

Effective July 1, 2002

New York City Water Board

Regulation Number 3

Discontinuance of Water Supply and/or Sewer Service for Denial of Access

Effective July 1, 2002

Statement of Basis and Purpose

This regulation is authorized by Sections 1045-(g) 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.

Pursuant to an Agreement of Lease, dated as of July 1, 1985, as amended (as so amended, the “Lease”), between the City of New York (the “City”) and the Board, the City leased its water system and sewerage system to the Board. The Lease provides that the City shall continue to operate and maintain such systems, and to enforce the rules and regulations of the Board and of the City relating to the use thereof. This function is performed by the New York City Department of Environmental Protection, an executive agency of the City (“DEP”).

This regulation authorizes DEP to terminate water and sewer services to customers that fail to facilitate DEP access to their premises. 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 an owner to avoid service termination by facilitating access sufficient to enable DEP to read, inspect, repair or replace meters or remote readable equipment.

This regulation is intended to assist DEP in gaining access to premises where water and sewer customers regularly fail to provide access to their premises thereby preventing DEP from routinely inspecting their water meters and validating water and sewer charges. It is also critical that DEP obtain access for any other reason deemed necessary or appropriate for the proper operation and maintenance of the water and sewerage systems, or the exercise by DEP or the Board of their powers or duties under law, including, but not limited to the need to inspect, test, repair or replace meters that malfunction or stop registering.

I. Access for Regular Quarterly Meter Readings

Some water and sewer customers regularly fail to provide access to their premises, preventing DEP from routinely inspecting their water meters and validating their water and sewer charges.

The commercial relationship between water and sewer system customers and the New York City Water Board (the "Board") is based on the provision of service and the resultant obligation on the part of the customer to pay for such services. This obligation to pay is based on the amount of water consumed as registered by DEP's meters, which are situated on the customer's property. In order to avoid estimated charges, which may be too high or too low, DEP must gain access to the premises to validate meter readings. Actual meter readings allow DEP and the Water Board to accurately assess consumption, generate accurate bills and produce accurate account receivable figures. Accurate readings also encourage customer payments by reporting the actual amount of water consumed and the amount owed for such consumption.

In order to ensure access to premises receiving water/sewer services, the Board's Water and Wastewater Rate Schedule requires that owners facilitate access to the water meter(s) serving their premises at least once every twelve months. Should an owner fail to facilitate such access, DEP may issue a written notice to the record owner of the premises which will require the owner to arrange access for DEP within a fixed period of time as indicated in the Water Board's Rate Schedule. This notice will be sent by first class mail to the registered owner of the premises and any party registered to receive 3rd party notification or copies of quarterly bills or delinquency notices. If access has not been provided by the expiration date set forth in the written notice, the account will be subject to the imposition of a non-refundable charge for failure to provide access. The charge is based on administrative costs incurred in notifying customers of the impending charge and in scheduling and performing a meter inspection that may not coincide with a regularly scheduled meter reading. The Water Board's annual Rate Schedule will specify the amount of this charge, which is currently anticipated to be \$50, subject to future modifications.

The bill containing the non-refundable surcharge will be sent by first class mail to the record owner of the premises and shall include an additional written notice again requiring the owner to arrange for access within a fixed period of time. Such Notice will advise the owner that if access still is not provided by the expiration of the fixed period stated in this second notice, DEP shall issue a 45-day Termination of Service Notice for the premises. If access is not provided by the date set forth in the 45-day Notice, DEP may terminate and discontinue water service to the premises in accordance with this Regulation Number 3.

This Regulation, combined with the \$50 charge imposed for the initial failure to provide access, will replace the second paragraph of Section 3 of the Board's FY2002 Rate

Schedule, which establishes an annual surcharge of 100% of the last annualized meter charge when a customer refuses to permit the installation, repair, replacement or inspection of either a meter, a remote reading device or a water-consuming fixture. The existing language provides a financial deterrent for failing to facilitate access, but does not guarantee that DEP will have access to the premises. A rule leading to service termination will ensure compliance in almost all cases.

A chronic failure to provide access or the affirmative denial of access permits a reasonable inference that a theft of services may be occurring. In such circumstances, equity and fairness to other system customers require strong measures to end any such improper activity. An owner can avoid all adverse actions by simply arranging access to the property's water meter(s) in a timely manner.

II. Access on Demand for Cause

DEP may require access on demand for cause when necessary to inspect, test, repair or replace meters or remote meter reading devices that may be malfunctioning or have stopped registering. Malfunctioning meters also bear upon the accuracy of charges being assessed and, therefore, on the commercial relationship between the Board and the property owner. Access for cause is also necessary where meters are discovered to have been removed, disconnected or are missing. In these cases, DEP should be authorized to immediately issue a written notice to the record owner of the premises in accordance with the above provisions.

Nothing contained herein is intended to, nor should it be interpreted as, limiting any powers of DEP to protect the health, safety and welfare of the citizens of New York City by entering a premises without notice to prevent a contamination of the water system or other threat to the public health, safety and welfare, including, but not limited to, situations involving a cross-connection of a property's plumbing system or a leaking water consuming fixture, water supply or sewer transport pipe.

Regulation Number 3

The Discontinuance of Water Supply and/or Sewer Service Because of Denial of Access

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” shall mean any person or entity, including (without limitation) any individual, sole proprietorship, partnership, corporation, association or joint venture, to whom or for whose benefit the Board is supplying water and/or providing sewer service, and who has an account established with the Board for payment of charges associated with such water and/or sewer service.
- (4) “DEP” shall mean the New York City Department of Environmental Protection or any authorized agents of DEP.
- (5) “Denial of Access” shall mean a failure of the Customer to facilitate reasonable access during DEP working hours or other times agreed upon between the Customer and DEP to the premises sufficient to enable DEP to inspect, test, repair or replace a meter or a remote meter reading device.
- (6) “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 denial of access, 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.

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 the following classes of accounts:

- (i) Commercial and all other non-residential accounts;
- (ii) Residential accounts with one to five units; and
- (iii) Residential accounts with six or more units.

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 length of time the customer has failed to provide access to the premises; 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) DEP shall, at least forty-five (45) days prior to the earliest date on which DEP will effect termination of service pursuant to this Regulation, 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.

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 regular mail to such person, firm or corporation. 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.

- (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 a list of attempts to gain access;
 - (iii) a description of the actions required to facilitate DEP access to the premises that 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.

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 service terminations 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 the customer has not facilitated access to the meter serving the subject account as of the opening of business on such day.
- (c) DEP shall not terminate water service on a date which is more than ninety (90) days after the earliest date set forth for termination in the Notice of Termination required under Section 3.2 above, unless it has, since such notice, issued a new Notice of Termination in the manner required by Section 3.2 above.

- (d) DEP shall discontinue termination of service if, prior to the time that termination is to take place:
 - (i) the customer files a complaint with DEP, pursuant to section 4.2 herein, with respect to the denial of access 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 charges pursuant to Regulation Number 2, Discontinuance of Water Supply and Sewer Service for Non-Payment of Charges.

- (e) DEP shall discontinue termination of service if, at the time that termination of service is to take place:
 - (i) the customer has provided access to the meter servicing the subject account at a time and in a manner acceptable to DEP; or
 - (ii) the customer claims that a complaint with respect to the denial of access was filed with DEP after service of, and in the manner specified in, the related notice of termination, and that such complaint is still under consideration by DEP, provided that in each case the DEP field representative is able to verify after reasonable efforts on the date that termination is to take place that the claim made by the customer is correct.

- (f) DEP shall discontinue termination of service if, at the time that termination of service is to take place, the customer immediately facilitates sufficient access to the meter servicing the subject account to DEP.

Section 4. Complaints

- 4.1 If a customer receiving a Notice of Termination wishes to register a complaint about the Denial of Access claim giving rise to such notice, such customer shall observe the procedures set forth in this section.

- 4.2 The customer must submit a written complaint, which must be addressed to and received by the Executive Director of the Board within fifteen days of the date of the Notice of Termination issued by DEP. The complaint must set forth with specificity why the Customer disagrees with DEP's claim of Denial of Access. The Executive Director shall make best efforts to render a final decision on the complaint within fifteen days of its receipt. DEP may not terminate service earlier than ten days after a final decision has been rendered to the customer.

- 4.3 Any Notice of Termination issued by DEP pursuant to Section 3.2(a) above shall contain a description of the procedures described in Section 4.2 above. The failure by a customer to submit a written complaint within the time period specified above may be deemed by DEP to constitute a waiver by the customer of their rights pursuant to this Section 4 and DEP may terminate service on the account without further demand or notice.

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 a significant medical condition exists. 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, as certified in writing by a licensed medical doctor (MD) or the New York City Department of Health (“NYCDOH”) in accordance with the provisions of this Section, and the absence of water service at the subject residential premises will aggravate such existing significant medical condition.

Such written certification shall:

- (a) be submitted on stationary of a licensed medical doctor or the NYCDOH, and be signed by the medical doctor or an official of the NYCDOH qualified to make a medical judgment;
- (b) state the name and address of the certifying medical doctor, and the doctor’s State registration number;
- (c) state the name and address of the ill person; and
- (d) include an affirmation that the absence of water service will aggravate an existing significant medical condition at the customer’s 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 or the NYCDOH either writing or telephoning the Deputy Commissioner, Bureau of Customer and Conservation 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 or the NYCDOH within five (5) business days or the initial certification by telephone will be void.

- (d) Within five business days of receipt of written certification, DEP shall provide the customer with a written notice that:
 - (i) DEP received such certification and such certification is effective for 30 calendar days; and,
 - (ii) advises the customer of the procedures required for renewal of certification, including specifically a statement that if the customer does not renew the certification before the 30-day period expires and arrangements for access to the premises 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 (MD) or official of the NYCDOH 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 or official of the NYCDOH. Renewed certification for those chronic cases shall be in effect for 60 calendar days. In the case of a chronic condition, the customer may request that the renewed certification remain in effect for a period longer than 60 days. Any such request shall be made in writing to the Deputy Commissioner, Bureau of Customer and Conservation 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 has been provided to the customer of DEP's determination that the certification of a significant medical condition is no longer in effect.

5.4 Customers who are Elderly, Blind or Disabled

- (a) DEP shall not terminate or refuse to restore service to residential premises where any resident of such premises is 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 out in this Section 5.4. As used in this Section 5.4, the following terms shall have the respective meanings assigned to each below:

- (i) a “blind person” shall mean a person who has central vision acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye with a limitation in the fields of vision such that widest diameter of the visual field subtends an angle no greater than 20 degrees, shall be considered as having a central vision acuity of 20/200 or less.
 - (ii) a “disabled person” shall mean a person with a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, as defined in the State Human Rights Act (State Executive Law, section 292[21]); or a person who is unable, because of mental or physical problems to manage his or her own resources or to protect himself or herself from neglect or hazardous situations without the assistance of others.
- (b) Procedure Before Termination Of Service:
- (i) DEP shall make a diligent effort 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 access to the meter;
 - (ii) Where efforts at personal contact are unsuccessful or where DEP and a customer are unable to agree on access, DEP must notify the NYC Human Resources Administration/Department of Social Services (“NYCDSS”) of the name and address of the customer and the date of termination so that such office may ascertain if the customer 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.
- (c) 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 a diligent effort 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 access; and
 - (ii) Where efforts at personal contact are unsuccessful or where the DEP and the customer are unable to agree on access, DEP shall notify the

NYCDSS of the name and address of the customer and the date of termination so that such office may ascertain if the customer is eligible for any assistance.

- (d) In cases where DEP has terminated service consistent with the provisions of this Section, DEP shall make a diligent effort 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 access to the premises.

5.5 Newborn Baby Exception

DEP shall not terminate or refuse to restore service to a residential premises when a newborn baby is in residence at such premises. A newborn baby shall mean an infant human being not more than six months in age. This section shall apply when either the parent or legal guardian of such newborn baby resides at the premises, which DEP has identified as eligible for a potential termination of service. The newborn baby exception shall be subject to DEP's review of a birth certificate or such other evidence that will substantiate the infant's date of birth, parentage and the parent's legal residence.

5.6 Procedures During Cold Weather Periods for Premises with Heat-Related Service

- (a) 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 5.6, the following terms shall have the respective meanings assigned to each below:
 - (i) A "cold weather period" shall mean the period of time beginning November 1st of each year and ending April 15th of the following year;
 - (ii) "Heat related service" shall mean water service that is necessary for the on-going operation of a customer's primary heating system.
- (b) For the purposes of this Section 5.6, 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, such as dialysis machines or iron lungs;
 - (iii) serious illness; or
 - (iv) disability or blindness.
- (c) Procedures: DEP shall not terminate service to customers known to be receiving heat-related service during cold weather periods, unless DEP has made a diligent effort to contact personally the customer or an adult resident at the subject premises at least 72 hours before the intended termination. If such efforts were unsuccessful, at the time of termination, DEP shall make additional efforts to contact personally the customer or an adult resident at the subject premises in order to determine whether a resident may suffer a serious impairment to health or safety as a result of termination and to fully explain the reasons for termination and to provide the customer with information on the protections available under this Section 5.6.
- (d) 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 NYCDSS orally and within five calendar days in writing, 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.

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

- (e) Termination of Service:
- (i) If DEP terminates service to a customer under this Section 5.6, 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 on-site 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 on-site 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 NYCDSS.

- (ii) If, after the discovery of tampered equipment, DEP decides to terminate service to a residential premises because of an unsafe condition arising from such tampered equipment, it must determine, in accordance with this Section, whether a resident of the subject premise 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 (c), (d), and (e) 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 NYCDSS on the same day service is terminated and request an immediate consideration of the case.

Section 6. Other

6.1 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 respectively be due and payable to the Board 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 7. Public Service Law

Effective July 1, 2002

- 7.1 In accordance with the requirements of the New York City Municipal Water Finance Authority Act, all service terminations 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.