⁵

In addition, during the presentation of evidence to the Grand Jury, the RCDAO presented testimony from witnesses Mytchela Jolicoeur, Christopher Wray, Shevon Frederick, Marie Lamercie Noel, and Denise Kerr who testified regarding the Sommers, their relationship to the Evergreen Facility and their ritual cleaning of the Evergreen Facility and its sister facility the New Golden Acres Facility for the Passover holiday which is generally understood to be reason for the Sommers activities on the evening of March 22 and morning of March 23.⁶⁶

While the New Golden Acres Facility is a subject of the RCDAO’s investigation, it is not implicated in the Department’s investigation of SUEZ. The New Golden Acres Facility is another ACF, with an overall capacity of 79 residents, located at 11 Prospect Street, Spring Valley, Rockland County, NY, 10977.⁶⁷ The New Golden Acres Facility is operated by New Golden Acres SP, LLC a limited liability company in Rockland County, New York registered to a Steven Schonberger of Lakewood, NJ.⁶⁸

As part of the RCDAO’s allegations, and testimony from Mr. Manuel Lema who testified before the Grand Jury in the criminal case, Mr. Lema stated that prior to the Sommer’s arrival at the Evergreen Facility he contacted the Rockland County 44 Control system to place the facility’s fire alarm system on test mode. Mr. Lema’s

⁶⁴ Id., p. 6.

⁶⁵ Id.

⁶⁶ Id., pp. 19-29.

⁶⁷ <https://profiles.health.ny.gov/acf/view/1255211> (accessed December 23, 2022).

⁶⁸ <https://apps.dos.ny.gov/publicInquiry/EntityDisplay> (accessed December 22, 2022) (search: “New Golden Acres SP”).

call to 44 Control was played for the Grand Jury.⁶⁹ The RCDAO in the Grand Jury proceeding presented testimony from Rockland County Sheriff's Office Coordinator Keith Mahoney, who explained aspects of the County's 44 Control and commercial fire alarm system.⁷⁰ Mr. Mahoney explained the significance of test mode:

So basically, test mode is when the fire alarm system is taken out of the service in the software. It's still active in the building, but it allows a technician or an alarm company to perform either a quarterly test or repairs on the equipment. If they trip the fire alarm, the dispatch does not get the signal [to send emergency assistance]. It comes to automation, but it does not go to the dispatcher.⁷¹

Coordinator Mahoney also explained that of the roughly 4,000 commercial accounts [in Rockland County] 60-100 place their systems on test mode daily.⁷² Coordinator Mahoney who is familiar with the Evergreen Facility stated that the Evergreen Facility maintained a fire alarm system that connected to 44 Control, and that log generated from 44 Control from March 22, 2021, showed that the Evergreen Facility fire alarm system was set to test mode at 5:12:53 p.m., with a pre-timed restoration of service to 44 Control eight hours later – or 1:12 a.m. on March 23.⁷³ Mr. Mahoney further testified that during the period in which the system was on test mode, the first of seven alarms alarmed at 12:48:30 a.m., on March 23, 2021.⁷⁴ Since the system was on test mode, these alarms did not notify 44 Control directly, instead they were automatically fielded, and the 44 Control Dispatch was not notified.⁷⁵

During this time, an Evergreen Facility employee, a Ms. Amianata Beridogo testified that while working an overnight 11:00 p.m., to 7:00 a.m. shift, on March 22 to March 23, 2021, and performing her routine of checking residents and their

⁶⁹ RCDAO Opposition to Defendants' Omnibus Motion, p. 10

⁷⁰ Id., p. 13.

⁷¹ Id.

⁷² Id., p. 14.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id., pp. 13-15.

rooms she suddenly heard the fire alarms go off.⁷⁶ Ms. Beridogo observed smoke emanating from the door to the kitchen area of the Evergreen Facility and as a result called 911.⁷⁷ Ms. Beridogo stated she contacted her supervisors and then began alerting and assisting Evergreen residents and staff to exit the building.⁷⁸ Ms. Beridogo testified that in the course of the evacuation she observed the smoke and fire intensify to the point that a fire was visible from the kitchen side of the Evergreen Facility.⁷⁹

Mr. Mahoney testified that until the test mode expired at 1:12:04 a.m. on March 23, 2021, that no direct notification was made to 44 Control of the Evergreen Fire by the Evergreen Facility's fire alarm system.⁸⁰ Additionally, Mr. Mahoney also testified and demonstrated that based on the 44 Control records another facility visited by the Sommers, the New Golden Acres, also registered a fire signal from a heat detector on the first floor at 12:05:26 a.m. on March 23, 2021.⁸¹

In the early hours of March 23, 2021, the 44 Control System was receiving alarms from Evergreen as well as its "sister facility," Golden Acres, located approximately 0.5 miles to the North on Prospect Street in the Village of Spring Valley, Rockland County, NY.

First Responder Testimony

Returning to the Evergreen facility, the RCDAO's investigation received testimony presented to a Grand Jury from first responders Brian Duddy and Kenneth Flynn.⁸² Mr. Duddy testified that as he arrived on scene at approximate 1:00 a.m., he observed smoke emanating from the kitchen of the Evergreen Facility

⁷⁶ Id., p. 9.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. p. 15.

⁸¹ Id.

⁸² Id., p. 11.

and that the fire rapidly intensified and became more destructive.⁸³ Mr. Duddy also testified that he observed the fire starting to rage in the kitchen area and extend to the multistory portion of the Evergreen Facility which housed residents, which ultimately collapsed shortly thereafter.⁸⁴

Consistent with Mr. Duddy, Mr. Flynn testified that he received an alert around 12:45 a.m., to respond to the Evergreen Facility, and that upon arriving there around 1:10 a.m., to 1:15 a.m., he observed “fire showing above the kitchen area of the building.”⁸⁵ The RCDAO stated that Mr. Flynn used photographs taken at the scene to walk through the chronology of the event which showed the fire emanating from the kitchen roof before escalating and worsening over time.⁸⁶

Spring Valley Police Department Testimony

Moreover, Spring Valley Police Department Officer (SVPD) Jonathan Ortega, the first emergency responder on scene at Evergreen testified that he received a call for a fire alarm at approximately 12:50 a.m., on March 23, 2021. Thereafter, he entered the Evergreen Facility where he encountered black smoke emanating from the area to the left of the entrance – the southwest side of the building.⁸⁷ Officer Ortega also testified that seeing the black smoke he contacted the Village Police Department to expedite fire response.⁸⁸ Officer Ortega recognized that, based upon speaking with Evergreen staff, a large number of residents required evacuation.⁸⁹ Officer Ortega testified that on the left side of the building near the dining area he

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id., p. 12.

⁸⁶ Id.

⁸⁷ Id., p. 16.

⁸⁸ Id.

⁸⁹ Id.

encountered a wall of smoke and water over the floor, so much so that he was unable to get past the significant volume of smoke.⁹⁰

At this time, Officer Ortega was joined by SVPD Officer McAllister, the second officer to respond, who assisted with knocking on doors and evacuating residents.⁹¹ Both Officers testified that as the lobby area filled with smoke the alternative was to evacuate residents out of the North side exit of the building.⁹² Officer McAllister also assisted in responding to a fire alarm activation at the New Golden Acres facility at approximately 12:15 a.m., prior to his arrival at the Evergreen Facility.⁹³

Officers Ortega and McAllister were then joined by Officer Roper who testified that as the third responding officer, he observed an active fire burning from the first story roof from the left side of the building next to the front entrance.⁹⁴ Officer Roper then assisted his fellow officers evacuate residents from the north side exit as firefighters arrived and began working the scene near the left front side of the building.⁹⁵

Spring Valley Firefighter Testimony

As part of the RCDAO's investigation they presented evidence from Firefighter Eric Cich, an eight-year veteran of Columbian Engine Company Number 1 in Spring Valley.⁹⁶ Firefighter Cich suffered significant injuries during the Spring Valley Incident.⁹⁷ Mr. Flynn who had testified earlier photographed Firefighter Cich being transported on a stretcher after he was removed from the building

⁹⁰ Id.

⁹¹ Id., pp. 16-17.

⁹² Id.

⁹³ Id., p. 18.

⁹⁴ Id.

⁹⁵ Id., pp. 18-19.

⁹⁶ Id., p. 29.

⁹⁷ Id., pp. 12; 29.

during the incident.⁹⁸ Firefighter Cich was transported to Good Samaritan Hospital where he received aggressive emergency treatment before being transferred to Westchester Medical Center for their hyperbaric chamber; where he spent three days receiving treatment.⁹⁹

Firefighter Cich testified that on the night of March 22, 2021, into the morning of March 23, 2021, he received a page at approximately 12:53 a.m., dispatching him and his fire company to the Evergreen Facility.¹⁰⁰ Firefighter Cich testified that the initial response to the Spring Valley Incident included firefighters John Conjura, Tim Hill, Donovan Scott, and Jared Lloyd.¹⁰¹ Jared Lloyd was the firefighter who tragically lost his life responding to the Spring Valley Incident.

Firefighter Cich testified that upon arrival there were multiple resident victims that required assistance and that he began to search the upstairs areas of the facility for victims.¹⁰² Firefighter Cich also testified that he sought to locate a resident trapped in Room 306 of the Evergreen Facility. Firefighter Cich testified that he arrived at Room 306 with fellow firefighters Leitner, Travis Helmke, and Jared Lloyd, whereupon he learned the resident in Room 306 was Oliver Hueston.¹⁰³ Oliver Hueston was the Evergreen resident who tragically died as a result of the Spring Valley Incident.¹⁰⁴ Firefighter Cich also testified that the fire was so severe at this point that as they responded to Room 306 the smoke was so black it prevented him from “seeing the hands in front of [his] face”¹⁰⁵

At this time, Firefighter Leitner left the group to go outside due to a low air supply, at which point, Firefighters Helmke and Cich attempted to extricate Mr.

⁹⁸ Id., p. 12.

⁹⁹ Id., p. 32.

¹⁰⁰ Id., p. 29.

¹⁰¹ Id., p. 30.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id., pp. 54-55.

¹⁰⁵ Id.

Hueston down a fire escape.¹⁰⁶ It was at this time Firefighter Cich lost track of Firefighter Lloyd and heard a mayday call.¹⁰⁷ Multiple sources, including SUEZ and Chief Conjura stated that the mayday call was received around 1:50 a.m., on March 23, 2021.¹⁰⁸ Firefighter Cich then testified that while evacuating Mr. Hueston, he encountered his own issues with his air supply and that the heat and smoke of the fire was so intense it was almost impossible to breathe.¹⁰⁹ Firefighter Cich then heard the evacuation tones from outside which signals an imminent threat to health and safety of the firefighters, for example, an imminent collapse of the building.¹¹⁰

The RCDAO also provided evidence to the Grand Jury from Firefighter Daniel Murray, a 28-year veteran firefighter with New York City Fire Department (FDNY); and a volunteer firefighter with the New City Fire Department for 15 years, most recently as Deputy Fire Chief.¹¹¹ Deputy Fire Chief Murray testified that his pager went off at approximately 12:50 a.m., and arriving after 1:00 a.m., he observed windows blackened with smoke, smoke pushing out of open walls, and that building “did not look like it was doing very well.”¹¹² Deputy Chief Murray testified that several members of his company used the fire escape, ascended the stairs, and began a search for residents.¹¹³ Deputy Chief Murray described the intensity of the fire, the smoke was “very thick” and that it was “pretty hot” so much so that “within two to three minutes, the temperature increased to the point where we decided to evacuate.”¹¹⁴ Deputy Chief Murray ascertained that his team had evacuated when

¹⁰⁶ Id., pp. 30-31.

¹⁰⁷ Id., p. 31.

¹⁰⁸ Response to DPS-14; Conjura Interview June 2, 2021.

¹⁰⁹ RCDAO Opposition to Defendants’ Omnibus Motion, p. 31.

¹¹⁰ Id.

¹¹¹ Id., p. 33.

¹¹² Id.

¹¹³ Id., p. 34.

¹¹⁴ Id.

he received information that someone was still unconscious on the third floor of the Evergreen Facility, whereupon Deputy Chief Murray ascended the fire escape again, entered, located an unconscious civilian and assisted other firefighters in carrying the civilian down the fire escape.¹¹⁵

It was at this time Deputy Chief Murray heard the mayday called on the radio, whereupon Deputy Chief Murray ascended the fire escape again to the third floor where he located firefighter Cich, grabbing and pushing him towards the door to be assisted down the fire escape.¹¹⁶ Deputy Chief Murray re-entered the Evergreen Facility and then located an unconscious Mr. Hueston, struggling to extricate him as conditions worsened.¹¹⁷

RCDAO also presented to the Grand Jury testimony from Firefighter Michael Bifulco, a former FDNY firefighter and volunteer firefighter with the Hillcrest Fire Department for over 15 years.¹¹⁸ Firefighter Bifulco testified that his pager alerted him on March 23, 2021, at approximately 12:50 a.m., to a fire at the Evergreen Facility whereupon the Hillcrest Fire Department was dispatched to respond.¹¹⁹ Upon arrival, Firefighter Bifulco conferred with Incident Commander Conjura and after conferring with another initial firefighter on scene went to the exterior door that led into the Evergreen Facility Kitchen.¹²⁰ Firefighter Bifulco testified:

when I had entered that door, we had charcoal thick black smoke approximately three feet off of the ceiling, high heat which was observed just based on feel and also a thermal energy camera that I had on my person. I didn't get very far into that kitchen initially without the protection of a hose line.¹²¹

Firefighter Bifulco added, regarding the kitchen ceiling and any pipes:

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id., p. 35.

¹¹⁸ Id., p. 36.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

Initially, like I said, when we got in, there was just a heavy amount of fire. Once we got a hose line in place and we could actually start making a little bit of progress on fire suppression, it was more evident, along with ventilation that was happening around me that I was not involved in, but it was more evidence of what was actually in there. You could start seeing the appliances. The ceiling had been compromised well beyond what we would have even done with a hose line. So it had happened prior to us being in there. *Utility, either metal conduit or sprinkler pipes were already fallen, tangled at chest height. They were already almost on the ground.*¹²²

Firefighters were then ordered out of the building.¹²³

Spring Valley Fire Department Chief Kenneth Conjura, also testified before the Grand Jury. Chief Conjura has been a member of the Spring Valley Fire Department for 19 years and has been Chief for the past two years.¹²⁴ Chief Conjura testified that on March 23, 2021, shortly after 12:00 a.m., he responded to the New Golden Acres Facility where he observed residents outside and heard a fire alarm active in the kitchen.¹²⁵ Chief Conjura saw no one present in the New Golden Acres Kitchen, silenced the heat detection alarm, and the proceeded back to his home in Nanuet, NY; video recordings show that Chief Conjura cleared the scene within 10 minutes.¹²⁶

After arriving home, Chief Conjura received another alert and responded the Evergreen Facility as the first responding fire fighter whereupon he observed a fire above the kitchen area, along the main structure where the residents live – where the first-floor kitchen meets the area of the larger structure behind it.¹²⁷ Chief Conjura testified that given the active fire and large number of residents he called for the assistance of other departments to respond.¹²⁸ Chief Conjura entered the

¹²² *Id.*, p. 37 (*emphasis added*).

¹²³ *Id.*

¹²⁴ *Id.*, p. 48.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*, pp. 48-49.

¹²⁸ *Id.*, p. 49.

building, observing smoke and could hear the sprinkler system going off but no active fire on the first floor.¹²⁹ Chief Conjura made his way to the second floor as he had observed the active fire from the building's exterior above the first-floor kitchen.¹³⁰ Chief Conjura while in the process of assisting with rescuing the building's residents access the Evergreen Facilities' kitchen roof where he observed fire similar to that observed on the ground "right where the buildings met, the fire was coming out of a penetration in that area."¹³¹

Chief Conjura further testified that it was at this point Firefighters Cich, Lloyd, and others arrived, and while the fire fighters' typical practice is to engage in fire suppression when they arrive at the scene of a fire, in this instance, evacuation of the 112 residents of the facility took precedence.¹³² Chief Conjura assumed the role of Incident Commander as other fire units arrived to assist with rescue and suppression.¹³³ Chief Conjura observed that the fire and the structural integrity of the building continued to worsen, whereupon at approximately 1:50 a.m., he ordered an evacuation of the building.¹³⁴ As the firefighters exited the building a mayday was broadcast for a firefighter on the third floor in Room 306, firefighter Jared Lloyd.¹³⁵

Chief Conjura further testified that each unit's officers conducted a personnel accountability report to determine the status of their respective members, and it became apparent that firefighter Jared Lloyd was unaccounted for. Meanwhile, the fire continued to progress uncontrollably which prevented anyone from going back into the building; shortly thereafter, the building ultimately collapsed.¹³⁶

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² Id., pp. 49-50.

¹³³ Id., p. 50.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

Spring Valley Fire Department Detective Richard Caparo also testified that he arrived at approximately 2:08 a.m., on March 23, 2021, and observed a large fire engulfing the building.¹³⁷ It was not until the fire became manageable much later in the day that the firefighters could search for the missing firefighter.¹³⁸

Concerns Regarding Pressure and Flow

After the mayday and building evacuation, the SUEZ CSB fielded a request – at approximately 2:16 a.m. – for additional on-site support from SUEZ.¹³⁹ At this time, SUEZ dispatched two employees to the Evergreen Facility to assist with the response and be embedded with the Incident Commander.¹⁴⁰ At approximately 2:37 a.m., in response to concerns regarding the severity of the fire, the CSB reported to 44 Control that it increased pressure to combat the increasing severity of the fire.¹⁴¹ Further, the SUEZ’s Plant managers reported to 44 Control that “tanks were full and operations as normal.”¹⁴²

Between 2:30 a.m., and 3:00 a.m., fire crews were seeking additional hydrants to address a lack of pressure. Meanwhile, it is reported that six fire tankers were hooked in series to a single hydrant at approximately 3:10 a.m., according to the 44 Control log archived recording and the SUEZ personnel on site.¹⁴³ Further, SUEZ indicates a call was made to the CSB to request options to increase flow at approximately 3:33 a.m.¹⁴⁴ After the first hour of the response to the Spring Valley Incident, as discussed in Chief Conjura’s interview, hydrant 1-119

¹³⁷ Id. p. 51.

¹³⁸ Id., pp. 50-51.

¹³⁹ Response to DPS-14, p. 3.

¹⁴⁰ Id., the two SUEZ employees who were dispatched to the Evergreen Facility arrived within ten minutes of each other at approximately 3:25 a.m., and 3:35 a.m.

¹⁴¹ Id.

¹⁴² Id., p. 2.

¹⁴³ Id.

¹⁴⁴ Id., p. 3.

located directly across from the Evergreen Facility experienced a reduction in pressure that led to a cessation of flow. The cessation of flow caused hydrant 1-119 to go into a vacuum condition which lifted the hydrant creating an issue with the stem of the hydrant slipping from the ground.¹⁴⁵ The multiple withdrawals from along the same main, which led to this vacuum condition and ultimately necessitated its replacement and the installation of a new hydrant, are further discussed below.

By approximately 3:35 a.m., fire crews and SUEZ discussed relocating connections for water service to other hydrants, specifically, those along North Main Street (also known as Route 45) in Spring Valley, as those hydrants were serviced by a larger main. The discussions between SUEZ and the incident commander identified that an additional connection could be made along Prospect Street, however, the Incident Commander rejected the idea, opting to wait and see how the connection along North Main Street would support the firefighting efforts.¹⁴⁶ The two SUEZ personnel embedded with the Incident Commander recommended adding connections to hydrants 4-351 and 4-352 along Prospect Street as that would provide a second feed which is hydraulically distinguishable from connecting to hydrants along North Main Street (Route 45).¹⁴⁷ Discussions between the fire Incident Commander and SUEZ continued for approximately another thirty to forty-five minutes in which SUEZ personnel continued to propose connecting to hydrants along Prospect Street.¹⁴⁸ During those discussions, at approximately 3:46 a.m., SUEZ's CSB continued to make any available operation changes to increase flow noting that these changes may cause other system issues or even a main break.¹⁴⁹

¹⁴⁵ Conjura Interview, June 2, 2021.

¹⁴⁶ Response to DPS-14.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id.

By approximately 3:54 a.m., the local fire departments disconnected from hydrants in the area, suspending firefighting efforts to establish new connections at other hydrants, thereby utilizing other water mains, located on North Main Street. Between 4:00 a.m., and 6:00 a.m., SUEZ provided multiple updates on the water tank levels at approximately 4:31 a.m., 5:06 a.m., and 6:02 a.m.¹⁵⁰ At approximately 6:00 a.m., the fire firefighters had largely suppressed the fire.¹⁵¹ By 6:00 a.m., the Incident Command again noticed a visible reduction in flow, which was most likely attributable to the morning demand pattern, indicative of local Village of Spring Valley residents waking and beginning their day. By 6:30 a.m., SUEZ transitioned to addressing any work orders needed for post-incident response and to alerting customer service personnel for front-end operations.¹⁵²

Chief Conjura, in his interview ultimately commended SUEZ for its assistance and recognized that they offered their advice and guidance during the response.¹⁵³ In addition, Rockland County Fire Coordinator Chris Kear stated that he was unsure, at the time, what SUEZ could have done differently in regard to their provision of water service during the event.¹⁵⁴

Investigator Green's Testimony Concerning the Origin and Cause of the Fire

Investigator (Inv.) Jason Green with the OFPC testified before the Grand Jury regarding the origin and cause of the Spring Valley Incident.¹⁵⁵ Investigator Green has served as a OFPC fire investigator since 2017 and he has also served as a volunteer firefighter for the past 26 years.¹⁵⁶ As an OFPC fire investigator Inv.

¹⁵⁰ Id.

¹⁵¹ RCDAO Opposition to Defendants' Omnibus Motion, p.13.

¹⁵² Id.

¹⁵³ Conjura Interview, June 2, 2021.

¹⁵⁴ Kear Interview, June 8, 2021.

¹⁵⁵ RCDAO Opposition to Defendants' Omnibus Motion, p. 55.

¹⁵⁶ Id.

Green conducts origin and cause investigations throughout New York state, and assists both local municipalities and other State agencies in said investigations, as well as teaching origin and cause investigations for public fire investigators.¹⁵⁷ Inv. Green holds two certifications both nationally and within New York State, as well as many prestigious teaching and presentation credentials.¹⁵⁸ Inv. Green has participated in over 100 investigations and served as the lead in over 15 investigations.¹⁵⁹

Inv. Green arrived at the Evergreen Facility around 6:00 a.m., on March 23, 2021.¹⁶⁰ Inv. Green conferred with Chief Conjura and other first responders to ascertain the current level of fire suppression and other hazards prohibiting entry as fire was still all over the partially collapsed building.¹⁶¹ Inv. Green conducted a “360 walk around” as part of an overall assessment.¹⁶² Inv. Green photographed the scene, and observed that the fire started in a concentrated area opposite the north side of the building, in the location of the Evergreen Facility kitchen.¹⁶³ Inv. Green also testified that at approximately 11:55 p.m., on March 23, 2021 first responders located the remains of now deceased firefighter Jared Lloyd.¹⁶⁴ Inv. Green remained on scene until approximately 3:00 a.m., on March 24, 2021 and returned at 7:00 a.m.¹⁶⁵ Inv. Green then began to eliminate potential causes of the fire, for example, appliances, electrical components, smoking materials, spontaneous heating or chemical reactions, and weather.¹⁶⁶ Inv. Green confirmed

¹⁵⁷ Id.

¹⁵⁸ Id., p. 56.

¹⁵⁹ Id.

¹⁶⁰ Id., p. 58

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id., pp. 58-59.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id., pp. 60-63.

that the Evergreen fire alarm system was in working order prior to the fatal fire.¹⁶⁷ In addition, Chief Conjura and other firefighters testified that they saw water from the sprinkler system on the floor and could hear the sprinklers functioning.

After having ruled out other potential causes, Inv. Green considered “open flames and sparks.”¹⁶⁸ Having conducted witness interviews and conducting additional review, Inv. Green became aware of the Sommers and their alleged use of a propane powered torch and hot coals while working in the Evergreen Kitchen.¹⁶⁹

Inv. Green explained:

Because the kitchen area of origin is actually not only within the kitchen area, there is an adjacent area, such as the wall areas and things like that, where if we apply a torch, which can reach well over 1000 degrees, that heat just doesn't stay with the appliances. That heat actually moves through that appliance and will transfer into the wall or the members of the wall or the materials within that wall. If you put - think about charcoal. If you put hot charcoal in your grill, and you keep the grill covered, just because you are done cooking, that charcoal is still going to remain hot for many hours. So if you place this somewhere in that kitchen, whatever that is contacting is just going to continuously give off heat in an unregulated amount into that adjacent space as well.¹⁷⁰

When determining the causal factors of the propane torch and hot coals, Inv. Green advised:

Where I have eliminated everything else that is in the area, a lot of things we say at that time is: what is different today? Why do I have an event here today? That kitchen operates every day of the year. What is different today that brought it in? And the only thing that we find that is different that day, and is a relative, most possible causal factor is the introduction of this torch and the hot coals into that area?¹⁷¹

Inv. Green explained that the conduction of heat transferred from items within the Evergreen kitchen, namely the sink, griddle, and pot warmer into the wall and the

¹⁶⁷ Id., p. 61.

¹⁶⁸ Id., p. 63.

¹⁶⁹ Id.

¹⁷⁰ Id.

¹⁷¹ Id., pp. 63-64.

space between the wall which became the area of origin for the fire.¹⁷² Inv. Green explained that the hot items like the propane torch and hot coals contacted with items in the kitchen and heated both those items and the building materials of Evergreen directly and through the conduction process.¹⁷³

Importantly, Inv Green explained that the building materials:

Whether they be wood or the insulation or the wiring that is in that. That is all being heated, and it is being heated to its ignition temperature, and then it's a smoldering event that may just start to build within that wall because of the theory of fire dynamics; it's going up and out. It's trying to continue to grow.¹⁷⁴

Inv. Green then explained the Evergreen smoldering event as follows:

So as I said, fire goes up and out. So try to imagine that you are in a wall space, and you have a wall stud on each side, and then you have a space. We have all seen this in walls the way a wall is created. So that heat is building up in there and is interacting with the products that are in that wall. That fire is going to do what fire is designed to do. It's going to move up and out. So it is going to keep continuing to work up into the wall until it hits the ceiling, and then it's going to start moving again up and out, trying to find it's way out. Again, in this area, we have - we don't have a free flow of oxygen, so it may be a little - so we're not going to have a rapid just ignition of temperature, like a flash that you can see. But it's going to slowly work its way up until it starts finding its path.¹⁷⁵

Inv. Green also explained that the smoldering fire in the wall space led to a fire above the kitchen ceiling above both the lights and the sprinkler system. The fire's progression above the ceiling delayed detection by the Evergreen alarm system stating, "until this fire finds its path or breaks through, the detection system is not going to work."¹⁷⁶ In addition, even when detected, the location of the fire in the ceiling evades effective area of the sprinkler system as sprinkler systems spray

¹⁷² Id. p. 64.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id. p. 65.

downward, not up to the ceiling.¹⁷⁷ In a statement to the press, the owners of the Evergreen Facility claim:

The building's sprinkler system was upgraded seven months before the fire, but it didn't pump enough water to squash the fire due to lack of water pressure, which is the responsibility of SUEZ-NY, and the fire hydrant in front of the facility didn't function as needed.¹⁷⁸

The claim(s) regarding the sprinkler system are not supported by the testimony of Inv. Green and is inconsistent with the testimony of firefighter Bifulco¹⁷⁹ Based on video recordings from the interior of the Evergreen Facility, Inv. Green explained:

We see a failure in the ceiling system in the dining room area, or the area adjacent, right in front of the dairy kitchen. We see tiles fall [from the ceiling]. We see smoke, and we start to see fire drip down. We see the activation of the sprinkler system. And again, with that exponential growth of fire, I believe, it's within three minutes or so, we actually lose the [dining area/hallway] camera entirely. It's completely smoke covered. Because this fire now has that big gulp of air that it's looking for, and it's not ventilation controlled anymore, and it has all the oxygen it needs, and it's just going to continue to grow unhindered.¹⁸⁰

Elected Official Letters & Public Comments

By letter dated March 30, 2021, NY State Assemblyman Kenneth P. Zebrowski requested that the New York State Public Service Commission (the PSC or Commission) investigate the claims from various fire departments of low water pressure that hindered the fire departments' effort to suppress the fire at the Evergreen Court Home. According to Assemblyman Zebrowski, the low water pressure prevented the firefighters use of nearby fire hydrants; therefore, the

¹⁷⁷ Id.

¹⁷⁸ Steven Liberman, *'You want to see him again:' 1 year after Evergreen Court fire, Lloyd's loss, questions linger*, Rockland/Westchester Journal News, March 22, 2022, <https://www.lohud.com/story/news/local/rockland/2022/03/22/jared-lloyd-anniversary-evergreen-court-fire-memory-lingers/7060094001/> (accessed January 8, 2022).

¹⁷⁹ "The ceiling had been compromised well beyond what we would have even done with a hose line. So it had happened prior to us being in there. Utility, either metal conduit or sprinkler pipes were already fallen, tangled at chest height. They were already almost on the ground." RCDAO Opposition to Defendants' Omnibus Motion, p. 37.

¹⁸⁰ Id., p. 65.

firefighters ran hoses nearly two-thirds of a mile from Evergreen to access hydrants on North Main Street (Route 45) that had adequate water pressure. Assemblyman Zebrowski also stated that there are reports of a history of low water pressure in the Evergreen neighborhood. Assemblyman Zebrowski asked the Commission to investigate if there are other locations within SUEZ's service area with significant water pressure issues that could impact the use of fire hydrants and if the low water pressure is caused by a water system that is insufficient for area development, and if so, the Commission should consider how local development decisions should be regulated.¹⁸¹

Additionally, comments that referenced the Spring Valley Incident were filed in PSC Case 21-W-0338 concerning the Veolia acquisition of Suez.¹⁸² As of December 2022, there were 247 public comments posted in the Veolia acquisition case, and 43 of these comments speculated that low water pressure may have impacted the response to the Spring Valley Incident. Additionally, Senator James Skoufis filed a comment letter stating, “[w]ater pressure for fire hydrants has been inconsistent, which has led to the inability of first responders to address emergencies.”¹⁸³ Comments filed by the Rockland County Water Coalition also speculated that water pressure and hydrant maintenance issues may have contributed to fire incidents. Finally, the Rockland Water Study Committee states that SUEZ “failed to provide the water pressure required for fire hydrants. This contributed to devastating fires and fatalities, including at a nursing home in

¹⁸¹ See also, Press Release, *Zebrowski Secures PSC Investigation into Low Water Pressure Reported During Evergreen Fire*, April 7, 2021. <https://assembly.state.ny.us/mem/Kenneth-Zebrowski/story/96981> (accessed December 23, 2022).

¹⁸² Case 21-W-0338, *SUEZ Water New York Inc., et al.* – Franchises, Public Comments.

¹⁸³ *Id.*, Sen. Skoufis Letter (filed December 16, 2021), pp. 1-2. Sen. James Skoufis represented the 39th Senate District in New York which covers portions of Rockland County at the time of the Spring Valley Incident.

Spring Valley in March 2021...”¹⁸⁴ These Coalition and Committee comments did not include specific supporting bases or a particularized proffer of evidence.

During its investigation, DPS Staff researched the service provided by SUEZ and the applicable standards to determine the foundation and accuracy of these comments. Those findings are discussed herein.

State and Federal Officials’ recognition of Firefighter Jared Lloyd

On June 30, 2022, Governor Kathy Hochul signed into law Assembly Bill A.9370-A which designated a portion of State Route 45 between New Hempstead Road and East Eckerson Road in the Town of Ramapo in Rockland County, New York as the “Firefighter Jared Lloyd Memorial Highway.”¹⁸⁵ In addition, on May 16, 2022, United States President Biden posthumously awarded Firefighter Jared Lloyd the Medal of Valor for acts of bravery in the line of duty.¹⁸⁶

IV. SCOPE AND SUMMARY OF STAFF’S INVESTIGATION

On March 31, 2021, the Department of Public Service (Department) staff (Staff) began its investigation into the Spring Valley Incident. Matter 21-00825 was initiated by the Department for Staff’s investigation of allegations of low water pressure in the Village of Spring Valley and other locations within SUEZ’s service area, and if the Spring Valley Incident was negatively impacted by any entity violating any provision of the Public Service Law, Title 16 of the New York Codes, Rules and Regulations (16 N.Y.C.R.R.), or Commission Orders.

¹⁸⁴ *Id.*, Rockland County Water Coalition (filed January 14, 2022). The Rockland County Water Coalition describes itself as a partnership of approximately 30 environmental and civic groups in Rockland County and the Hudson Valley. <http://www.rocklandwatercoalition.org/who-we-are/> (accessed December 23, 2022).

¹⁸⁵ L. 2022, Ch. 262. Same as S. 8298-A. Sponsors of the legislation included Assemblymembers Zebrowski, Brabenec, Lawler, and Senator Reichlin-Melnick.

¹⁸⁶ The Medal of Valor is awarded to public safety officers who have exhibited exceptional courage, regardless of personal safety, in the attempt to save or protect others from harm. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-joseph-r-biden-jr-to-award-medals-of-valor/> (accessed January 10, 2023).

Staff's investigation included: the issuance of interrogatory requests (IRs) to SUEZ and review of the company's responses; review of SUEZ's tariff schedule P.S.C. No. 2 – Water, and applicable regulations; review of industry standards; site visits and observations of water facility testing; interviews; requests and review of records through the Freedom of Information Law Requests and Subpoenas to the Village of Spring Valley and Rockland County; and the request and review of SUEZ's electronic mail records.¹⁸⁷

Information and Document Requests to SUEZ

Staff issued over thirty document and interrogatory requests to SUEZ requesting information related to: (1) budget versus actual spending on hydrants, water service and main installations and replacements, and reasons for over and underspending; (2) records of low pressure concerns and complaints related to fire hydrant water flow along with descriptions of the findings and actions taken by SUEZ in response to each concern and complaint; (3) a description and copies of verbal and written communications with fire departments on fire hydrant service and the Spring Valley Incident; (4) copies of all specifications and procedures associated with operating, maintaining, testing, and replacing hydrants and associated appurtenances used for public fire protection service; (5) water system design, operation, and map information; (6) inspection, maintenance, and testing records of public fire hydrants; (7) water service interruptions and notices; (8) SUEZ personnel responsible for system operation, monitoring, and incident response and their respective duties; (9) records of the Spring Valley Incident; (10) records pertaining to the Evergreen Facility; (11) water system Supervisory Control and Data Acquisition (SCADA) data; (12) non-revenue water records; (13) fire hydrant defect tracking, repairs, and notices; (14) meter accuracy; (15) outreach and education regarding SUEZ's water system and/or its components, system

¹⁸⁷ Tariff Schedule P.S.C. No. 2 – Water was in effect during the majority of Staff's investigation. On November 30, 2022, Veolia Water New York, Inc. filed Tariff Schedule P.S.C. No. 1 – Water which superseded SUEZ's P.S.C. No. 2 – Water, and became effective December 30, 2022.

capabilities and constraints; and, (16) emergency and/or development planning with municipal authorities, fire departments, and public officials. Most IRs requested information from 2016 to present with the exception of hydrant flow test information, which included a request for 10 years of data. These IRs assisted with the development of questions during Staff's interview process; were used to determine and adjust the scope of the investigation; were used to help determine if SUEZ was in compliance with its Tariff, and other regulatory requirements; and were used to determine if SUEZ was in compliance with industry standards and SUEZ's recent rate case Orders.¹⁸⁸

Inspection of SUEZ Infrastructure

On April 30, 2021, Staff conducted a site visit to observe the scene of the Spring Valley Incident, tour the SUEZ facilities and operations serving Spring Valley, and to witness the replacement of hydrant 1-119 on Lafayette Street and installation of a new spartan hydrant in its place. Staff conducted a second site visit on June 10, 2021, to observe a series of flow tests conducted on the water mains serving the Evergreen Facility and the nearby streets.¹⁸⁹ Generally, SUEZ maintains its infrastructure in satisfactory condition, and is knowledgeable of its system operations and components. Staff inquired as to whether outages occurred during the month of March 2021 and whether those outages would have impacted the provision of fire protection service. SUEZ responded, stating that the Company had two planned outages to replace hydrants, and one unplanned service emergency

¹⁸⁸ E.g., Case 90-W-0652, In the Matter of the Rules and Regulations of the Public Service Commission – New 16 N.Y.C.R.R. Part 503, Memorandum, Order, and Resolution Adopting 16 N.Y.C.R.R. Part 503 (issued August 26, 1991), pp. 5-6. (Order Adopting Part 503); P.S.C. No. 2 – Water, SUEZ Water New York Inc., effective January 24, 2021; 16 N.Y.C.R.R. §503; Case 21-W-0338, supra; Case 19-W-0168, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of SUEZ Water New York Inc., SUEZ Water Westchester Inc. and SUEZ Water Owego-Nichols Inc. for Water Service; and Matter 20-01700, In the Matter of Water Utilities Emergency Response Plan.)

¹⁸⁹ Digital Photographs taken by Staff during their site visits are provided in Appendix C.

that occurred after the Spring Valley incident.¹⁹⁰ SUEZ provided notification by telephone of these outages to the 44 Control System and stated these outages did not impact water service during the Spring Valley Incident.¹⁹¹

During its site visit, Staff also toured the neighborhoods surrounding the Evergreen site at 65 Lafayette Street, and observed a high density of multifamily residences, and the construction of a new residential complex one street over, on Bethune Boulevard in the Village of Spring Valley, Rockland County, NY.

Interviews with SUEZ Personnel

Staff conducted technical meetings with SUEZ personnel to discuss the capabilities, constraints and application of SUEZ's hydraulic modeling software. This software is discussed in further detail below in the "System Design and Operation" section. Staff met with SUEZ personnel to discuss the capabilities, constraints, and functions of SUEZ SCADA system, hydraulic modeling systems, and for an overview of the system appurtenances during the site visit.

Inspection of Electronically Stored Information

DPS Staff also conducted an extensive e-discovery effort, querying, and reviewing over 32,000 SUEZ employee e-mails, texts, and other documents. Staff reviewed the material for responsiveness, and for its relevance to the investigation. The Department's e-discovery review and efforts spanned approximately one year.

Meetings with First Responder Coordinators and Municipal Officials

In addition, Staff conducted four panel interview sessions with members of the local Fire Departments and municipal government to obtain different perspectives regarding the Spring Valley Incident, fire protection services and emergency response, and municipal and administrative processes in Spring Valley.

¹⁹⁰ Response to DPS-6 & DPS-17.

¹⁹¹ Id.

First, Staff interviewed Fire Chief Kenneth Conjura on Wednesday, June 2, 2021. The discussion consisted of the ratings and standards of hydrants, historic water supply issues in Spring Valley, and the availability of information regarding SUEZ's water system infrastructure. Staff also discussed the Spring Valley Incident itself, including Chief Conjura's perspective of the timeline of events, potential hydrants that were used, and SUEZ's participation during the response to the fire. Chief Conjura stated that SUEZ was helpful, tried to find solutions and implement operational changes during the response phase.

Second, Staff also interviewed Chris Kear, Director of Rockland County Emergency Services on Tuesday June 8, 2021. This discussion consisted of the communication channels and flow of information between SUEZ and Rockland County fire departments, historic issues with water service quality, his role during the response to the Spring Valley Incident, and his recollection of events. Chris Kear stated that SUEZ has been responsive to concerns and rectifies issues in the system quickly. He recommended that SUEZ review its older infrastructure, stating that the area is fast growing, and the infrastructure needs to keep up with that growth. Director Kear also stated that he was unsure, at the time, what SUEZ could have done differently in regard to their provision of water service during the fire event.

Third, Staff interviewed Wayne Ballard, Spring Valley Building Department Chief, on Wednesday June 16, 2021. This discussion consisted of zoning and planning board roles, the Village's process for approvals of fire suppression systems and his limited knowledge and involvement in SUEZ's operations. Mr. Ballard's interview understated the severe lack of record keeping and inspection activity within Spring Valley. Staff recognizes that, subsequent to this interview, the Rockland County District Attorney's Office has charged Mr. Ballard with filing a false instrument and falsifying business records, charges which grew out of the scrutiny related to the Spring Valley Incident.¹⁹² DPS Staff was not aware at the

¹⁹² RCDAO IND-70403-21, Wayne Ballard

time of its interview with Mr. Ballard of any pending criminal investigation. The Department has not been in contact with Mr. Ballard since this initial interview nor after he was charged.

Lastly, Staff interviewed Gordan Wren, a former Rockland County Fire and Emergency Services Coordinator, on Friday June 18, 2021. The DPS Staff interview focused on a discussion of the municipal functions of Spring Valley and its relation to SUEZ.

Requests to Village and County for Governmental Documents

Staff also served formal document requests to local governmental entities via Freedom of Information Law (FOIL) requests pursuant to the New York State Public Officers Law¹⁹³ and subpoenas specifically authorized by the Public Service Law.¹⁹⁴ Among these requests, Staff issued a FOIL request to the Village of Spring Valley on June 23, 2021. When the Village did not provide responses, Staff sent follow-up inquiries. County officials informed DPS Staff that the Rockland District Attorney's Office was reviewing Village documents obtained as a result of a search warrant executed on the Village Building Department. Following continued local government unresponsiveness, Staff served three investigatory subpoenas on various governmental entities. On March 23, 2022, DPS Staff issued one subpoena to Rockland County for documents it had collected and possessed as a result of exercising supervisory control over the Village of Spring Valley Building Department. Subsequently, on April 11, 2022, and May 27, 2022, DPS Staff served two additional subpoenas on the Village of Spring Valley.¹⁹⁵ These three subpoenas sought the production of documents related to the Evergreen Facility.¹⁹⁶

¹⁹³ Judiciary Law §255; Public Officers Law §87; Village of Spring Valley Code §197-12, Rockland County Code §329-11.

¹⁹⁴ PSL § 19.

¹⁹⁵ DPS Staff needed to serve a second subpoena to the Village of Spring Valley after the Village initially produced documents unresponsive to Staff's April 11, 2022 subpoena.

¹⁹⁶ Appendix E to this report contains the subpoenas to the Village of Spring Valley and Rockland County.

The local government entities asserted that the transfer of documents among the Village and County entities delayed the delivery of requested documents to DPS Staff. The DPS document requests were not answered until the documents were returned by the District Attorney's Office to the County and then ultimately transferred back to the Village itself in mid-2022. Ultimately, DPS Staff received document productions of approximately 900 pages on June 16, 2022, from the Village of Spring Valley. An open question exists as to how the County did not possess any records responsive to the DPS subpoena, after the County took control of the Village of Spring Valley Building Department on February 14, 2022.

The documents that the Village ultimately did produce, while voluminous and conforming to Staff's request, did not demonstrate violations or wrongdoing on the part of SUEZ. In reviewing the documents produced, DPS Staff observed an absence of documents pertaining to certain governmental inspection functions. The absence of such documents further complicated the DPS investigation.¹⁹⁷ Specifically, there was a lack of Spring Valley records concerning the Evergreen Court Home and any relevant certification or approval concerning its fire flow needs. Of the records provided for Staff's review, many pertained to other violations such as, but not limited to, lack of maintenance, issues with forms of egress, inoperable sprinklers, and electrical issues. Notably, no records produced by the Village to DPS indicated whether the Village Building Department determined or recorded the necessary fire flow and whether the water flow that was available was sufficient for the transition of the structure from a hotel to an adult care facility, any modifications of the structure, its continued and ongoing use as the Evergreen Court Home, or took account of the number of residents and staff at the facility.

The records produced did include copies of Occupancy Certifications; however, occupancy numbers were missing from the certificates dated from 1979 to 1999, and the most recent certificate provided was from 2006. Some of the certifications were marked and revised by hand, were missing expiration dates, and

¹⁹⁷ This absence of government documents may be the subject of a criminal investigation.

had a “pending approval” stamp due to outstanding violations; it was unclear if those violations were corrected and if approval was ever granted. The Village Building Department was not able to provide more recent certifications to Staff.

The Village records obtained by DPS also contained a FOIL request dated February 13, 2009. This FOIL request was sent to the Village by an attorney representing the owners of the Evergreen Facility requesting copies of existing building code violations, the original Certificate of Occupancy, and any existing fire code violations on file. There were no copies of a response to this 2009 FOIL request provided in the documents responding to the DPS subpoena.¹⁹⁸

As part of its investigation, in late 2022, DPS Staff became aware that the families of deceased firefighter Jared Lloyd and deceased resident Oliver Hueston, and others, submitted their own FOIL requests to the Village. Those requests seemed to indicate that responsive records dated after 2016 may remain in the Village’s possession, and it prompted a follow up inquiry by DPS Staff to the Village.¹⁹⁹ Upon contacting the Village via telephone, a Village employee informed DPS that any attorneys involved in answering the Department’s request no longer worked for the Village. In fact, the Village informed DPS that the Village had outsourced the operation of its Law Department to a private law firm. DPS Staff continues to work with the Village’s new outside counsel to obtain responsive records, however, the outsourcing of its Law Department has effectively reset the progress made to obtain such records.

Further, Staff issued requests to Rockland County Attorney’s Office, the Sheriff’s Office, and the District Attorney’s Office seeking the actual recordings for

¹⁹⁸ Village of Spring Valley documents, p. 571.

¹⁹⁹ Steven Lieberman, *Evergreen Court fire victim's sons sue facility, others over his death. What to know*, November 23, 2022, Rockland/Westchester Journal News, November 23, 2022 <https://www.lohud.com/story/news/local/rockland/2022/11/23/evergreen-court-fire-lawsuit-sons-sue-facility-others-over-death/69674055007/> (accessed January 10, 2023) Firehouse News, *NY Investigative Reporter Uncovers Decades of Fire Safety Violations*, Firehouse.com, November 3, 2022. <https://www.firehouse.com/safety-health/news/21286016/reporter-uncovers-decades-of-fire-safety-violations-at-deadly-spring-valley-ny-fire> (accessed January 9, 2023).

the Spring Valley Incident from the Rockland County 44 Control system from the government document custodians. Those requests were denied.²⁰⁰

V. APPLICABLE REGULATIONS AND STANDARDS

Consistent with PSL §§89-b and 89-c, the Commission seeks to ensure that the public receives safe and adequate water service at just and reasonable rates. The Commission also has jurisdiction over the approval of the ownership and operation of privately-owned water utilities; meter testing and approval; cost allocation; service standards; tariff terms; and utility communication of approved or proposed rates, charges, and tariff terms.²⁰¹ All water utilities must demonstrate the technical, managerial, and financial capacities required to meet the federal Safe Drinking Water Act standards.²⁰² The Department examines the revenues, costs, and sales forecasts of regulated utilities; reviews utility acquisitions; reviews utility short- and long-term system plans; investigates complaints related to customer service, rates and charges, and reliability of the system; and reviews utility tariffs and statements.

New York State regulations promulgated at 16 N.Y.C.R.R., §503.1, require waterworks to comply with the Recommended Standards for Waterworks, Policies for the Review and Approval of Plans Specifications for Public Water Utilities

²⁰⁰ Appendix E, p. 27.

²⁰¹ PSL §2(27) states a water works corporation is “every corporation, company, association, joint stock association, partnership, and person...owning, operating, and managing any water plant or water-works, except where water is distributed solely on or through private property solely for the use of the distributor or its tenants and not for sale to others.”

²⁰² Originally enacted by the U.S. Congress in 1974, the Safe Drinking Water Act (or SDWA) protects the quality of drinking water. Congress subsequently amended the statute in 1986 and 1996 to strengthen its protections. This federal law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources. *See generally* 88 Stat. 1660, Pub. L. 93-523 (Dec. 16, 1974); 42 U.S.C. §§ 300f to 300j-27 (2022).

(hereinafter referred to as the Ten State Standards).²⁰³ In turn, the Ten State Standards contain design parameters relating to the installation of public water systems including source development, treatment design and implementation, distribution system design, and fire hydrant placement and installation parameters. The Ten State Standards requires that a waterworks system's design should be such that fire flows and facilities are in accordance with the requirements of the Insurance Services Office or other similar agency for the service area involved.²⁰⁴ In New York, the State Fire Code establishes parameters for determining the fire flow.

New York State Fire Code

In practice, the State Fire Code, and more specifically 19 N.Y.C.R.R., §1225.2 requires that all buildings comply with the 2020 Fire Code of New York State.²⁰⁵ Within the 2020 New York State Fire Code, §§ 507.1 and 507.2 state that a building shall have a water supply capable of “providing the required fire flow,” and that the fire flow must be established by an “approved” method set forth by a “fire code official.”²⁰⁶ The FCNYS also refers to its Appendix B, which outlines “Fire-Flow

²⁰³ PSC Order Adopting Part 503, pp. 5-6 (Aug. 26, 1991) (referencing the Ten State Standards). *See* Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, *Recommended Standards for Water Works, 2012 Edition* (Albany: Health Research Inc., Health Education Services Division, 2012). The Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers in 1950 created a Water Supply Committee consisting of one associate from each state represented on the Board. The member states include Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin. A representative from the Province of Ontario was added in 1978. The Committee was assigned the responsibility for reviewing existing water works practices, policies, and procedures, and reporting its findings to the Board. The report of the Water Supply Committee was first published in 1953, and subsequently has been revised and published in 1962, 1968, 1976, 1982, 1987, 1992, 1997, 2003, 2007, and 2012.

²⁰⁴ *Recommended Standards, 2012 Edition*, §1.1.6. (Ten State Standards) As described in the 2020 ISO PPC report, the “ISO is an independent company that serves insurance companies, communities, fire departments, insurance regulators, and others by providing information about risk.”

²⁰⁵ 2020 Fire Code of New York State (FCNYS) establishes minimum requirements for fire prevention and fire protection systems using prescriptive and performance-related provisions.

²⁰⁶ *Id.*, §507.3.

Requirements for Buildings.”²⁰⁷ The FCNYS states that Appendix B is an informative tool used for local jurisdictions to establish their own policy for establishing fire flows in their jurisdiction.²⁰⁸ Further, the method outlined in the FCNYS Appendix B follows the Fire Suppression Rating Schedule issued by the ISO and provides the methodology for determining the needed fire flow of a structure.²⁰⁹ FCNYS §103 states that administration and enforcement of the code, in general, is the responsibility of the local government in which the building or structure is located.²¹⁰

As stated in FCNYS Appendix B, and mirroring the ISO Fire Suppression Rating Schedule, the necessary fire flow is ascertained by calculating the fire-flow calculation area defined as “the total floor area of all floor levels within the exterior walls and under the horizontal projections of the roof of a building, except as modified by B104.2,” which provides for the sub-division of the fire-flow calculation area for spaces separated by a suitable fire wall.²¹¹ In addition, §B105.3 provides that for buildings equipped with an automatic sprinkler system, the supply shall be capable of providing the greater of (1) the automatic sprinkler system demand, including hose stream allowance; or (2) the required fire flow.²¹² Table B105.1(2) included with Appendix B provides the applicable fire flow in GPM based on the fire-flow calculation area and construction type of the building. Further, for buildings with automatic sprinkler systems Table B105.2 states that based on the design standard of the sprinkler system (either §903.1.1 or §903.3.1. of the International Fire Code) one can calculate the minimum fire flow in gallons per minute (gpm) at 25 percent of the table value at the duration stated for the reduced

²⁰⁷ Id., Appendix B.

²⁰⁸ Id., p., xvii.

²⁰⁹ Insurance Services Office, Inc., *Fire Suppression Rating Schedule* (Jersey City: Insurance Services Office, Inc., 2012).

²¹⁰ FCNYS, §103.1, p. 3.

²¹¹ Id., Appendix B, §B104.1.

²¹² Id., Appendix B, §B105.3.

flow rate. Thus, by using Tables B105.2 and B105.1(2), one can calculate the fire-flow in gpm based on the fire-flow calculation area of a building.

PSC Regulations – Periodic Testing of Hydrants

The Public Service Commission water utility regulations at 16 N.Y.C.R.R. §503.6(b) require that each waterworks corporation providing fire protection service(s) have a program to inspect and test each hydrant a minimum of once every three years, with a minimum requirement that one-third of all hydrants are tested annually. These tests include basic operability and visual inspection tests. 16 N.Y.C.R.R. §503.6(c)(2) sets out the requirements for the Department to be notified of hydrant inoperability. If the number of inoperable hydrants exceeds a threshold percentage of the total number of hydrants tested, then the water utility must notify the Department by January 31 of the subsequent year. In addition, 16 N.Y.C.R.R. §503.11 requires that records pertaining to service standards be retained for six years. These operative and visual inspections are distinguishable from -- and do not include -- flow testing.

Visual, operative, and flow testing for hydrants are conducted pursuant to the requirements of the American Water Works Association (AWWA) Manual for Installation, Field Testing, and Maintenance of Fire Hydrants, Manual M-17.²¹³ The M-17 manual contains nomenclature and diagrams for various types of fire hydrants and the appropriate use of each, standards for conducting flow tests, rubrics and standards for hydrant inspections, and maintenance best practices. Manual M-17 recommends an approximate ten-year cycle for flow testing, as discussed further below.

²¹³ American Water Works Association, Manual of Water Supply Practices – M17, Fourth Edition Installation, Field Testing, and Maintenance of Fire Hydrants (Denver: American Water Works Association, 2006) (M-17 Manual).

SUEZ Emergency Response Plan

DPS Staff also reviewed SUEZ's February 2021 Emergency Response Plan (ERP).²¹⁴ Pursuant to 16 N.Y.C.R.R. §503.4:

Every water corporation will file with the department a copy of its emergency plan for maintaining a reasonable supply of water during a drought or other emergency affecting the maintenance and delivery of a safe and adequate supply of potable water.

Developed in accordance with EPA, OSHA, and DOH requirements, SUEZ's ERP applies to emergencies involving the utility's infrastructure, *e.g.*, mains, reservoirs, standpipes, and water quality and supply. The plan states that it covers the company's actions:

- 1) responding to and recovering from such an emergency;
- 2) conducting internal and external communication during such emergency events; and
- 3) to assess vulnerabilities to water quality or supply under such emergency conditions.²¹⁵

By way of example, the plan could apply to an earthquake, extended drought, or airborne radiation plume impacting a reservoir. SUEZ's ERP §3.5 provides procedures to protect employees from fires and explosions occurring at utility-owned facilities or in the community.²¹⁶ Section 3.5 of the ERP prioritizes evacuation of personnel, containment of fires, contacting 911, notifying SCADA, and in situations where SUEZ's water supply facilities (*i.e.*, wellfields, water reservoirs, standpipes) are impacted by a fire at those facilities – finding an alternative supply source.²¹⁷

The SUEZ 2021 ERP also includes a list of the utility's "critical customers."²¹⁸ This list can help utility personnel determine the relative priority of an incident, whether to assemble an incident management team and activate an emergency

²¹⁴ Matter 20-01700, In the Matter of Water Utilities Emergency Response Plan, SUEZ's Emergency Response Plan (ERP) (filed February 1, 2021).

²¹⁵ SUEZ ERP, §1.1 Emergency Response Plan Overview.

²¹⁶ Id.

²¹⁷ Id., §3.5.

²¹⁸ Id., Appendix 12.

operations center, and the scope of outreach communications to key constituencies, including the Rockland County 44 Control System, when SUEZ's infrastructure experiences a challenge.²¹⁹ "There are several groups of customers that can be categorized as critical, and will be notified of an emergency using the general notifications through the media, Rapid Alert Systems and/or NY-Alert. Examples of these types of groups of customers include Hospitals/Nursing Homes, Schools, Apartments and High-Rise Apartment residents."²²⁰ The 2021 ERP critical customer list included the Evergreen Facility.²²¹

After reviewing the ERP and the Evergreen Facility fire, Staff found no information indicating that SUEZ violated the 2021 ERP during the Spring Valley Incident. As noted above, the ERP pertains mainly to SUEZ-owned properties and emergencies on those properties. Should a SUEZ-owned property experience a fire, the ERP prioritizes evacuation and containment of that fire. Given that the Evergreen Facility fire occurred on private property and not on SUEZ property, this aspect of the ERP did not apply to the Spring Valley Incident. In addition, Staff uncovered no information that water had not been supplied into the facility. Furthermore, following notification of the onset of the Evergreen fire, SUEZ employees responded and travelled to the Evergreen site, reported to the incident commander, and liaised with firefighters about SUEZ resources in the area. In sum, Staff analyzed the procedures and protocols contained in the 2021 ERP and did not find any failures on the part of SUEZ pertaining to the Emergency Response Plan during the Evergreen Facility fire.

²¹⁹ Id., §2.0, Emergency Response Notification and Reporting Procedures.

²²⁰ Id., §2.1.5, page 2-7,

²²¹ Id., Appendix 12.

SUEZ Tariff

SUEZ's Tariff requires that the Company provide public fire protection service.²²² Public fire protection service is the provision of water through fire hydrants located on local streets.²²³ The Tariff provides: "[u]pon application of duly authorized representatives of municipalities in the territory supplied, the Company will install fire hydrants for purposes of public fire protection, at locations agreed upon by the municipal authorities and representatives of the Company."²²⁴ In addition, the Tariff outlines the Company's maintenance of hydrants, appropriate use of hydrants, the requirement that the Company be notified of any use of a hydrant, and the rates and charges associated with public fire protection. Staff reviewed the requirements contained in the Tariff as they relate to the provision of public fire protection services. Staff found that SUEZ did not violate the terms of its Tariff regarding fire protection service related to the Spring Valley Incident.

VI. SYSTEM COMPONENTS AND OVERVIEW

SUEZ provides residential and non-residential metered, non-metered, and fire protection service (*i.e.*, fire hydrants) to approximately 78,000 customers in Rockland County, constituting approximately 92 percent of the county residents. For its Rockland County service territory, SUEZ draws its water from approximately 60 groundwater wells and from several surface water sources, *e.g.*, Indian Lake and Lake Deforest reservoirs. The Village of Spring Valley is predominantly located in SUEZ's Pressure District (PD) 95, which is served by four wells located within PD 95, the Ramapo Valley Well Field, and supplemental supply from PD 10. Water from the wells within PD 95 is pumped directly to the

²²² Tariff schedule P.S.C. No. 1 – Water, Leaf Nos. 28, 29, and 112. (effective January 24, 2021). The Tariff also recognizes the provision of private fire protection service in certain specified areas, *see*, *e.g.*, Leaf Nos. 26, 27, 107-110, a scenario not applicable here.

²²³ Tariff schedule P.S.C. No. 1 – Water, Leaf Nos. 28, 29, and 112.

²²⁴ *Id.*, Leaf No. 28, section 6 (Public Fire Protection), subsection 6.1.a (Installation of Fire Hydrants).

distribution system while water from the Ramapo Valley Well Field is pumped to the distribution system and the Spring Valley Standpipe (Standpipe). The Standpipe is a storage tank, more than 100 feet in height, located in Spring Valley that holds two million (2,000,000) gallons of water to serve PD 95 (see photos below). The Standpipe is located approximately a half a mile from the Evergreen Facility. SCADA systems monitor water system conditions (pressure and flow rate) at the sources and system entry points, as well as the water elevation within the Standpipe. Fire protection service is provided to the Village of Spring Valley via approximately 275 fire hydrants located throughout the Village. In its recent rate case (19-W-0168), SUEZ forecasted average annual investments of approximately \$28 Million for Distribution system improvements, including mains, valves, and hydrants. Specifically, SUEZ forecasted approximately \$720,000 in new and replacement hydrant installations each year.²²⁵

²²⁵ Case 19-W-0168 – SUEZ Water New York Inc. et al. – Rates, Final Joint Proposal with Appendices, Appendix 5 (filed January 21, 2020).



Photo 1 – SUEZ Spring Valley Standpipe – April 30, 2021



Photo 2 – SUEZ Spring Valley Standpipe – April 30, 2021



Photo 3 – SUEZ Spring Valley Standpipe.²²⁶

²²⁶ <https://www.alpinepainting.com/casestudies/project-spring-valley-standpipe-spring-valley-ny-client-suez-new-york> (accessed January 13, 2023).

VII. SYSTEM DESIGN AND OPERATION

The Ten State Standards mandate that fire hydrants can only be installed on water mains which are rated for fire protection; these mains are six-inch in diameter or greater.²²⁷ Larger diameter mains may be used to allow for withdrawal of required fire flow while maintaining minimum residual pressure. The Ten State Standards also require that the system maintain a minimum pressure of 20 pounds per square-inch (psi) at ground level, under all conditions of flow.²²⁸ Normal working pressure in the distribution system should be in the range of 60 to 80 psi, with a low working pressure threshold of 35 psi.²²⁹ Based on variations in community usage during a typical day, the normal working pressure can and does fluctuate. Thus, the working range is 60 to 80 psi, but should not drop below 35 psi with an absolute minimum pressure of 20 psi.

The PSC's regulations pursuant to 16 N.Y.C.R.R. § 503.2 states that the "minimum working pressure (the pressure under all conditions except fire flows) in all portions of the water corporation's distribution system should not be less than 35 psi." Thus, the Commission requires that all water utilities maintain system pressure at a minimum of 35 psi.

As stated previously, the ISO also prepares a Public Protection Classification (PPC) report which solicits information from local communities within the United States on their structure fire suppression capabilities and performs an evaluation which grades municipalities out of a score of 10, 1 representing an exemplary fire suppression program and 10 indicating that an area's fire suppression program does not meet the ISO's minimum criteria.²³⁰

²²⁷ Ten State Standard §8.2.1

²²⁸ *Id.*, §8.2.2

²²⁹ *Id.*

²³⁰ ISO, *PPC Summary Report*, (Jersey City: Insurance Services Office, Inc., 2020) (PPC Summary Report).

Needed fire flow is the rate of water flow, at a residual pressure of 20 psi and for a specified duration, necessary to control a major fire in a structure.²³¹ Determination of the needed fire flow relies on numerous factors, including the nature of use for the structure, the construction material used in the structure, square footage and number of stories, installation and effectiveness of sprinkler and other fire suppression systems, and the separation between structures. Needed fire flow can range between 500 gpm and 12,000 gpm. Needed fire flow is unique to each structure, and the calculation and determination of needed fire flow is the responsibility of the architects, engineers, and developers responsible for a structure's design, construction, and use. After calculating and determining the fire flow, the professional engineer then applies the engineer's seal to the completed works for application for permits from the municipality's Building Department. Before it issues a permit or a certificate of occupancy for a structure, the municipal Building Department reviews the application for completeness and adherence to regulations.²³² This process is then enforced by the municipality via its Building Department through annual and triennial building and fire inspections.

For instance, under the Village of Spring Valley Code, basic housing standards include access to potable water and that the water supply systems are adequate to provide sufficient water and pressure under normal conditions.²³³ Unless a private water supply is obtained, when a developer or construction entity engages with SUEZ to seek water service for a property, SUEZ conducts an analysis based on the water flow demand or need certified and provided by an applicant to the Building Department and SUEZ, before SUEZ would provide a "willingness-to-serve" letter, the document SUEZ issues stating that it can establish service to that location, specifically:

²³¹ As defined in the AWWA M-31. American Water Works Association, Inc., *Manual of Water Supply Practices – M-31, Fourth Edition Distribution System Requirements for Fire Protection* (Denver: American Water Works Association, 2008) p. 2.

²³² Village of Spring Valley Code §255-61

²³³ Village of Spring Valley Code §147-29.

The applicant/developer presents an application with water flow demands certified by their licensed professional engineer. The Company then checks the GIS system to ensure there are water mains in the area of the project/development. From there it is sent to modeling to perform a hydraulic model analysis based on the demand projections certified by the applicant's licensed professional engineer. This analysis can be 100% via hydraulic model, or combined with field fire flow tests if requested, and paid for, by the applicant/developer. Next a hydraulic model report is written and a willingness to serve letter is then issued.²³⁴

With regard to fire flow specifically:

If the fire flow requested by the applicant's/developers licensed professional engineer is greater than the existing available fire flow, then that applicant/developer would be responsible to make a [financial payment] contribution to help pay for any upgrades needed to serve that application/project. Additionally, the applicant/developer and their licensed professional engineer may choose at their own volition to redesign their project/application to require less needed fire flow and resubmit the application based on those redesigned parameters.²³⁵

As such, SUEZ cannot produce a willingness-to-serve-letter unless its modeling demonstrated it could support the necessary supply and fire flows for the newly constructed building.

The applicant can either complete the identified improvement or redesign their project to require less fire flow. This decision to complete the identified improvement or redesign the project is solely made by the applicant, its licensed professional engineer, and the approving municipality. SUEZ is not involved in calculating any applicant's individual fire flow requirements. The Company only provides a willingness to serve based on applicant's requirements as presented by their licensed professional engineer.²³⁶

Furthermore, under the FCNYS, the local administrative and enforcement jurisdiction, in this case the Village of Spring Valley, is responsible for conducting fire inspections. Those inspections would evaluate whether the Evergreen Facility had a compliant automatic sprinkler system and may include an analysis of the fire-flow calculation area needed to determine what fire flow is required to serve the

²³⁴ Response to DPS-32.

²³⁵ Response to DPS-32

²³⁶ Response to DPS-32.

Evergreen Facility. As such, if the Village needed to review fire flow at a building or residence as part of changes to structure or upon changes discovered during an inspection, the Village could and/or would contact SUEZ to perform a flow test and ascertain whether the necessary flow could be provided. Therefore, it would be incumbent on the Village prior to issuing a certificate of occupancy to inform the building owner/operator that it lacked the needed fire flow to receive a certificate of occupancy. The building owner/operator would then be responsible for working with the municipality as well as SUEZ to resolve the situation as described above.

According to data provided and confirmed by SUEZ, the minimum main size serving SUEZ's fire hydrants in Spring Valley is 6 inches in diameter and ranges up to over 24 inches.²³⁷ The use of 6-inch main is consistent with the minimum requirements of the Ten State Standard.²³⁸ To improve pressure and flow in Spring Valley, SUEZ stated that in response to a work order filed in 2020 it planned to install approximately nine-hundred feet of new 12-inch water main, along Slinn Avenue in Spring Valley which is to the north and east of both Lafayette Street and Prospect Street, to redistrict a section of PD 95 to PD 50 which has the benefit of increasing overall pressure in the area.²³⁹ SUEZ initiated the project in June 2021 and completed the construction project at the end of 2021.

The Village of Spring Valley is served by dry-barrel fire hydrants. SUEZ is in the process of replacing all hydrants within Spring Valley and its service territory which includes a large portion of Rockland County with the Spartan model of hydrant. The Spartan model provides greater security against water theft, requires less costly maintenance, and is more efficient to operate than traditional hydrant models. It should be noted, DPS Staff does not believe the replacement of hydrants to the Spartan model suggests that the hydrants in use today or during the Spring Valley incident were inadequate to address the incident.

²³⁷ Responses to DPS-12 & DPS-19.

²³⁸ Ten State Standards §8.2.2.

²³⁹ Response to DPS-21 - Revised.

Staff reviewed the maintenance and inspection records and found that SUEZ conforms to the requirements of 16 N.Y.C.R.R. §503.6(b) and inspects all hydrants at least once every three years.²⁴⁰ Staff also reviewed SUEZ's inspection procedures and found their procedures conform to those in the AWWA Manual M-17.²⁴¹

In addition to hydrant maintenance inspections, flow tests are utilized to measure the pressure and flow available in sections of a waterworks distribution system. A flow test conducted at a hydrant does not necessarily represent the available flow at that specific hydrant, but rather the pressure and flow available for the portion of the distribution system serving that hydrant. AWWA Manual M-17 states: “[i]t is good practice to conduct flow tests on all parts of the distribution system approximately every 10 years.”²⁴² The M-17 recommendation for a 10-year cycle for flow tests does not entirely sync up with the 16 N.Y.C.R.R. §503.11 regulation requiring the retention of records pertaining to service standards for at least six years. For SUEZ to maintain records for all flow tests performed on the distribution system, it should expand the retention of these records beyond six years to at least ten years. Ideally, when a flow test is conducted on any hydrant, the result should be retained until a subsequent flow test is conducted so that a record of the last flow test performed is always available throughout the entirety of the proceeding 10-year flow test cycle. Digitizing these records and storing them for that period represents a relatively modest cost and therefore could be implemented fairly quickly and effortlessly. **DPS Staff recommends that flow test records be retained for a minimum of 10 years so that at least the previous flow test record is retained until such time it is replaced by the new and/or updated flow test data and therefore most current record.**

²⁴⁰ Response to DPS-5.

²⁴¹ Response to DPS-4.

²⁴² M-17 Manual, p. 41.

In addition, SUEZ conducts flow tests on demand for developers, and as needed internally to gather data for hydraulic modeling or main replacements.²⁴³ In addition to the system data obtained from flow tests, SUEZ utilizes modeling software to output hydraulic parameters including pressure, flow, standpipe water elevation, and pump operation.²⁴⁴ The hydraulic model is primarily utilized to simulate optimization of system supply, evaluate impacts of system changes, evaluate capacity, optimize water loss efficiency, perform trace analysis, and evaluate proposed capital planning projects.²⁴⁵ SUEZ provided records of all available flow test results dating back to 2012.²⁴⁶ As flow test results do not correlate directly to a specific hydrant but rather the distribution system assets serving said hydrant, the recommendation to “conduct flow tests on all parts of the distribution system approximately every ten years” is not indicative of a bright, hardline rule, which mandates strict flow testing on each and every hydrant at a specific given interval.

Further, the scope of necessary tests is variable as the system and customer base develops and changes over time. Additionally, SUEZ must balance the frequency of flow tests against non-revenue water and water conservation concerns, as flow tests can consume substantial amounts of water, while also potentially impacting the water quality of customers in the vicinity of the test. Flow tests expend varying amounts of water in each test, and therefore it is difficult to quantify the exceptional amount of water necessary to perform these tests more frequently.

Flow testing that is too frequent could diminish the availability of water in each test area and can compete with water conservation efforts. In addition, testing may cause interruptions to residents and businesses, may impede traffic, and may

²⁴³ Response to DPS-11.

²⁴⁴ Response to DPS-27.

²⁴⁵ Id.

²⁴⁶ Response to DPS-5.

require utilities to retain or reallocate additional staff to perform these tasks. Due to these potential impacts, **it is therefore recommended that SUEZ make a good-faith effort to meet or exceed the AWWA M-17 best practice of conducting flow tests on all parts of the distribution system every 10 years. If development is anticipated to increase in a given portion of its service territory, flow tests should be conducted *before* such development is permitted by local land use regulators and *before* such development commences to better gauge the available flow and ensure adequate supply to meet changing demand.**

VIII. SPRING VALLEY INCIDENT AND COMPANY RESPONSE

SCADA Data and Flow Tests

During the DPS investigation, Staff requested information regarding which system components in Spring Valley have SCADA monitoring in place and what data is recorded at each location. Staff also requested SCADA data for March 21, 2021, through March 27, 2021.²⁴⁷ Upon review, the SCADA data indicates that the SUEZ system experiences peak demand between 7 a.m. and 10 a.m. Typically, the water level in the Standpipe will fluctuate between 70 feet and 108 feet.²⁴⁸ The water level in the tank typically decreases during the day, until approximately 10 p.m., at which time demand decreases and allows the tank to be refilled. According to the sequence of events provided by SUEZ as well as the RCDAO filing, the fire is believed to have been observed shortly before 1:00 a.m. on March 23. Starting at approximately 11:00 p.m., on March 22, 2021, the Standpipe began its nightly water refill during the system's off-peak hours. By 1:00 a.m. on March 23, there was approximately 83 feet of water in the Standpipe water tank.²⁴⁹ The tank has a

²⁴⁷ Response to DPS-10.

²⁴⁸ Id., Attachment A.

²⁴⁹ Id.

maximum of capacity of 110 vertical feet of water whereupon the tank would overflow.²⁵⁰ The tank continued to fill with water until approximately 7:00 a.m. on March 23.²⁵¹ The SCADA data indicates that the Standpipe tank had sufficient water and did not empty as a result of the response to the Spring Valley Incident.

On June 10, 2021, Staff visited Spring Valley and observed a series of flow tests at various hydrants near the location of the fire. In total, Staff observed flow tests at eight locations. Staff attended flow tests for the following hydrants: 1-119 (Lafayette Street); 3-1 (Lake Street); 3-2 (Washington Street); 3-3, 3-4, 3-5 (Bethune Blvd); 1-89 (Lafayette/White Intersection); and 1-14 (North Main Street/Route 45).²⁵² To conduct a flow test, as was performed in mid-2021 under DPS Staff's supervision during Staff's field visits, at each location, two adjacent hydrants are identified along a shared service main. One main is used to monitor the residual pressure in the main, while the other hydrant is opened to measure flow. In general, the change in residual pressure is monitored while the second hydrant is opened and water flows out, and the empirical data is then processed through a series of calculations in order to determine what flow is available at a pressure of 20 psi, as 20 psi is identified as the universal base for measuring available flow in order to allow for equitable comparisons. Again, this an estimation of the water available in a main at the specified pressure, not necessarily related to singular hydrant; the available flow fluctuates based on the size of main serving the hydrants.

The available flow, at 20 psi, ranged from 728 gpm to 6,279 gpm across the eight tests. Specifically, the nearest hydrant, hydrant 1-119, located across the street from the Evergreen Facility site, had an available flow of 1,154 gpm, when tested during the June 2021 DPS Staff site visit.

²⁵⁰ Response to DPS-26.

²⁵¹ Response to DPS-10, Attachment A.

²⁵² See, Appendix D, Map of Spring Valley including hydrants which were flow tested, etc.

According to the Company's response to DPS-14, it was theorized by SUEZ personnel at the scene of the Spring Valley Incident that the diminished flow may have resulted from pulling water from multiple hydrants and/or connections that existed in the same area of smaller mains. Based on the SCADA data provided, and the June 2021 flow tests conducted, there was sufficient water in the Standpipe, and that the mains are capable of providing flow within the ranges recommended by the M-31.²⁵³ Therefore, Staff is of the shared belief that multiple simultaneous withdrawals from the mains was a contributing factor to the diminished flow during the later phases of the response to the Evergreen fire. SUEZ states:

For example, if the estimated capacity of a main is 1000 gpm that would represent the total potential available flow for that main, not 1000 gpm for each hydrant used. If 2 or more hydrants in close proximity on the same main are utilized, that 1000 gpm would be split among them. In practice, multiple fire hydrants are typically needed simultaneously to withdraw the total amount of flow available in the main.²⁵⁴

Thus, the use of multiple hydrants by multiple fire departments utilizing the same network of hydrants to simultaneously combat the fire at Evergreen continued to divide the available flow amongst the hydrants used. Adding multiple fire engines and tankers to each of the hydrants located in proximity to one another further divided the available flow. Moreover, as fire crews connected to hydrants beyond hydrant 1-119, located directly across from the Evergreen facility, moving along the same main would not necessarily resolve the division of available flow.

In addition, at approximately 3:35 a.m. on March 23, the two SUEZ personnel embedded with the Incident Commander recommended adding connections to hydrants 4-351 and 4-352 along Prospect Street (to the north) as these two hydrants would provide a second feed which is hydraulically distinguishable from connecting to hydrants along North Main Street/Route 45 (to

²⁵³ As defined in the AWWA M-31. American Water Works Association, Inc., *Manual of Water Supply Practices – M-31, Fourth Edition Distribution System Requirements for Fire Protection* (Denver: American Water Works Association, 2008) pp. 2, 40.

²⁵⁴ Response to DPS-19.

the west).²⁵⁵ Discussions between the fire Incident Commander and SUEZ continued for approximately another thirty to forty-five minutes in which SUEZ personnel continued to reiterate their suggestion to connect to hydrants located along Prospect Street.²⁵⁶ During those discussions, SUEZ's CSB continued to make any available operational changes to increase flow (*e.g.*, activating an additional booster pump) noting that these changes could cause other system issues or even a main break.²⁵⁷

Identification of Specific Hydrants Used

Staff's investigation devoted resources to identify the specific hydrants used during the incident and took into consideration all hydrants that may have been used during the incident. SUEZ's hydraulic modeling system, which is designed to provide estimated maximum available fire flow based on water distribution system hydraulic computer model simulations under average day demand and optimal conditions, cannot isolate the specific usage of hydrants.²⁵⁸ Additionally, due to the immediate need to address the emergency at hand, firefighters and first responders did not record and communicate to SUEZ the specific locations or identifying numbers of the hydrants used during the incident. During Staff's interview with Fire Chief Conjura, he stated that local Departments could only indicate street names and street intersections to establish where firefighters were connecting to hydrants. Knowledge of the exact hydrant numbers assists SUEZ in assessing conditions at the time of the incident as well as identify whether additional inspections or maintenance is required for those hydrants after an incident.²⁵⁹

²⁵⁵ Response to DPS-14.

²⁵⁶ Id.

²⁵⁷ Response to DPS-24.

²⁵⁸ Response to DPS-19.

²⁵⁹ Conjura Interview, June 2, 2021

According to SUEZ, “communication from the local Fire Departments to SUEZ whenever they utilize a hydrant would also be of value because it would allow for prompt follow-up re-inspection after such use.” This observation aligns with the requirements of the M-17 manual.²⁶⁰ “Providing this information to the Company has been requested numerous times with limited success.”²⁶¹ According to Leaf 28 Section 6.2b of SUEZ’s Tariff, “[f]ire departments should inform the Company promptly of any hydrant which has been used or which is leaking, or in need of attention, so that such hydrants may be placed in readiness for instant operation.” Staff believes that fire departments would have the best or first-hand knowledge as to which hydrants were used to respond to an incident. Considering these factors, **DPS Staff recommends that SUEZ develop or enhance protocols that clearly identify and communicate specific hydrant usage between the Fire Departments, County Coordinators, and the Company in the Company’s service territory during or immediately after fire events.** Such communication from the Fire Departments and County Coordinators will assist the Company in inspecting hydrants that are used soon after an emergency. Such protocols could include: (1) on-site personnel (from first or emergency responders, county/municipal officials, or SUEZ) dedicated to logging hydrant usage by number and location; (2) a monthly check-in/email notice, or regular meetings, between SUEZ, Fire Departments, and County Coordinators dictating hydrant usage by number, hydrant conditions and concerns; and (3) maintaining a log between all parties to encourage transparency regarding hydrant usage.

IX. COORDINATION & COMMUNICATIONS

To determine the level of transparency between SUEZ, its customers and local fire departments in its service territory, Staff inquired via interrogatory

²⁶⁰ M-17 Manual, p. 30.

²⁶¹ Response to DPS-36. DPS Staff understands this observation by SUEZ to extend beyond the Evergreen Facility fire incident.

requests the availability of system information, flow maps, demand conditions, hydrant conditions and availabilities, and hydrant inspection records.

According to SUEZ, fire flow maps are available upon request to fire departments. Such maps use estimated available flow data based on model simulations of average day demand conditions. SUEZ further noted, however, that any further detail, such as mapping of mains, is confidential as the Company considers it critical infrastructure information (or CII).²⁶² To the extent that a fire department demonstrates the need to review locations of mains or mapping related thereto, SUEZ and the fire department(s) should develop a process to provide access to these maps while protecting the critical infrastructure information through an appropriate legal mechanism.

In regard to regular communications with fire departments, SUEZ previously held meetings with fire departments on a monthly basis; the frequency of meetings decreased in 2018 when the number of items requiring coordination did not warrant monthly meetings, and the COVID-19 Pandemic led to a suspension of these meetings.²⁶³ SUEZ states:

SUEZ and the Rockland County Fire Chiefs Association (RCFCA) held coordination meetings approximately monthly. The meeting frequency was reduced effective January 18, 2018, when the number of items requiring coordination did not warrant meeting. During the meetings SUEZ requested a number of times that the Fire Departments provide notification to the Company on a consistent basis, advising when any hydrant was used. In order to help facilitate more frequent notification from the Fire Departments, in July of 2019 the Company developed and provided an app to the Fire Departments that would allow a more streamlined method for hydrant use notification communication.²⁶⁴

Topics of such meetings included, but were not limited to, flow tests, hydrant locations, hydrant flow information, and repair and upgrades to infrastructure.²⁶⁵

Staff recommends the resumption of such meetings between fire

²⁶² Response to DPS-36. *See generally* POL §§86(5), 89(5)(a)(1-a).

²⁶³ Response to DPS-35.

²⁶⁴ Response to DPS-6.

²⁶⁵ Response to DPS-3, Attachment B.

departments and SUEZ, either in-person or virtually, with a written agenda and on a schedule as appropriate for each fire department.

Additional communication occurs when a hydrant is placed in an out-of-service status. When a hydrant is determined as out of service, SUEZ communicates these outages via a phone call notification to 44 Control, which serves as central communications point and dispatch for fire departments in Rockland County. Once the hydrant has been repaired or replaced, and has returned back to an in-service status, such communication is repeated, and the County would update the 44 Control information.²⁶⁶

While SUEZ's current communication and outreach processes do not violate the PSL or its implementing regulations, Staff recommends the following improvements to the Company's outreach and communication practices. In addition to the recommendations stated above, **Staff recommends improved communication between SUEZ and local Fire Departments as well as the County Coordinator(s), including infrastructure and flow data available immediately upon request at the time of an incident and need for hook up to hydrants. The information should not just be limited to hydrant locations, but designate which hydrants share a main, and which would have greater available flow.** This will help fire departments ensure that they have the flow needed to respond to an incident and ensure that water is not being pulled from too many hydrants connected to the same main. **Staff also recommends that fire hydrant inspection and repair data should be readily available to fire department personnel upon request.** This will help first responders and SUEZ personnel identify which hydrants are not in proper working order at the time of an incident and therefore should not be connected. **Staff recommends that SUEZ organize system orientations and trainings for fire department personnel on a regular basis, on a timeline and frequency that is appropriate for both the Company and Fire**

²⁶⁶ Responses to DPS-6 & DPS-36.

Departments, to promote understanding of the system components and operations. Such orientations should also be made available upon reasonable request for fire departments located within SUEZ’s service territories.

Lastly, for outreach and communications, **Staff recommends that SUEZ make a good-faith attempt to support opportunities to educate the local governments and land use regulatory authorities within its service territories on system constraints, load, the interplay of local government fire safety inspections, development planning, and local land use along with fire protection and emergency services planning. Such education should also include promotion of conservation efforts that can assist with alleviating system constraints. Such orientations should be available upon request and held on at least an annual basis.** Future discussions regarding development by and among municipal officials, local land use authorities, and county officials should seek participation by SUEZ regarding system constraints and the capabilities of existing infrastructure.

X. ROCKLAND COUNTY COMPREHENSIVE WATER CONSERVATION AND IMPLEMENTATION PLAN

As part of the DPS Staff investigation and discussions around water use, it is important to recognize the efforts of Rockland County and its Task Force on Water Resources Management. On March 3, 2020, the County released its Comprehensive Water Conservation and Implementation Plan.²⁶⁷

This Comprehensive Water Conservation and Implementation Plan (Plan) presents an integrated approach to water conservation that is implementable and cost-effective for the County of Rockland (County) and its implementation partners. Though it’s difficult to quantify with certainty what the total sustainable supply is for the County, periods of non-sustainable groundwater supply withdrawal, when groundwater levels drop, have been observed during previous peak demand seasons when drought and high temperatures occurred. As population continues

²⁶⁷ *Id.*, p. 9.

to increase, it's anticipated that periods when production exceeds current peak-production levels will increase, resulting in greater risk of non-sustainable withdrawal.

Further, the Plan recognized:

Integral to this approach is acknowledging ongoing water and energy resource conservation efforts of the two largest utilities in the County: water utility SUEZ Water New York Inc. (SUEZ NY) ... Measures in the Plan are intended to complement ongoing efforts rather than duplicate them.

The Task Force's report provided a framework and/or strategies to reduce overall and peak demands through water conservation efforts, so that current supplies and infrastructure can meet forecast water demand.²⁶⁸ Relying on data obtained through Case 13-W-0303, the report states that "the County appears to have enough supply to meet the baseline production forecast until 2044."²⁶⁹ DPS Staff continue to monitor SUEZ's quarterly filings in Case 13-W-0303 and those reports do not indicate a severe change in consumption or a reduction in available supply.

In addition, as part of this investigation, DPS Staff requested from SUEZ each and every low-pressure complaint in the entirety of SUEZ's service territory for the past six years.²⁷⁰ Staff also requested SUEZ to provide the specific steps taken and the resolution of each complaint.²⁷¹ Staff found that many of the low-pressure complaints were related to service interruptions for repairs or were issues with the complainants' individual facilities. Also, Staff observed a high number of complaints that were uncorroborated when SUEZ responded or were temporary or transient in nature.²⁷²

Additionally, as required by the terms of the Commissions' July 2020 Order Adopting the Terms of Joint Proposal, Approving Merger, and Establishing Rate Plan, SUEZ's obligation to file a five-year water system upgrade forecasts and

²⁶⁸ Id., p. 1.

²⁶⁹ Id. p. 10.

²⁷⁰ Response to DPS-21.

²⁷¹ Id.

²⁷² Id.

capital expenditure report within 60 days of the end of each calendar year will provide another opportunity to examine critical infrastructure and available water resources. These five-year reports will also support the Commission’s ability to maintain proper oversight of the Company during the full term of the rate plan.²⁷³ These plans will identify “miles of main replaced by type and the number of new customers in the previous year.” The reporting requirements will add transparency to SUEZ’s capital plans and provide information to Staff that will assist with reviewing whether adjustments are needed in future.

As stated above, during the June 10, 2021, site visit, Staff observed a high density of multifamily residences in the Village, and the construction of a new multi-resident housing complex on an adjacent street, Bethune Boulevard. Developers and owners of new or expanded structures may be called upon to provide financial payments to support additional water utility infrastructure and water capacity – *before* such development is permitted, before such structures are constructed, before the local land use regulator inspects such structures and issues certificates of occupancy, and before residents or businesses occupy such structures. DPS Staff does not believe there are immediate concerns regarding the supply of water in Spring Valley or in Rockland County, however, the concerns raised in the Task Force report remain, and therefore, local land use regulators must exercise vigilance as they and their communities’ approach 2050.

XI. OTHER OVERSIGHT ENTITIES

Village of Spring Valley

As the local jurisdiction tasked with administration and enforcement of the FCNYS prior to February 14, 2022, the Village of Spring Valley was required to have established and carried out the appropriate building and fire code inspection

²⁷³ Case 19-W-0168, supra, Order Adopting the Terms of Joint Proposal, Approving Merger, and Establishing Rate Plan (issued July 16, 2020) p. 37.

processes. This obligation included annual and triennial inspections of buildings in the Village's jurisdiction as required by Title 19 of the N.Y.C.R.R., and in addition, proper administration of the FCNYS. Such administration would include determining the necessary fire flow for properties pursuant to FCNYS §507.3. As such, it is unclear what the appropriate fire flow for the Evergreen Facility was leading up to the Spring Valley Incident. The Village of Spring Valley, despite FOIL requests, two subpoenas, and additional outreach by the Department, did not (and apparently cannot) provide information reflecting what basic safety inspections took place between 2016 and March 22-23, 2021; and whether any analysis of the necessary fire flow for the Evergreen Facility was performed. The Village's records produced also do not identify any analysis of the needed fire flow or indicate that an analysis of the fire-flow calculation area was performed. Thus, any figure relating to the fire flow needed and calculation of it cannot be performed since records regarding the facility apparently do not exist.

New York State Department of State

The New State Department of State (DOS), oversees, investigates, and enforces various aspects of State Law, including but not limited to the Article 6 of the Executive Law, administration and enforcement of the Uniform Fire Prevention and Building Code Act pursuant to Article 18 of the Executive Law, and Title 19 of the N.Y.C.R.R. In addition, DOS provides technical assistance to local governments, grants, and oversees the registration and licensure of business and corporate entities in New York State.²⁷⁴ In particular, Executive Law § 376(S) authorizes the Secretary of State to do all things necessary or desirable to further and effectuate the general purposes and specific objectives of the New York State: Uniform Fire Prevention and Building Code Act. Finally, Executive Law §§ 381(4)(a) & (c) provides that if the Secretary of State determines that a local government has failed to administer and enforce the Uniform Code in accordance

²⁷⁴ Executive Law (EXC) Art. 6; Art. 18.

with the Minimum Standards, the Secretary shall take any or both of the following actions:

- issue an order compelling compliance by such local government with the Minimum Standards;
- designate the county in which such local government is located to administer and enforce the Uniform Code in such local government.²⁷⁵

Takeover of the Spring Valley Building Department

Prior to February 14, 2022, the Village of Spring Valley and the Village of Spring Valley Building Department through its inspectors were responsible for applying, implementing, and enforcing the State Uniform Fire Prevention and Building Code for the Village pursuant to Article 18 of the Executive Law.²⁷⁶ As stated above, Staff observed in the records that were provided by the Village of Spring Valley (the timespan of the produced records abruptly ended in 2016), numerous instances where the Evergreen Facility was cited for a myriad of failures. In fact, Rockland County and more specifically the Town of Ramapo and Village of Spring Valley have had a history of issues related to the timely and regular

²⁷⁵ The statute authorizes the Secretary to request that the Attorney General institute an action against the local government compelling it to comply with, enforce, and administer the code. Executive Law § 381(4)(b).

²⁷⁶ 19 N.Y.C.R.R. Chapter XXXIII, Subchapter A, Parts 1219-1229 (Uniform Fire Prevention and Building Code); Village of Spring Valley Code §82-2; *see also* <http://rocklandgov.com/departments/county-executive/press-releases/2022-press-releases/rockland-launches-new-office-of-buildings-and-codes/> (accessed December 20, 2022).

administration of Building and Fire Inspections, including fatalities related to illegal basement apartments.^{277, 278, 279, 280, 281, 282}

In April 2016, Assemblyman Kenneth Zebrowski (AD 96) stated:

The systemic and pervasive lack of code enforcement in Ramapo and Spring Valley is a clear and present danger to the safety and well-being of our citizens. For over two years I have been documenting this lawlessness and calling on the State to intervene. For an inspector to sign off on a school with dead bolted doors, exposed wiring and extension cords across a bathroom floor, shows that we cannot trust these local officials. The evidence is clear and the time for action is now. The State must intervene to protect the health and safety of our residents, children and first responders.²⁸³

This concern led to Assemblyman Zebrowski calling for the New York State Department of State (DOS) to take over the building departments or assign Rockland County to do so.²⁸⁴

²⁷⁷ Tara Rosenblum, *Playing With Fire*, News 12 Westchester/Hudson Valley, Nov. 1, 2022, <https://westchester.news12.com/projects/playing-with-fire> (accessed January 9, 2023) (concerning the Village of Spring Valley).

²⁷⁸ Sen. James Skoufis, Chair, Committee on Investigations and Government Operations, *Final Investigative Report: Code Enforcement in New York State* (issued August 5, 2019) pp. 58-62, 82.

²⁷⁹ Lanning Taliafero, *Fatal Fire in Central Nyack under Investigation*, Patch, October 13, 2015. <https://patch.com/new-york/nyack/1-dead-morning-fire-central-nyack> (accessed December 23, 2022).

²⁸⁰ Lanning, Taliafero, *Fire Captain Says Local Yeshivas Unsafe: Video*, Patch, October 15, 2015. <https://patch.com/new-york/newcity/fire-captain-says-local-yeshivas-unsafe-video> (accessed December 23, 2022).

²⁸¹ Lanning Taliafero, *State Slaps Ramapo on Private-school Fire Inspections*, Patch, April 11, 2016. <https://patch.com/new-york/newcity/state-slaps-ramapo-private-school-fire-inspections> (accessed December 23, 2022).

²⁸² Lanning Taliafero, *Letters to Ramapo About ‘Severe Violations’ at Private Schools*, Patch. April 12, 2016. <https://patch.com/new-york/nanuet/letters-ramapo-severe-violations-private-school-0> (accessed December 23, 2022).

²⁸³ Press Release, *Assemblyman Ken Zebrowski and County Executive Ed Day Stand with Firefighters to Demand Immediate State Intervention in the Village of Spring Valley and Ramapo Code Enforcement*, April 15, 2016. <https://assembly.state.ny.us/mem/Kenneth-Zebrowski/story/69354> (accessed December 23, 2022).

²⁸⁴ Press Release, *Zebrowski Once Again Calls for State Takeover of Ramapo Building Department*, September 16, 2016. <https://assembly.state.ny.us/mem/Kenneth-Zebrowski/story/71746> (accessed December 23, 2022).

In the year prior to these incidents and reports, DOS issued its First Order Pursuant to Executive Law §381(4).²⁸⁵ The First Order, which determined that the Village of Spring Valley was not complying with minimum standards, related to:

- Conducting fire safety and property maintenance inspections as required by 19 N.Y.C.R.R. §1203.3(h);
- Establishing a code enforcement program that contains all the features set forth in 19 N.Y.C.R.R. §1203, as required by 19 N.Y.C.R.R. §1203.2(a);
- Requiring owners of buildings to apply for and obtain appropriate building permits... conducting required construction inspections and final inspections to determine work actually performed complies with Uniform Code... and prohibiting the use or occupancy... of a newly converted existing buildings) without an appropriate certificate of occupancy; and
- Establishing and maintaining a system of records of the Village's activities relating to the code enforcement features described in subdivisions (a) to (i) of 19 N.Y.C.R.R. §1203, as required by 19 N.Y.C.R.R. §1203.3(j).²⁸⁶

The DOS First Order directed the Village and its officials to improve the Village's processes and procedures for conducting the required periodic fire safety and property maintenance inspections, as well as how to address the other issues identified in the Order. Subsequently, the Village failed to comply with DOS' First Order by failing to provide DOS with documents and information necessary to accurately assess whether the Village met these minimum standards.²⁸⁷ DOS reported that in January 2017, it entered into a Memorandum of Agreement (MOA) with the Village of Spring Valley to assign an Oversight Officer to observe the activities of the Village's code enforcement office and maintaining DOS' right to take further action during or after the term of the MOA.²⁸⁸ This MOA also resulted

²⁸⁵ NYS DOS Order Pursuant to Executive Law §381(4)(a) (issued October 6, 2015). (DOS First Order)

²⁸⁶ NYS DOS Designation Pursuant to Executive Law §381(4)(c) and Second Order Pursuant to Executive Law §381(4)(a) (issued November 16, 2021) (DOS Second Order).

²⁸⁷ DOS Second Order, p. 3.

²⁸⁸ DOS Second Order, p. 4 (discussing 2017 MOA).

in a written work plan on or about January 24, 2017 relating to DOS oversight activities under the MOA.²⁸⁹

As stated in DOS Second Order, in early 2021, DOS became aware of discrepancies in the records and reports provide to DOS by the Village.²⁹⁰ Most importantly:

More specifically, with respect to a building located at 65 Lafayette Street that should be inspected at least once every year, information provided by the Village to the Department indicated that: (1) as of November 1, 2019, the building was overdue for its required annual fire safety and property inspection but that such inspection was scheduled; (2) as of March 2020, there were no outstanding inspections for buildings required to be inspected annually within the Village; and (3) an inspection entry existed in the Village's electronic record keeping system indicating that an inspection of this building took place on April 22, 2019 but that no substantiating records of any inspection being completed for the building within the prior three (3) years could be found.²⁹¹

Thus, in 2019, the Evergreen Facility (located at 65 Lafayette Street) was overdue for its annual fire and property inspections. However, as of 2020, the Village's records indicated that there were no outstanding inspections in the Village. When DOS sought documentation to support the assertion that an inspection took place on April 22, 2019, there were no corroborating records for the past three years. The Village had no supporting documentation or records to prove that the April 22, 2019, inspection was actually performed.

The DOS Second Order states that DOS issued a letter dated April 30, 2021, alerting the Village to these discrepancies and directing the Village to provide a plan to DOS to audit and remediate the discrepancies, commensurate with on-going monthly reporting.²⁹² Between April 2021 and November 2021, DOS and the Village exchanged information; however, the Village repeatedly failed to provide sufficient responses to DOS requests as records were either lacking detail or reports

²⁸⁹ Id.

²⁹⁰ Id.

²⁹¹ Id.

²⁹² Id., pp. 4-5.

were never submitted.²⁹³ As of the date of the DOS Second Order, the Village failed to provide the updated list of buildings required to be inspected annually and triennially, along with information reflecting when such buildings were last inspected by the Village among other summary information.²⁹⁴ In addition, based on the Village's 2020 annual report, submitted to DOS on July 5, 2021, 34 of 91 buildings containing an area of public assembly (areas of public gathering) were not inspected within the last 12 months, an admission by the Village that the Village and its officials were not in compliance with the necessary minimum standards required under 19 N.Y.C.R.R. Chapter XXXIII, Subchapter A, Parts 1219-1229.²⁹⁵ Further the same 2020 annual report indicated that out of 384 multiple residences (buildings with multiple dwellings), 47 were not inspected within the last 36 months.²⁹⁶ In addition, out of 651 nonresidential buildings in the Village, 125 were not inspected in the last 36 months.²⁹⁷ Finally, as of November 16, 2021, the Village has failed to provide DOS with the fire safety and property maintenance inspection reports for July, August, September, and October 2021.²⁹⁸

In light of this non-compliance, on November 16, 2021, DOS, by its Second Order Pursuant to Executive Law § 381(4), designated Rockland County to assume administration and enforcement of the State Uniform Fire and Prevention and Building Code as well as the State Energy Conservation Construction Code within the Village of Spring Valley and to manage the enforcement of the building codes for the Village of Spring Valley. This designation became effective on February 14,

²⁹³ Id., p. 5.

²⁹⁴ Id.

²⁹⁵ Id., pp. 5-6.

²⁹⁶ Id.

²⁹⁷ Id.

²⁹⁸ Id.

2022. According to media reports, directing the takeover of the Spring Valley Building Department is the first time DOS has directed such an action.²⁹⁹

Consistent with the DOS Second Order, the Rockland County Legislature unanimously adopted new local law and approved three resolutions which adopted the terms of the DOS' Designation and Second Order Pursuant to Executive Law § 381 (4), whereby the County assumed responsibility for managing the Spring Valley Building Department which included a \$1.5M budget amendment, which also included the hiring a Director of Building Administration and Code Enforcement within the Office of the County Executive, and approving an intermunicipal agreement between the County and the Village conducting annual fire safety inspections.³⁰⁰

Rockland County currently oversees and administers building and fire code enforcement in the Village of Spring Valley. DOS and the County's efforts to address the prior lack of compliance with building and fire code within Spring Valley remains on-going.

Recent Outsourcing of the Village of Spring Valley Law Department

During the course of this investigation, DPS Staff issued FOIL requests and subpoenas to the Village of Spring Valley seeking records pertaining to the Evergreen Facility.³⁰¹ The Village initially denied Staff's FOIL request, and its subsequent response to Staff's first subpoena was deemed non-responsive by DPS Staff. This, in turn, necessitated the issuance of a second subpoena and an accompanying letter seeking responsive documents or, in the alternative, an

²⁹⁹ Tara Rosenblum, *Playing With Fire*, News 12 Westchester/Hudson Valley, Nov. 1, 2022, <https://westchester.news12.com/projects/playing-with-fire> (accessed January 9, 2023) (concerning the Village of Spring Valley).

³⁰⁰ Rockland County Local Law 1 of 2022, *see also*, https://rocklandgov.com/files/3016/4935/1921/FEBRUARY_1_2022_LEGISLATIVE_MINUTES.pdf (accessed December 23, 2022); Resolutions No. 71, 72, and 73 of 2022, *see also*, https://rocklandgov.com/files/6816/4935/1900/FEBRUARY_8_2022_LEGISLATIVE_MINUTES.pdf (accessed December 20, 2022).

³⁰¹ Appendix E, pp. 20-29.

affidavit explaining the absence of responsive records and a privilege log.³⁰² After the second subpoena, the Village responded with approximately 890 pages of material, much of it spanning a time period from 1964 to the late 1980s, but abruptly ending in 2016. As discussed above, the documents did contain various citations, and materials identifying repeated building and fire code violations at the Evergreen Facility. After reviewing the produced materials, DPS Staff contacted the Village Law Department in November 2022, to seek any documents or materials between 2016 and the present. Staff was also aware that the families of deceased firefighter Jared Lloyd and deceased resident Oliver Hueston, and others submitted their own FOIL requests to the Village which seemed to indicate responsive records dated after 2016 were in the Village's possession, necessitating the follow up.³⁰³ Upon contacting the Village via telephone, a Village representative informed DPS that any attorneys involved in answering the Department's request no longer worked for the Village. In fact, the Village had outsourced the operation of its Law Department to a private law firm. DPS Staff continues to work with the Village's new outside counsel to obtain responsive records; however, the outsourcing of its Law Department has effectively reset the process to obtain such records, and further delay of this report is not in the public interest.

New York State Department of Health

The New York State Department of Health (DOH) is responsible for the oversight of the provision of potable water pursuant to 10 N.Y.C.R.R. While this oversight does pertain to SUEZ, it is not germane to the DPS investigation. Further, many of the documents collected through the Department's e-discovery

³⁰² *Id.*, pp. 22-23.

³⁰³ Steven Lieberman, *Evergreen Court fire victim's sons sue facility, others over his death. What to know*, November 23, 2022, Rockland/Westchester Journal News, November 23, 2022 <https://www.lohud.com/story/news/local/rockland/2022/11/23/evergreen-court-fire-lawsuit-sons-sue-facility-others-over-death/69674055007/> (accessed January 10, 2023) Firehouse News, *NY Investigative Reporter Uncovers Decades of Fire Safety Violations*, Firehouse.com, November 3, 2022. <https://www.firehouse.com/safety-health/news/21286016/reporter-uncovers-decades-of-fire-safety-violations-at-deadly-spring-valley-ny-fire> (accessed January 9, 2023).

process pertained to DOH potability and water quality inspections which fell outside the scope of the DPS requests.

DOH fulfills another important and pertinent responsibility: oversight and surveillance of Adult Care Facilities (ACFs) in accordance with State Laws, Regulations, and Codes, *e.g.*, 18 N.Y.C.R.R., Subpart D.³⁰⁴ This oversight responsibility includes inspection and enforcement powers administered pursuant to 18 N.Y.C.R.R. Part 486 which also includes civil penalty powers. For instance, DOH is responsible for ensuring ACFs have proper Disaster and Emergency Planning, *e.g.*, conduct monthly fire drills for staff and volunteers, quarterly fire drills, with at least one annual drill requiring total evacuation of the facility, and at least one annual drill conducted with the involvement of local fire authorities in which residents participate.³⁰⁵ DOH is also responsible for investigating whether ACFs keep accurate records of these drills.³⁰⁶

Between July 1, 2018, and June 30, 2022, DOH issued a total of 26 violations resulted from 7 inspections of the Evergreen facility, including 1 inspection resulting in no violations which occurred prior to March 23, 2021.³⁰⁷ Recent citations pertained to records access and timely provision of records.³⁰⁸ Early citations, per an August 30, 2019 report cited the Evergreen facilities for sixteen (16) violations related to resident services – supervision³⁰⁹ and medication management,³¹⁰ food service,³¹¹ personnel continuing education requirements,³¹²

³⁰⁴ 18 N.Y.C.R.R., Subpart D.

³⁰⁵ *Id.*, §§487.12(f); 487.12(g); 487.12(h).

³⁰⁶ *Id.*, §487.12(j).

³⁰⁷ <https://profiles.health.ny.gov/acf/view/1254888#inspections> (accessed December 20, 2022).

³⁰⁸ 18 N.Y.C.R.R., §485.11(b), *see also*, <https://profiles.health.ny.gov/acf/view/1254888#inspections> (accessed December 20, 2022).

³⁰⁹ *Id.*, §§487.7(d)(9) & 487.7(d)(12-13).

³¹⁰ *Id.*, §§487.7(f)(5) & 487.7(f)(12)(ii)

³¹¹ *Id.*, §§487.8(c); 487.8(d)(4,8,10-11); 487.8(e)

³¹² *Id.*, §487.9(c)(15, 17-18).

and other citations related to maintenance and the quality of facilities.³¹³ Among other notable issues, DOH issued a citation to the Evergreen Facility for a violation of 18 N.Y.C.R.R. §487.11(f)(19) for the presence of prohibited fire hazards such as portable space heaters or accumulation of combustible materials.³¹⁴ This type of violation mirrored similar violations contained in the records provided by the Village of Spring Valley which cited the Evergreen Facility for the accumulation of refuse, lack of illuminated exit signs, and other fire safety related building code and fire code violations, as reflected in the documents provided by the Village of Spring Valley up to 2016.³¹⁵

X. CONCLUSION

While the result of Staff's thorough investigation and the facts contained in this report demonstrate that SUEZ did not commit any PSL-related violations, the use of multiple hydrants by multiple fire departments utilizing the same network of hydrants to simultaneously combat the fire at Evergreen continued to divide the available flow amongst the hydrants used. Adding multiple fire engines and tankers to each of the hydrants located in proximity to one another further divided the available flow. Moreover, as fire crews connected to hydrants beyond hydrant 1-119, located directly across from the Evergreen facility, moving along the same main would not necessarily resolve the division of available flow.

SUEZ's SCADA data indicates that the Standpipe tank had sufficient water and did not empty as a result of the response to the Spring Valley Incident. Based on the SCADA data provided by SUEZ, and the June 2021 flow tests conducted, there was sufficient water in the Standpipe, and that the mains are capable of providing flow within the ranges recommended by the M-31.

³¹³ *Id.* §§487.11(b); 487.11(i); 487.11(j); &

³¹⁴ <https://profiles.health.ny.gov/acf/view/1254888#inspections> (accessed December 20, 2022).

³¹⁵ Village of Spring Valley Documents., p. 1; 12; 34; 38; 43; 53; 93; 166; 174; 228; and 261.

One must consider the larger context in which this investigation was conducted including but not limited to multiple on-going felony criminal prosecutions spearheaded by the Rockland County District Attorney's Office, the on-going efforts of the NYS Department of State and Rockland County to address the controversies surrounding the Village of Spring Valley and its building department, the challenges in accessing or receiving relevant documentation, the significant age of the Evergreen Facility, and public scrutiny of water resources in SUEZ's service territory.

As described in the August 22, 2022, Rockland County District Attorney Office Response to Omnibus Motion, the direct cause of the ignition and spread of the Evergreen Facility fire is the alleged use and introduction of an ignited propane-fueled torch and shovels of burning and glowing coals and embers in the facility's kitchen area.

These acts, combined with the placement of the Evergreen Facility's fire detection system into "test mode," delayed detection of the fire and alerting the County's 44 Control Emergency Communication System. In addition, even when detected, the location of the fire in the ceiling evaded the effective area of the sprinkler system and claim(s) regarding the sprinkler system being inoperable are not supported by the testimony of Inv. Green and firefighter Bifulco.

Further, the actions which led to the fire were allegedly conducted without local government permit or approval, and no fire watch was maintained during the above actions or in the hours following those actions – by either the Sommers or the Evergreen Facility's owners and operators.

In addition, records produced by local government regulatory entities did not reflect that such local government regulators conducted the required building and fire inspections, and there is no evidence fire flow tests analyses or tests were conducted at the Evergreen Facility at any time. Most importantly, there is no evidence that the local government regulators enforced the Fire Prevention and Building Code at the Evergreen Facility after 2016.

DPS Staff did not find any violations by SUEZ requiring further action by the Public Service Commission. DPS Staff's investigation did identify opportunities for: enhancements or improvements that local governmental entities, fire departments, and the utility could consider to improve communications among SUEZ, Rockland County, the Village of Spring Valley, and emergency responders; improved record keeping and operational practices of the Company; and facilitating greater understanding of the water system operation and constraints among first responders and local land use regulation authorities to improve the efficiency and efficacy of the first response. These recommendations will encourage further cooperation between the Company and local fire departments and municipalities to assist in the execution of the response to future fire-related incidents.

These recommendations also address important issues and may provide enhancements to SUEZ's operations and local communities' response to emergency incidents. These eight recommendations are provided with the intent to improve operational processes and communication between the Company, local fire departments, municipalities, Rockland County, and other key stakeholders.³¹⁶

Dated: January 2023
Albany, NY

³¹⁶ A table containing each of Staff's recommendations is appended to this report. See, Appendix A.

APPENDICES

Appendix A – Table of DPS Staff Recommendations

Rec # 1	Staff recommends that flow test records be retained for a minimum of 10 years so that at least the previous flow test record is retained until such time it is replaced by the new and/or updated flow test data and therefore most current record.	p. 59
Rec # 2	Staff recommends that SUEZ make a good-faith effort to meet or exceed the AWWA M-17 best practice of conducting flow tests on all parts of the distribution system every 10 years. If development is anticipated to increase in a given portion of its service territory, flow tests should be conducted before such development is permitted by local land use regulators and before such development commences to better gauge the available flow and ensure adequate supply to meet changing demand.	pp. 61
Rec # 3	Staff recommends that SUEZ develop or enhance protocols that clearly identify and communicate specific hydrant usage between the Fire Departments, County Coordinators, and the Company in the Company's service territory during or immediately after fire events.	p. 65
Rec # 4	Staff recommends the resumption of meetings between fire departments and SUEZ, either in-person or virtually, with a written agenda and on a schedule as appropriate for each fire department.	pp. 66-67
Rec # 5	Staff recommends improved communication between SUEZ and local Fire Departments as well as the County Coordinator(s), including infrastructure and flow data available immediately upon request at the time of an incident and need for hook up to hydrants. The information should not just be limited to hydrant locations, but designate which hydrants share a main, and which would have greater available flow.	p. 67
Rec # 6	Staff also recommends that fire hydrant inspection and repair data should be readily available to fire department personnel upon request.	p. 67
Rec # 7	Staff recommends that SUEZ organize system orientations and trainings for fire department personnel on a regular basis, on a timeline and frequency that is appropriate for both the Company and Fire Departments, to promote understanding of the system components and operations.	pp. 67-68

	Such orientations should also be made available upon reasonable request for fire departments located within SUEZ's service territories.	
Rec # 8	Staff recommends that SUEZ make a good-faith attempt to support opportunities to educate the local governments and land use regulatory authorities within its service territories on system constraints, load, the interplay of local government fire safety inspections, development planning, and local land use along with fire protection and emergency services planning. Such education should also include promotion of conservation efforts that can assist with alleviating system constraints. Such orientations should be available upon request and held on at least an annual basis.	pp. 68

Matter 21-00825
SUEZ Water New York, Inc.
Spring Valley Low Water Pressure Investigation

STAFF OF THE DEPARTMENT OF PUBLIC SERVICE
INTERROGATORY / DOCUMENT REQUEST

Request No.: DPS-14
Subject: Sequence of Events

The following questions are related to the fire that occurred on March 23, 2021 at the Evergreen Court Home for Adults, which is located at 65 Lafayette Street in the Village of Spring Valley.

1. Provide SUEZ's understanding of the sequence of events (timestamped if available) that led to the incident. Identify the source of this information.
2. Provide SUEZ's understanding of the sequence of events (timestamped if available) that occurred after the fire began. This should include, at minimum, the fire department activities while on site, when SUEZ became aware of the incident, when SUEZ arrived on site, SUEZ's activities while on site, and the time of SUEZ's departure.

RESPONSE:

1. SUEZ cannot speculate on any timeline of events leading up to the fire.
2. Please see DPS-14 Attachment A

Responding Witness:

Operations Panel

Signature of Reporting Witness

TIME LOGS

Summary of 44 Control Log – 65 Lafayette Drive, Spring Valley, March 22-23rd, 2021

<https://www.firehouse.com/safety-health/video/21215828/radio-traffic-captures-fallen-ny-firefighters-mayday>

<u>Time Stamp</u>	<u>Approx Time</u>	<u>Remark</u>
12:55	1:40AM	30 Minutes Mark
18:55		Request for SUEZ from Incident Command to 44 Control
20:17		Mayday reported
21:45		<u>Crews looking for firefighter (mayday response)</u>
23:40	2:10AM	<u>1 Hour Mark</u>
24:05		Call stating victim down fire escape
26:12	2:20AM	<u>70 Minute Mark</u>
26:36		IC requests update on SUEZ. No ETA. Request to contact. Tell SUEZ; "Very low on water. Very big fire. Need them here ASAP"
27:09		44 Control to IC: SUEZ is advising that they have already boosted the pressure and are giving you all they can at the moment. Supervisor is in route. ETA approximately 1hr.
27:53	2:30AM	80 Minute Mark
28:00		Question: How's the pressure on the hydrant. (Can not understand part of the response). Stated: Looking for another hydrant.
29:00		Still trying to secure another water source
30:50		56 Bathune Blvd – Call for possible 2 nd fire
32:17	2:40AM	90 Minute Mark
34:18	2:50AM	100 Minute Mark
40:24	3:00AM	110 Minute Mark
41:23	3:10AM	2 Hr Mark
42:35		Hydrant discussions; 6 tankers in series hooked to single hydrant
46:00	3:20AM*	2hr 10min Mark; SUEZ on-scene looking for location of command post
47:00		Call for no one to enter the building
48:33	3:40AM	2 Hr 30 Min Mark
49:15		Discussion of using the N. Main St main (20")
49:48	3:50AM	2 Hr 40 Min Mark
51:29	4:00AM	2 Hr 50 Min Mark
52:25		Temporary shutdown of supply to reconnect service from N. Main (20")
52:43	4:10AM	3 Hr Mark
53:15	4:20AM	3 Hr 10 Min Mark
53:25		Water supply to N. Main Street Established (Used up Alice Drive)
54:25	4:30AM	3 Hr 20 Min Mark
54:45	4:40AM	3 Hr 30 Min Mark
54:55	4:50AM	3 Hr 40 Min Mark
57:15	5:10AM	4 Hr Mark
57:43	5:20AM	4 Hr 10 Min Mark
58:39	5:50AM	4 Hr 40 Min Mark

(*) Time estimated based on J. Tardiff known time of call into 44 Control for on-scene

Timeline of Events – March 23, 2021, 65 Lafayette Street Fire Response and Communications:

2:16am: Call from CSB (Plant) for fire incident at 65 Lafayette St Spring Valley. Request SUEZ support on scene.

- Authorized for David Alvarado to mobile to scene from home in Congers

2:29am: J Tardiff left home for scene from Whippany, NJ

2:37am: Called CSB asked if the tanks in the area were full and if system was operating as expected. Plant indicated tanks were full and operations as normal.

3:19am: J. Tardiff on scene. Call to CSB to get location of incident command. Got number to 44-control

3:20am: Call to 44 Control to get location of Incident Command Center location

3:23am: Called D. Alvarado to determine his location for meet up.

3:25am: J. Tardiff arrived at incident command. Spoke to Incident Commander

- Question on using hydrant of main in N. Main St; replied that would be a good idea and indicated we have a 20" main. Showed image of GIS on phone.
- Chief indicated flow was good for first 45 minutes of firefighting but then pressure "dropped off". I indicated that no operational changes were made during that time. I suggested it was due to pulling from multiple hydrants/connections on the same area of smaller diameter water mains.
- Incident Commander again indicated frustration on the lack of flow and pressure for the scene. Discuss any measures we could do to increase flow/ pressure.

3:30am: Call from D. Alvarado to meet up;

3:33am: Call to CSB to request look for options to increase flow and pressure to the area.

3:35am: D. Alvarado joins J. Tardiff at command center. Discussion with Incident Commander and provided a recommendation for additional water by connecting to hydrant at the end of Prospect Street (HP-4-351 and or HP-4-352). Explained that it would provide a second feed directly in line with the tank and different than the 20" N. Main St feed hydraulically. Incident Commander wanted to wait to see if the 20" main connection was sufficient.

3:46am: Call from CSB. Discuss revising operations to increase flow and pressure. CSB agreed to make improvements and J. Tardiff authorized with understanding that it may cause other system issues or potential main break.

3:54am: Discussion with Incident Commander. Now feeding from 20" main on N. Main St.

3:59am: Call to CSB to inform then that 20" main being used for firefighting at increased pressure and flow

4:06am: Discussion with Incident Commander. Again asked if Incident Commander would want to try connecting to hydrant at the end of Prospect Street for additional flow. Showed him the GIS connection and location of the tank. Explained again that it would provide an additional feed in line with the SUEZ tank. Incident Commander listened but decided not to proceed with this recommendation.

4:31am: Call to CSB to provide update on fire suppression and check on tank levels.

5:06am: Call to CSB to provide update on fire suppression and check on tank levels.

6:02am: Call to CSB asking if the Plant made any changes. See visible reduction in flow. No changes to operations were made. Pointed out that it is likely morning demand pattern.

6:28am: Call from CSB Katherine DeStephano. Discussed activities and administrative/work order question regarding D. Alvarado.

6:45am: Call from Lenny Denise. Provided Lenny with status and including discussions and moves made. Fire at limited open flame visible from command center.

7:02am: Call from CSB Katherine DeStephano. CSB to post front-end notify to customers in Spring Valley area:

Appendix C – Site Visit Photographs

On April 30, 2021, DPS Staff conducted a site visit to observe the scene of the Spring Valley Incident, tour the SUEZ facilities and operations serving Spring Valley, and to witness the replacement of hydrant 1-119 on Lafayette Street and installation of a new Spartan hydrant in its place. Staff conducted a second site visit on June 10, 2021, to observe a series of flow tests conducted on the water mains serving the Evergreen Facility and the nearby streets. The following digital photographs detail various facilities and operations that were seen and observed by Staff on both April 30, 2021, and June 10, 2021.



Hydrant 1-119 – Excavated – April 30, 2021



Hydrant 1-119 – Backhoe lifting hydrant for extraction – April 30, 2021



Hydrant 1-119 – Extracted Hydrant Connection Detail – April 30, 2021



Hydrant 1-119 – Extracted Hydrant Connection Detail Front – April 30, 2021



New Spartan Model of Hydrant 1-119. Installed on April 30, 2021.



Hydrant 1-119 Installed on April 30, 2022 – Pressure Gauge Detail – June 10, 2021



Hydrant 1-119 – Hydrant with diffuser – June 10, 2021



Hydrant 1-89 Flow Test conducted on June 10, 2021



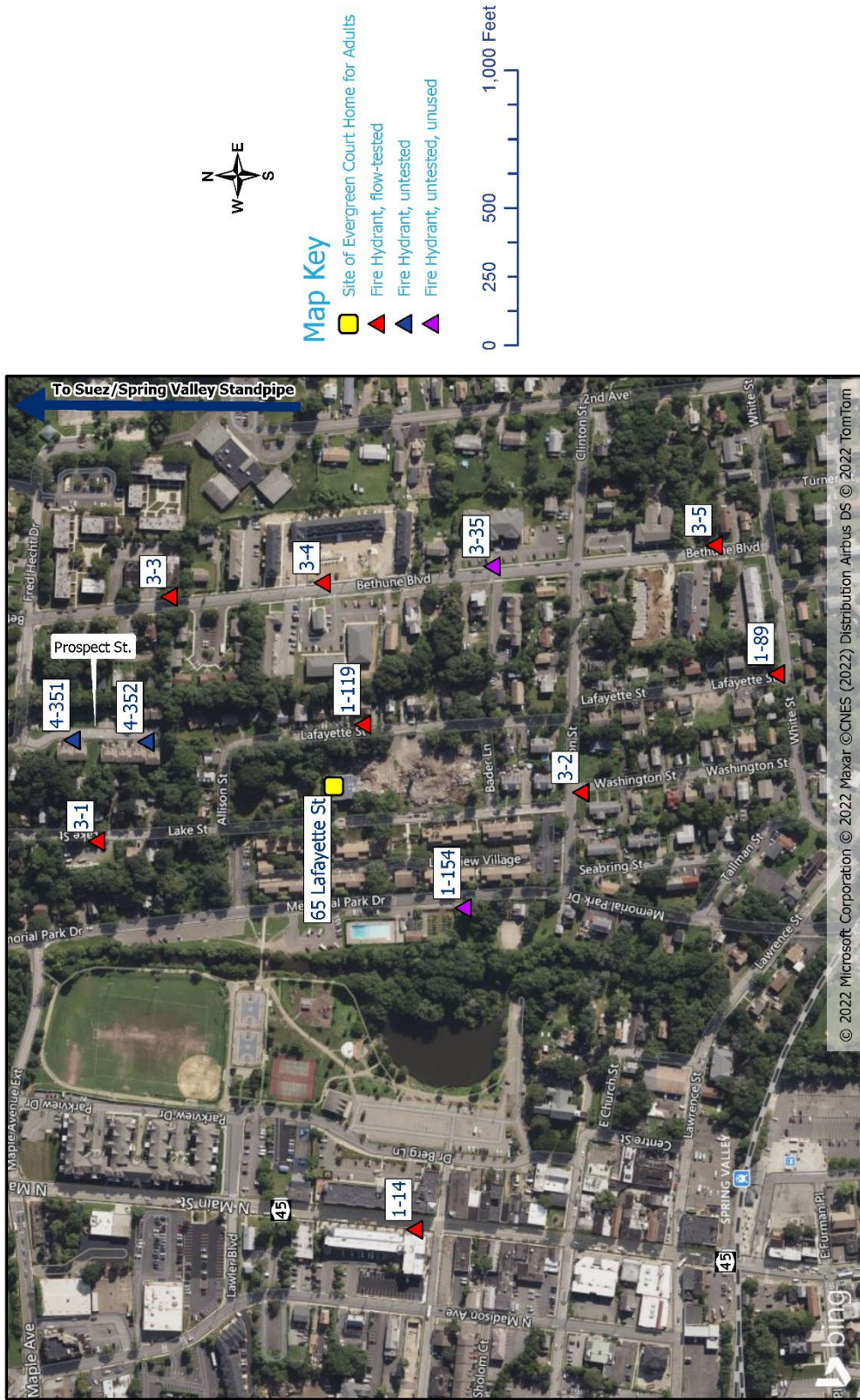
Hydrant 3-5 Nameplate which indicates the hydrant number – June 10, 2021



Hydrant 1-89 Flow Test – Water Consumption Demonstration – June 10, 2021

Appendix D – Village of Spring Valley Map

Spring Valley Map



This map was prepared for Matter Number: 21-00825

Appendix E – Rockland County Village of Spring Valley FOIL Requests and Subpoenas

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**VILLAGE OF SPRING VALLEY
200 NORTH MAIN STREET
SPRING VALLEY, NY 10977
PHONE: (845) 352- 1100 EXT: 106
FAX: (845) 352-1164**

APPLICATION FOR PUBLIC ACCESS TO VILLAGE RECORDS

THE BUILDING DEPARTMENT WILL RESPOND TO REQUESTS FOR VILLAGE RECORDS PERTAINING TO THE BUILDING DEPARTMENT WITHIN (5) BUSINESS DAYS OF RECEIPT OF APPLICATION. VILLAGE RECORDS ARE OPEN FOR INSPECTION MONDAY THROUGH FRIDAY BY APPOINTMENT.

I HEREBY APPLY TO OBTAIN COPIES/INSPECT THE RECORDS FOR THE FOLLOWING:

RECORD REQUIRED/DEPARTMENT

Copies of the building application for the Evergreen Court Home for Adults, located at 65 Lafayette, Spring Valley, NY.
Any records, including engineering reports, related to the fire protection requirements and needed fire flows for previous structures located at 65 Lafayette. Any communications regarding or determinations of building applications for 65 Lafayette.

NAME (PRINT): Joshua Gonyea

ADDRESS: 3 Empire State Plaza, Albany NY 12223

REPRESENTING: New York State Department of Public Service, Office of Electric, Gas and Water

SIGNATURE: *Joshua Gonyea*

PHONE #: (518) 408 - 1061 DATE OF REQUEST 6/23/2021

THERE IS A \$0.25 FEE PER PAGE FOR COPIES MADE- ALLOWED BY STATE LAW

BUILDING DEPARTMENT'S OFFICE USE ONLY

- REQUEST APPROVED
- REQUEST DENIED FOR THE REASONS CHECKED BELOW
 - NEED APPROVAL OF MAYOR
 - CONFIDENTIAL RECORD
 - INTERFERE WITH JUDICIAL PROCEEDINGS
 - UNWARRANTED INVASION OF PERSONAL PRIVACY
 - RECORD NOT LOCATED AFTER DILIGENT SEARCH
 - RECORD NOT MAINTAINED BY THIS AGENCY
 - DISCLOSURE COULD DANGER LIFE OR SAFETY OF A PERSON
 - EXEMPTED BY STATUTE OTHER THAN THE FREEDOM OF INFORMATION ACT
 - OTHER (SPECIFY) _____

OFFICIAL
SIGNATURE: _____ TITLE: _____ DATE: _____

NOTICE: YOU HAVE THE RIGHT TO APPEAL A DENIAL OF THIS APPLICATION TO THE HEAD OF THE DEPARTMENT. HE/SHE MUST FULLY EXPLAIN THEIR REASON FOR SUCH DENIAL IN WRITING WITHIN (7) DAYS OF RECEIPT OF THE APPEAL.

I HEREBY APPEAL: SIGNATURE: _____ DATE: _____

NOTIFIED: DATE: _____ TIME: _____ BY: _____ TO: _____

DISCLAIMER REGARDING FOILS FOR
BUILDING DEPARTMENT RECORDS

THE DOCUMENTS PROVIDED IN RESPONSE TO YOUR REQUEST ARE COPIES OF RECORDS THAT EXIST IN THE BUILDING DEPARTMENT'S FILES. PROVISION OF THESE DOCUMENTS DOES NOT CONSTITUTE A REPRESENTATION BY THE VILLAGE THAT A VALID CERTIFICATE OF OCCUPANCY IS CURRENTLY IN EFFECT, OR THAT THERE ARE NO VIOLATIONS AFFECTING THE SUBJECT PROPERTY.

I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ABOVE.

X Joshua Lanyea

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of the Acts,
Practices, and Adequacy of Water Pressure
Provided by SUEZ Water New York, Inc.

Number: 21-00825

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

To:


Rockland County
Office of Buildings and Codes
Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building A
Pomona, New York 10970

YOU ARE HEREBY COMMANDED, all business and excuses being laid aside, to appear and produce to the New York State Department of Public Service, 3 Empire State Plaza, Albany, New York, on April 7, 2022, at 11:00AM, all records, papers, documents, correspondence, and all other writings which you have in your custody or control, concerning the following:

1. Records pertaining to Evergreen Court Home for Adults, 65 Lafayette Street, Spring Valley, New York, including but not limited to, inspections, complaints, blueprints, fire protection requirements, fire suppression systems, fire flows, fire hydrants, water service requirements, building applications, and engineering reports.
2. Records and/or correspondence relating to the fire incident at Evergreen Court Home for Adults that occurred on or about March 23, 2021.

This subpoena is authorized and issued pursuant to New York Public Service Law (PSL) §19, and New York Civil Practice Law and Rules §2302(a). Failure to comply with this subpoena is punishable as a misdemeanor as provided for by PSL §19(2).

Dated: March 23, 2022
Albany, New York



Secretary to the Commission
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of the Acts,
Practices, and Adequacy of Water Pressure
Provided by SUEZ Water New York, Inc.

Number:
21-00825

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

TO:
Village of Spring Valley Building Department
200 North Main Street
Spring Valley, NY 10977
Care of: Diana Montgomery, Village Clerk
Fax: 845-956-6035 / 845-352-1164

YOU ARE HEREBY COMMANDED, all business and excuses being laid aside, to appear and produce to the New York State Department of Public Service, 3 Empire State Plaza, Albany, New York, on April 29, 2022, at 11:00AM, all records, papers, documents, correspondence, and all other writings which you have in your custody or control, concerning the following:

1. Records pertaining to Evergreen Court Home for Adults, 65 Lafayette Street, Spring Valley, New York, including but not limited to, inspections, complaints, blueprints, fire protection requirements, fire suppression systems, fire flows, water service requirements, building applications, permits, engineering reports, and fire hydrants.
2. Records and/or correspondence relating to the fire incident at Evergreen Court Home for Adults on or about March 23, 2021.

This subpoena is authorized and issued pursuant to New York Public Service Law (PSL) §19, and New York Civil Practice Law and Rules §2302(a). Failure to comply with this subpoena is punishable as a misdemeanor as provided for by PSL §19(2).

Dated: April 11, 2022
Albany, New York



Secretary to the Commission
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223



Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore
Commissioners

May 27, 2022

Via E-mail and U.S. Mail:

Thomas M. Mascola
Village Attorney's Office
Village of Spring Valley
200 North Main Street
Spring Valley, NY 10977
tmascola@villagespringvalley.org

Re: Matter 21-00825 – SUEZ Investigation – Response to Subpoena Duces Tecum

Dear Mr. Mascola:

On April 28, 2022, the Village of Spring Valley provided a response to a subpoena duces tecum issued by the Secretary to the Public Service Commission on March 23, 2022. Thank you for your response to the subpoena. The subpoena requested:

1. Records pertaining to Evergreen Court Homes for Adults, 65 Lafayette Street, Spring Valley, New York, including but not limited to, inspections, complaints, blueprints, fire protection requirements, fire suppression systems, fire flows, fire hydrants, water service requirements, building applications, and engineering reports.
2. Records and/or correspondence relating to the fire incident at Evergreen Court Home for Adults that occurred on or about March 23, 2021.


The Village's response to the Department's subpoena contained approximately 67 pages of voucher reports and certain invoices for hydrants and water service provided by SUEZ Water New York, Inc. The Village's response was non-responsive to any of the specific demands contained in the March 23, 2022, subpoena. As such, please find attached a new subpoena provided as a courtesy so that the Village has sufficient time to properly respond to the subpoena.

Should the Village possess any responsive documents to which the Village did not or does not wish to disclose provide a detailed privilege log describing each responsive document and the associated reason(s) the Village seeks to withhold each document. In the alternative,

should the documents sought in the subpoena not exist provide a signed and notarized affidavit by a custodian of such records describing if the documents ever existed and why they cannot be provided, and/or if the documents ever existed in the first instance.

Should you have any questions as to how to properly respond to this subpoena please contact Nicholas Forst at 516-490-2325 or Nicholas.Forst@dps.ny.gov with any questions. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Forst', written in a cursive style.

Nicholas Forst
Assistant Counsel

cc: John Sipos, Deputy General Counsel, Director OIE
David Rossi, Deputy Director OIE
Dennis DiBari, Chief OIE

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of the Acts,
Practices, and Adequacy of Water Pressure
Provided by SUEZ Water New York, Inc.

Number:
21-00825

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF NEW YORK

TO:


Village of Spring Valley Building Department
200 North Main Street
Spring Valley, NY 10977
Care of: Diana Montgomery, Village Clerk
Fax: 845-956-6035 / 845-352-1164

YOU ARE HEREBY COMMANDED, all business and excuses being laid aside, to appear and produce to the New York State Department of Public Service, 3 Empire State Plaza, Albany, New York, on June 17, 2022, at 11:00 a.m., all records, papers, documents, correspondence, and all other writings which you have in your custody or control, concerning the following:

1. Records pertaining to Evergreen Court Home for Adults, 65 Lafayette Street, Spring Valley, New York, including but not limited to, inspections, complaints, blueprints, fire protection requirements, fire suppression systems, fire flows, water service requirements, building applications, permits, engineering reports, and fire hydrants.
2. Records and/or correspondence relating to the fire incident at Evergreen Court Home for Adults on or about March 23, 2021.

This subpoena is authorized and issued pursuant to New York Public Service Law (PSL) §19, and New York Civil Practice Law and Rules §2302(a). Failure to comply with this subpoena is punishable as a misdemeanor as provided for by PSL §19(2).

Dated: May 27, 2022
Albany, New York



Secretary to the Commission
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223



Department of Public Service

Public Service Commission

Rory M. Christian

Chair and
Chief Executive Officer

Diane X. Burman

James S. Alesi

Tracey A. Edwards

John B. Howard

David J. Valesky

John B. Maggione

Commissioners

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

November 29, 2022

Via Electronic Mail

Ryan Sweeney Esq.,
Senior Assistant District Attorney
1 South Main Street, Suite 500
New City, New York 10956-3549
sweeneyr@rocklandda.org

Re: Matter 21-00825 - In the Matter of the Investigation of the Acts, Practices, and Adequacy of Water Pressure Provided by SUEZ Water New York, Inc.

Dear Ms. Sweeney:

Pursuant to Judiciary Law §255, the Department respectfully requests public records pertaining to the Rockland County District Attorney's office investigation of and allegations against the following criminal defendants:

- Ballard, Wayne, IND-70403-21, Rockland County Court - Criminal Term
- Canario, Raymond, IND-70158-22, Rockland County Court - Criminal Term
- Canario, Raymond, IND-70401-21, Rockland County Court - Criminal Term
- Kerr, Denise, IND-Unavailable, Rockland County Court - Criminal Term
- Lema, Manuel, IND-Unavailable, Rockland County Court - Criminal Term
- Sommer, Nathaniel, IND-70294-21, Rockland County Court - Criminal Term
- Sommer, Aaron, IND-70294-21, Rockland County Court - Criminal Term

Documents should include but not be limited to any charges, indictments, statement of facts, motions, or other public documents filed with the Rockland County Clerk's Office in these matters. Should you have any questions or concerns please do not hesitate to contact me. Thank you.

Sincerely,

Nicholas Forst,
DPS Assistant Counsel

CC: David Rossi, DPS Deputy Director OIE
John Sipos, DPS Director OIE



Department of Public Service

Public Service Commission

Rory M. Christian

Chair and
Chief Executive Officer

Diane X. Burman

James S. Alesi

Tracey A. Edwards

John B. Howard

David J. Valesky

John B. Maggiore

Commissioners

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

December 13, 2022

Via Electronic Mail

Thomas Humbach, Esq.,
Rockland County Attorney
11 New Hempstead Rd,
Pomona, NY 10956
HumbachT@co.rockland.ny.us

Jeanne Gilberg Esq.,
Counsel to the Office of the Sheriff of
Rockland County
55 New Hempstead Road
New City, NY 10956
GilbergJ@co.rockland.ny.us

Re: Matter 21-00825 - In the Matter of the Investigation of the Acts, Practices, and Adequacy of Water Pressure Provided by SUEZ Water New York, Inc.

Dear Mr. Humbach & Ms. Gilberg:

Pursuant to Judiciary Law §255 and Rockland County Code §329-11, the Department respectfully requests records pertaining to fire at the Evergreen Court Home for Adults, located at 65 Lafayette Street, Spring Valley, New York, 10977, which occurred on or about March 23, 2021, including but not limited the following:

- 44 Control, Fire Dispatch, and/or 911 emergency recordings regarding emergency services response to fire located at 65 Lafayette Street, Spring Valley, New York, 10977.
- Any and all reports pertaining to the origin and/or cause of the fire at the Evergreen Court Home for Adults, located at 65 Lafayette Street, Spring Valley, New York, 10977.

Records should include but not be limited to those held or maintained by the Rockland County Law Department, Clerk's Office, Rockland County Sheriff's Office, or the Rockland County Office Fire and Emergency Services. Should you have any questions or concerns please do not hesitate to contact me. Thank you.

Sincerely,

Nicholas Forst,
DPS Assistant Counsel

CC: David Rossi, DPS Deputy Director OIE
John Sipos, DPS Director OIE

From: [Gilberg, Jeanne](#)
To: [Forst, Nicholas \(DPS\)](#)
Cc: [Humbach, Thomas](#); [George, Sheela](#)
Subject: FW: Evergreen
Date: Tuesday, December 20, 2022 9:54:42 AM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Nick,

As I suspected, based on the ongoing Evergreen investigation, it is the Rockland County DA's (DA) position that the release of the requested records would interfere with the DA's pending prosecution of the defendants' cases. According to Supervising ADA Ryan Sweeney, she has spoken to you regarding the request DPS made to the DA for other documents and made you aware of the Article 78 proceeding currently pending before Hon. Thomas Zugibe relating to the disclosure of the records of the investigation of the Evergreen fire by the NY Office of Fire Prevention and Control. The DA provided a letter to the Assistant Attorney General representing OFPC in that case stating its opposition. Essentially it states that it is the DA's position that any public disclosure of records that encompasses potential trial evidence in their case would potentially impact upon the prosecution of the case. It is their position that DPS's request for the documents your office requested, relating to the origin and cause of the fire and the 44 control/dispatch records would fall into this category of trial evidence.

Jeanne

Jeanne Gilberg

Principal Assistant County Attorney
Office of the County Attorney
Allison – Parris County Office Building
11 New Hempstead Rd., 3rd Floor
New City, NY 10956
(845) 638-5178
Fax- (845) 638-5676
[Counsel for Office of Rockland County Sheriff](#)
[\(845\) 638-5407](#)
Cell-917-626-0608