Effective 7/1/99
First Amendment 5/3/02

New York City Water Board

Regulation Number 2

The Discontinuance of Water Supply and/or Sewer Service Because of Nonpayment

Effective July 1, 1999, Second Amendment November 9, 2007

Statement of Basis and Purpose

The regulation is authorized by Sections 1045-h(8) and 1045-j(5) of the New York Public Authorities Law, which provide that the rules and regulations of the New York City Water Board (the "Board") may provide for the discontinuance or disconnection of the supply of water or the provision of sewerage service, or both, for nonpayment of charges imposed by the Board.

The regulation authorizes the New York City Department of Environmental Protection ("DEP") to terminate water and sewer services to customers because of nonpayment of assessed charges. The regulation sets forth the conditions under which DEP may terminate service, the notice requirements to which DEP shall adhere, the days of the week and the times of day during which DEP may terminate service, special procedures to be followed in the case of medical emergencies and the procedures for avoiding service termination by making payment of, or entering into a payment agreement covering all delinquent charges.

The regulation is intended to assist in the collection of delinquent water and sewer charges and to benefit water and sewer ratepayers by improving system collection rates. It provides the Board with a further mechanism - - - the ability to terminate service- - - to enforce collection of such charges. While fully intended to supplement (and not to replace) the Board's other rights and remedies in the event of nonpayment, the ability to terminate service is a useful mechanism to secure payment of delinquent charges. Most water utilities have shut-off regulations as an integral part of their enforcement policy. Water utilities with high collection rates tend to use shut-offs more frequently than utilities with lower rates.

This regulation was considered at a public hearing held on June 17, 1999, and was approved by the New York City Water Board at its meeting of June 22, 1999. Subsequently, a First Amendment was approved in May 2002, which lowered the dollar amount and delinquent period thresholds that determine an account's eligibility for enforcement by means of service termination. The significant purposes of this Second Amendment are: to shorten the required notice period before service may be terminated;

further lower the dollar amount and delinquent period thresholds determining an account's eligibility for service termination because of non-payment; revise the cold weather period during which DEP will consider special circumstances before conducting service terminations replacing the fixed period of November 1 to April 15 with December 21 to the last day of February of any year and at other times subject to the approval of the Commissioner of DEP considering temperature and health and safety conditions; simplify the Termination Complaint procedure to define a single process which shall apply to any customer subject to service termination because of non-payment; delete the Newborn Baby exception as a circumstance requiring Special Procedures.

Regulation Number 2
The Discontinuance of Water Supply and/or Sewer Service Because of Nonpayment

Section 1. Definitions

As used in this Regulation, the following terms shall have the respective meanings ascribed to them below:

(1) "Board" shall mean the New York City Water Board.

(2) "City" shall mean The City of New York.

(3) "Customer" means a current property owner or Authorized Representative of a property owner.

(4) "Authorized Representative" means any individual or organization who has an original 'Letter of Authorization' ("LOA") on file with DEP, signed by the owner of the premises and notarized, designating that individual or organization as the Authorized Representative. If such LOA fails to state a specific end date, DEP will deem it to expire one year from the date of notarization. A valid Letter of Authorization must contain a statement that the owner hereby rescinds any previously issued LOA. In cases where an owner has authorized multiple representatives, DEP shall deem the latest dated LOA to be valid, superseding any earlier dated LOA.

(5) "Days" unless otherwise stated shall mean calendar days.

(6) "DEP" shall mean the New York City Department of Environmental Protection.

(7) "Delinquent charges" shall mean fees, rents or other charges imposed by the Board on a customer's account for the supply of water and/or the provision of sewer service, which remain open and unpaid after the due date thereof.

(8) "Nonpayment" shall mean the failure or refusal, by a customer, to pay any fees, rents or other charges imposed by the Board on such customer's account for the supply of water and/or the provision of sewer service, on or before the same are due, thereby rendering such fees, rents or other charges delinquent charges.

(9) "Termination of service", "Terminate Service", 'Terminate", and all such similar word forms shall mean the discontinuance or disconnection of the supply of water and/or the provision of sewer service to any customer.

Section 2. General

2.1 Authorization to Terminate Service. DEP may, and it is hereby authorized by the Board, to terminate the supply of water and/or the provision of sewer service to any customer for nonpayment, in such circumstances as are specified in, and subject to the requirements of, this Regulation.

2.2 No Alteration of Rights, Powers and Privileges of DEP and Board. Nothing contained herein shall be deemed to alter, amend or modify the rights, powers, or privileges of DEP or the Board otherwise conferred by law, or to subject DEP or the Board to the jurisdiction of any other governmental agency, authority, board, bureau, department or other body with respect to any termination of service.

2.3 Termination in Addition to Other Remedies. Anything in this Regulation to the contrary notwithstanding, termination of service shall be in addition to, and not in lieu of, any other right or remedy available to DEP or the Board in respect of delinquent charges, including (without limitation) the imposition of a lien on real property to the extent permitted by applicable law.

2.4 Unless otherwise specified, delivery of notices as provided herein shall be made by regular mail.

Section 3. Termination of Service

3.1 Classes of Accounts where Service May be Terminated. Subject to Section 4 below, service may be terminated for all classes of accounts if there exists:

(i) At least one delinquent charge open and unpaid for at least six months and total delinquent charges amount to at least $500.00, or

(ii) At least one delinquent charge open and unpaid for at least three months and total delinquent charges amount to at least $5,000.00, or

(iii) Any installment payment agreement entered into by a customer with DEP or the Board that is in default.

DEP may, but shall not be obligated to, establish additional criteria within each such class of account, to further prioritize and select accounts where service will be terminated. Such criteria may include, but shall not be limited to: the dollar amount of delinquent charges; the length of time the delinquent charges have remained open and unpaid; the expected effectiveness and cost of other collection methods; the type of property which is

receiving service; the current use of such property; and the eligibility of such property for inclusion in any program for the sale or other transfer of liens held by the Board as security for the payment of delinquent charges.

3.2 Notice of Termination. (a) Except as provided in Sections, 3.4(g), 4.3 and 6.3 below, prior to any termination of service under this Regulation, DEP shall, at least fifteen (15) days prior to the earliest date on which DEP will effect such termination of service, serve a written notice of termination on the following parties:

(i) the subject customer; and

(ii) the owner of the premises which will be affected by such termination of service.

DEP shall also affix a copy of such notice on the entranceway of the premises served. Such notice in every case shall be served either personally on the person, firm or corporation to which it is directed, or by mailing the same via overnight mail to such person or entity. In the case of service on the owner of the affected premises, DEP shall be entitled to rely on the name and address of the record owner as reflected in the records of the New York City Department of Finance, as of the date the notice is served. In the case of service on the customer in the event the customer is not the owner, DEP shall be entitled to rely on the billing name and address of the customer as registered in DEP's records.

(b) Each notice served pursuant to Section 3.2(a) above shall clearly state and include:

(i) the earliest date on which termination of service may occur;

(ii) the reasons for termination of service, including the total amount required to be paid to the Board to avoid termination of service, and the date by which such payment must be made;

(iii) a description of the actions which the customer must take to avoid termination of service;

(iv) the address and telephone number of a DEP representative that the customer may contact in reference to the subject account;

(v) a description of the procedures specified in Section 4 below, which are available to the customer to register a complaint about the subject account, and to have such complaint considered before termination of service;

(vi) a summary of the exceptions set forth in Section 5 below, together with a notice that any customer eligible for any such exception should contact DEP at the telephone number indicated;

(vii) a statement that any payment of charges due with a check or draft that is subsequently dishonored does not constitute payment, and shall entitle the Board and DEP to terminate service on the account without further demand or notice;

(viii) an opportunity to enter into an installment payment agreement with DEP; the terms and conditions of such an agreement are described more fully in Section 6 of this Regulation; and

(ix) a description of the process for service restoration.

(c) The total amount specified in any notice of termination as being required to be paid to avoid termination of service may include all delinquent charges then open on the subject customer's account.

3.3 Additional Notice for Multiple Dwellings. If any termination of service would result in the discontinuation of water service to an entire multiple dwelling (as defined in the New York Multiple Dwelling Law or the New York Multiple Residence Law), DEP shall, in addition to serving the notice required by Section 3.2(a) above, also post and/or mail all additional notices required under Section 116 of the New York Public Service Law, in the manner specified in such Section.

3.4 Physical Termination of Service.

(a) DEP shall effect terminations of service only on the days of the week and during the times of day permitted under Section 89-b of the New York Public Service Law.

(b) DEP shall verify, on the day termination of service is scheduled to take place, that payment on the subject account, in the full amount required to avoid termination of service, has not been posted to the account as of 9:00am on such day.

(c) DEP shall not terminate service on a date which is more than ninety (90) days after the date of service of the related notice of termination required under Section 3.2 above, unless it has, since such date of service, issued a new notice of termination in the manner required by Section 3.2 above.

(d) Prior to the time that termination is to take place, DEP shall discontinue termination of service if (i) the customer files a Termination Complaint with DEP with respect to any charges giving rise to such termination, (ii) such complaint is received after service of, and in the manner specified in, the related notice of termination, and (iii) such complaint remains under consideration by DEP, provided that this shall not prevent DEP from terminating service for nonpayment of any undisputed charges, including but not limited to undisputed charges subject to an executed Payment Agreement.

(e) At the time that termination of service is to take place, DEP shall discontinue termination of service if,

(i) the customer claims that payment in full of all delinquent charges giving rise to the termination has been made, and produces a written record of payment, or

(ii) the customer asserts that a Termination Complaint with respect to the subject account was filed with the Executive Director of the Board in accordance with Section 4 hereof, provided that in each case a DEP representative is able to verify after reasonable efforts that the customer has in fact filed a Termination Complaint and that a response has not yet been issued by the Executive Director.

(f) DEP shall discontinue termination of service if, at the time that termination of service is to take place, the customer offers to immediately pay, and does immediately pay to DEP, the full amount demanded in the related notice of termination. DEP shall be entitled in such circumstances to require that payment be made by postal money order, certified check, or such other form of payment as may be acceptable to DEP, at a location that is acceptable to DEP.

(g) DEP shall discontinue termination of service if at the time that termination of service is to take place, the customer offers to enter into a payment agreement, in accordance with the provisions of Section 6 hereof, provided that, the customer immediately goes to a location as directed by DEP and promptly executes such agreement, in form and substance satisfactory to DEP, and pays the initial down payment specified therein by postal money order, certified check or such other form of payment as may be acceptable to DEP at the time of execution. If the customer indicates a willingness to accept an payment agreement and thereafter fails or refuses to execute such agreement and/or pay the down payment or initial installment specified therein, DEP may proceed to terminate service without further demand or notice.

(h) Anything in this Regulation to the contrary notwithstanding, whenever, pursuant to Sections 3.4(d), (e), (f) or (g) above, DEP is obligated or elects to discontinue termination of service to a customer in respect of certain delinquent charges, nothing contained herein shall prevent or prohibit DEP from terminating service to such customer, in accordance with this Regulation, in respect of any other fees, rents or charges owing to the Board for the supply of water or the provision of sewer service (that is, fees, rents or charges other than those giving rise to the termination which has been discontinued).

Section 4. Termination Complaints

4.1 If a customer receiving a notice of termination wishes to register a complaint about the subject account, with regard to the charges giving rise to such notice of termination (any such complaint being referred to as a "Termination Complaint"), such customer shall observe the procedures set forth in Section 4.2 below in registering such complaint.

4.2 The customer shall be afforded the opportunity to seek resolution of their Termination Complaint. A Termination Complaint must:

(a) be submitted in writing;
(b) include the identification of the property (street address, account number, or borough, block and lot number) and charge or charges that the customer is disputing and a statement of the reason or reasons why the Customer believes the charges are incorrect;
(c) include a return address other than a Post Office Box address;
(d) include a fax number and e-mail address, if available;
(e) be addressed to and received by the Executive Director of the Board within five (5) business days of receipt of the subject notice of termination issued by DEP.

DEP may not terminate service earlier than five (5) business days after a determination in respect of a Termination Complaint has been issued by the Executive Director. Such determination shall be sent by overnight mail to the address specified in 4.2(c) above. In the event that such determination is not decided in favor of the customer, DEP shall affix a notice to the entranceway of the premises served at least five (5) business days prior to termination.

4.3 The failure by a customer to comply with all provisions of Section 4.2 may be deemed by DEP to constitute a failure by the customer to avail himself of the

Termination Complaint procedures and upon DEP notifying the customer that their Termination Complaint is incomplete shall entitle DEP to terminate service on the account without further demand or notice no earlier than five (5) business days after such notice of an incomplete Termination Complaint has been issued by DEP via overnight mail.

Section 5. Termination of Residential Service - Special Procedures

5.1 Significant Medical Conditions. DEP shall not terminate or refuse to restore service to a residential premises when DEP is notified in accordance with this Section that a significant medical condition exists and such condition would be aggravated by a termination of service. A significant medical condition exists when a resident of such premises suffers from a serious illness or medical condition that severely affects his or her well-being. The customer or such resident shall provide written certification by a licensed medical doctor, licensed nurse practitioner or the New York City Department of Health and Mental Hygiene ("NYCDOHMH") that termination of service or failure to restore service will aggravate an existing significant medical condition suffered by a resident of the premises.

5.2 Procedures for Initial Certification.

(a) Initial certification of a significant medical condition may be made to DEP by a licensed medical doctor, licensed nurse practitioner or the NYCDOHMH either in writing or by telephoning the Deputy Commissioner, Bureau of Customer Services.

(b) Initial certification is effective for 30 calendar days from the date DEP receives it.

(c) If the initial certification is made by telephone, DEP must receive a written certification from the licensed medical doctor, licensed nurse practitioner or the NYCDOHMH within five (5) business days or the initial certification by telephone will be void.

(d) Within five (5) business days of receipt of written certification, DEP shall provide the customer and such resident with a written notice that:

(i) DEP received such certification and such certification is effective for 30 calendar days;

(ii) advises the customer and such resident of the procedures required for renewal of certification, including specifically a statement that if the customer or such resident does not renew the certification before the 30-day period expires and

arrangements for payment acceptable to DEP are not made, DEP may proceed with termination.

5.3 Procedures for Renewal of Certification.

(a) If the significant medical condition is likely to continue beyond the expiration of any written certification, the certification may be renewed, provided that before the expiration of the initial certification a licensed medical doctor, licensed nurse practitioner or official of the NYCDOHMH submits a new written certification that also states the expected duration of the significant medical condition and explains the reasons why termination of service would aggravate the significant medical condition.

(b) A renewed certification remains in effect for 30 calendar days, except for cases certified as chronic by a licensed medical doctor, licensed nurse practitioner or official of the NYCDOHMH. Such renewed certification for those chronic cases shall be in effect for 60 calendar days or longer if documentary evidence supports such longer period. Any request for a renewed certification shall be made in writing to the Deputy Commissioner, Bureau of Customer Services, who shall be authorized to approve such longer period stating any special conditions to be met by the customer.

(c) DEP may only terminate service to a customer who has submitted a certification of a significant medical condition after written notice, sent via overnight mail, has been provided to the customer and if applicable, such resident, of DEP's determination that the certification of a significant medical condition is no longer in effect. In such instances, DEP shall affix a notice to the entranceway of the premises served at least five (5) business days prior to termination.

5.4 Customers or Residents who are Elderly, Blind or Disabled. DEP shall not terminate or refuse to restore service to a residential premises where the customer or any other remaining residents of the households are known or identified to DEP as being blind, disabled, 62 years of age or older, or 18 years of age or under, without complying with the procedures set forth in this section.. (a) Procedure Before Termination Of Service: In cases where DEP has been made aware that a resident or residents of a residential premises meets the conditions Section 5.4 above, (i) DEP shall make an effort as set forth in Section 5.4(d) to contact personally an adult resident at the subject premises at least 72 hours before termination of service to attempt to secure an agreement that would avoid termination and arrange for payment of the outstanding charges; (ii) where efforts at personal contact are unsuccessful or where DEP and a customer are unable to reach an agreement,

DEP shall notify the NYC Human Resources Administration/Department of Social Services ("NYCHRA") of the name and address of the customer and if applicable, such resident, and the date of termination so that such office may ascertain if the customer and if applicable, such resident, is eligible for any assistance. DEP must continue service for at least 15 business days after providing this notice, unless notified by such office that other arrangements have been made.

(b) Procedures After Termination Of Service: (i) in cases where service has been terminated and DEP is later notified that the customer should have received the protections under this Section 5.4, DEP shall make an effort as set forth in Section 5.4(d) to contact personally an adult resident at the subject premises, within 24 hours of such notification, to attempt to secure an agreement that would restore service and arrange for payment of outstanding charges; and (ii) where efforts at personal contact are unsuccessful or where the DEP and the customer are unable to agree on an agreement, notify the NYCHRA of the name and address of the customer and if applicable, such resident, and the date of termination so that such office may ascertain if the customer and if applicable, such resident, is eligible for any assistance.

(c) In cases where DEP has terminated service consistent with the provisions of this Section, DEP shall make an effort as set forth in Section 5.4(d) to contact personally an adult resident at the subject premises within 10 calendar days after termination, to determine whether alternative arrangements have been made for the provision of service and, if none have been made, attempt to secure an agreement that would restore service and arrange for payment of outstanding charges.

(d) For purposes of this section, when DEP is required to make an effort to contact personally an individual, DEP must:

(i) attempt to call such person once between 9:00am and 5:00pm and if unsuccessful, twice between 6:00 p.m. and 9:00 p.m. on weekdays or 9:00 a.m. and 5:00 p.m. on Saturdays and Sundays, if there is a telephone; and

(ii) make an onsite personal visit, if there is no telephone or if telephone contacts are unsuccessful.

5.5 Procedures During Cold Weather Periods for Premises with Heat-Related Service. During cold weather periods, before terminating water service to any residential premises with heat-related service, DEP shall first make an attempt to determine whether a resident of the subject premises may suffer serious impairment to health or safety as a result of termination, in accordance with the procedures set forth

below. Doubts as to whether a person may suffer serious impairment to health or safety as a result of termination must be resolved in favor of making such a finding. As used in this Section 5.5, the following terms shall have the respective meanings assigned to each below:

(i) A "cold weather period" shall mean that period of time from December 21 to the last day of February of any year and at such other times subject to the approval of the Commissioner of DEP considering temperature and health and safety conditions.

(ii) "Heat related service" shall mean water service which is necessary for the on-going operation of a customer's primary heating system.

(a) For the purposes of this Section 5.5, a person may suffer serious impairment to health or safety as a result of termination when there is evidence of any of the following:

(i) dependency on such service due to age, poor physical condition or mental incapacitation;

(ii) use of life support systems;

(iii) serious illness; or

(iv) disability or blindness.

(b) Procedures: DEP shall not terminate service to customers known to be receiving heat-related service during cold weather periods, unless DEP has made an effort as set forth in Section 5.4(d) to contact personally the customer or an adult resident at the subject premises at least 72 hours before the intended termination, and if unsuccessful, at the time of termination, in order to determine whether a resident may suffer a serious impairment to health or safety as a result of termination, to fully explain the reasons for termination and to provide the customer with information on the protections available under this Section 5.5.

(c) Where DEP determines that a resident may suffer a serious impairment to health or safety as a result of termination, DEP shall not terminate service unless:

(i) DEP notifies the NYCHRA orally and in writing within five business days of an intended service termination, that a resident may suffer a serious impairment to health or safety as a result of termination; and

(ii) Such office, after an investigation, informs DEP that the reported condition is not likely to result in a serious impairment to health or safety, or that an alternative means for protecting the person's health or safety has been arranged.

(iii) If DEP has notified such office under subparagraph (i), it must inform the customer of the referral and explain its purpose.

(d) Termination of Service

(i) If DEP terminates service to a customer under this Section 5.5, and the customer or an adult resident of the subject premises was not personally contacted by DEP before termination of service and the customer has not contacted DEP for the purpose of requesting reconnection before 12 noon on the day following termination of service, DEP must, by onsite personal visit with the customer or other adult resident, immediately attempt to determine whether there is continuing occupancy and whether a serious impairment to health or safety may result of service remains terminated. If DEP determines that a serious impairment to health or safety may result, it must immediately restore service. If DEP is unable to make an onsite personal visit with the customer or an adult resident, and does not have reasonable grounds to believe that the premises have been vacated, DEP must immediately refer the name and address of the customer to the NYCHRA.

(ii) If DEP discovers that a premises water supply and/or wastewater service lines and/or appurtenances do not comply with City regulations governing such service lines and appurtenances, DEP may decide to terminate service to a residential premises because of an unsafe water supply or public health condition arising out of such non-compliant service lines and equipment. DEP shall determine, in accordance with this Section, whether a resident of the subject premises may suffer a serious impairment to health or safety as a result of termination. If DEP determines that a resident may suffer a serious impairment, it must follow the procedures set forth in subdivisions (b) and (c) above; provided however, that continued service is not required if it is impractical for DEP to eliminate such unsafe condition. In any cases where a resident of the subject premises may suffer a serious impairment to health or safety and DEP terminates service to preclude the continuation of an unsafe condition, DEP shall notify the NYCHRA on the same day service is terminated and request an immediate consideration of the case.

Section 6. Payment Agreement.

6.1 General. DEP shall offer each customer issued a notice of termination a payment agreement in lieu of immediate payment of the full amount demanded by such notice. Execution of such an agreement by a customer and DEP in accordance with the terms set forth herein will enable the customer to avoid termination of service provided that the customer shall, at all times, remain in full compliance with all terms of such Agreement. Each offer of an payment agreement shall: inform the customer of the availability of an agreement; state the minimum terms which would be accepted by DEP in such agreement; explain any alternate terms that may be available; state the date by which the customer must contact DEP and execute an agreement in order to avoid termination of service; indicate the name and telephone number of a DEP representative that the customer may call to discuss an agreement; state what action DEP will take if an payment agreement is not executed and returned by its due date.

6.2 Terms of Agreement. Any such payment agreement shall set forth:

(a) the total amount and dates of the delinquent charges covered by such agreement;

(b) the time period over which such total amount shall be paid;

(c) the number, due date and amount of each periodic payment due under the agreement;

(d) the amount of the required down payment or initial installment, which shall be an amount up to fifty percent (50%) of the total amount covered by the agreement, and shall be due and payable upon execution of the agreement by the customer; and

(e) the interest rate to be charged on the unpaid balance under the agreement, which shall be equal to the interest rate authorized by the New York City Water Board Water and Wastewater Rate Schedule then in effect.

6.3 Reservation of Rights to Terminate. Anything in this Regulation to the contrary notwithstanding including but not limited to Section 3.1(iii) and Section 6.2(d), DEP reserves the right to terminate service to any customer who/which has executed a payment agreement in response to a notice of termination forthwith provided that DEP shall issue a notice of default to the owner by overnight mail and affix a notice to the entranceway of the premises served five (5) business days before termination of service, if the customer fails to pay any installment or other amount owing under such payment agreement when the same is due including but not limited to fees, rents or charges subsequent to such payment agreement. .

Section 7. Other

7.1 Fee for Termination of Service and for Reconnection.

(a) The Board may establish, and may from time to time revise, fees to be charged to customers in connection with (i) any termination of service to a customer under this Regulation, and (ii) for any restoration of service to such customer. Such fees shall be due and payable to the Board respectively thirty (30) days after termination of service is effected, and thirty (30) days after service is restored. If any such fee is not paid when due, it shall, to the fullest extent permitted by law, become a lien and charge against the subject real property.

(b) Once service is terminated pursuant to this Regulation, it shall not be restored unless and until any outstanding fees owing to the Board for termination of service, or for the restoration of service, shall have been paid to the Board in full.

Section 8. Public Service Law

8.1 In accordance with the requirements of the New York City Municipal Water Finance Authority Act, all terminations of service shall be carried out in accordance with the provisions of Subdivisions three-a, three-b and three-c of Section 89-b and Section 116 of the Public Service Law, as applicable.