

New York City Water Board

Regulation Number 3

Denial of Access

Effective: July 1, 2002, as subsequently amended through the Second Amendment effective July 1, 2025.

Statement of Basis and Purpose

This regulation is authorized by Sections 1045-g(3), g(4), g(17) and j(5) of the New York Public Authorities Law, which provide that the New York City Water Board (the “Board”) shall establish, fix, revise, charge, collect and enforce the payment of all fees, rates, rents and other service charges for the use of, or services furnished, rendered or made available by the water system and wastewater utility systems of the City of New York (the “System”) and that rules and regulations of the Board may provide for the enforcement of fees and service charges and the discontinuance or disconnection of the supply of water or the provision of wastewater service, or both, for non-payment of charges imposed by the Board.

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 the System to the Board. The Lease provides that the City shall continue to operate and maintain such System 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”).

On metered accounts, DEP requires access to the premises to obtain and validate meter readings to measure water consumption and in order to avoid estimated charges, which may not reflect the actual quantity of services provided. For the Multi-Family Conservation Program and grandfathered frontage billing accounts, DEP must have the ability to inspect the building’s physical profile and water-consuming fixtures. DEP also may require access on demand for cause when necessary to inspect, test, upgrade, repair or replace meters, remote meter reading devices or other meter appurtenances that may be malfunctioning, have stopped registering or whose condition or reliability appears to be uncertain. Access for cause is also necessary where meters are discovered to have been removed or are disconnected or missing, or when the installation of a meter bypass device or meter tampering is suspected and in all such similar instances where a possible billing interference condition may exist. Finally, DEP must be able to obtain access when deemed necessary or appropriate to ensure for the proper operation and maintenance of the System and the protection of public health, or the exercise by DEP or the Board of their powers or duties under law.

This regulation is intended to assist DEP in the maintenance and operation of the vast systems providing water and wastewater services to its customers and in enforcing payment for services received when water and wastewater customers, after reasonable notice, fail to provide and/or facilitate access to their premises thereby preventing DEP or its agents from inspecting water and wastewater service at the premises. To that end, this regulation authorizes DEP to impose a Denial of Access Account Administration Fee and Attributed Consumption Charges and to pursue all available enforcement actions for customers that fail to provide and/or facilitate access to their premises as required by DEP. A customer can lessen the impact of adverse denial of access actions authorized by the Board's Rate Schedule and this Regulation by simply providing and/or facilitating access to the customer's premises to DEP at a mutually agreeable time, subject to DEP scheduling, and in a manner acceptable to DEP.

Remedies

When DEP identifies a need for access to a customer's premises either to obtain an actual meter reading or on demand for cause, it shall follow the three-step sequential notice protocol set forth in the Board's Rate Schedule. DEP shall impose a Denial of Access Account Administration Fee on each account where a customer fails to provide and/or facilitate access as required by DEP in a first written notice. DEP shall, in addition to the Denial of Access Account Administration Fee, impose Attributed Consumption Charges on each applicable account where a customer fails to provide and/or facilitate access as required by DEP in a second written notice in accordance with the Rate Schedule. If an owner fails to provide and/or facilitate access to a premises as required by DEP in a third written notice, the account will be subject to any and all enforcement actions available to DEP by property class, including but not limited to sale of the lien for unpaid charges. In addition, as a last resort and pursuant to the Termination of Services Regulation, DEP may issue a 15-day Notice of Termination of Services to the premises for failure to facilitate and/or provide access, and notwithstanding the foregoing, DEP may terminate service to any account which fails to pay any charges imposed pursuant to this Regulation in connection with denial of access if such charges are not paid by their due date.

This regulation was considered at public hearings held on April 17, 18, and 19, 2002, was approved by the New York City Water Board at its meeting of May 3, 2002, and became effective July 1, 2002. Subsequently, a First Amendment was approved in May 2009, and became effective on July 1, 2009. This Second Amendment¹ was considered at public hearings held on May 27, 28, 29, and June 2 and 3, 2025, was approved by the New York City Water Board on June 6, 2025, and became effective July 1, 2025. This Second Amendment removes provisions relating to termination of service as a result of a Denial of Access, which have been consolidated into the Termination of Service Regulation; revises notice and mailing provisions for Denial of Access notices; raises the

¹ Prior to the effective date of this Second Amendment, Regulation No. 3 previously included provisions relating to Termination of Service as a result of a Denial of Access condition. Because those provisions were duplicative of existing provisions in Regulation No. 2, Termination of Service, this Second Amendment removes those provisions and refers to Regulation No. 2 regarding termination as a result of a Denial of Access.

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Denial of Access Account Administration Fee from \$250 to \$500, but makes the Fee refundable in certain circumstances; and other miscellaneous changes.

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Section 1. Definitions

As used in this Regulation, the following terms² shall have the respective meanings ascribed to them below:

- (1) “Access” means the ability to inspect a Customer’s water and/or wastewater service and premises in order to ensure the accuracy of charges and includes, but is not limited to the ability to inspect, test, install, repair or upgrade water meters, remote reading devices and any appurtenant System equipment.
- (2) “Attributed Consumption Charges” are the charges authorized pursuant to the Rate Schedule in addition to the Denial of Access Account Administration Fee upon DEP’s issuance of a Determination of Denial of Access.
- (3) “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.
- (4) “Billing Interference Regulation” means Water Board Regulation No. 4, Billing Interference, effective July 1, 2009 as subsequently amended through the amendment effective July 1, 2025.
- (5) “Board” means the New York City Water Board.
- (6) “Charges” means fees, rates, rents or other charges imposed by the Board and/or DEP pursuant to the Rate Schedule.
- (7) “City” means The City of New York.

² Terms used in this Regulation, which are not defined herein, shall have the meanings set forth in New York City Water and Wastewater Rate Schedule then in effect for the period during which Denial of Access was at issue. Should the same term be defined both in this Regulation and the Rate Schedule, for purposes of this Regulation, the definition herein shall govern.

- (8) “Customer” means a current property owner or Authorized Representative of a property owner.
- (9) “Days” unless otherwise stated means calendar days.
- (10) “Delinquent Charges” means Charges which remain unpaid after the due date thereof.
- (11) “Demand for Access” means the issuance of a notice by DEP to a Customer which requires the Customer to provide and/or facilitate Access to the Customer’s premises to DEP at a time and in a manner acceptable to DEP.
- (12) “Denial of Access” means a failure of the Customer to provide and/or facilitate Access to DEP as required in the Demand for Access.
- (13) “Denial of Access Account Administration Fee” is the fee authorized pursuant to the Rate Schedule upon DEP’s issuance of a Determination of Denial of Access.
- (14) “Denial of Access Regulation” means this Water Board Regulation No. 3, Denial of Access, effective July 1, 2002, as subsequently amended through the amendment effective July 1 , 2025.
- (15) “DEP” means the New York City Department of Environmental Protection or any authorized agents of DEP.
- (16) “Determination of Denial of Access” means a written notice by DEP that a Customer has failed to provide and/or facilitate Access to the Customer’s premises in accordance with a Demand for Access notice.
- (17) “Open Charges” means Charges that have been billed to the Customer, but which remain unpaid after the due date thereof.
- (18) “Rate Schedule” means the Board’s Water and Wastewater Rate Schedule then in effect when the Denial of Access occurred.
- (19) “System” means the Water Supply System and the Wastewater System collectively.
- (20) “Termination of Service”, “Terminate Service”, “Terminating Service”, “Terminate”, and all such similar word forms mean the discontinuance or disconnection of the supply of water and/or the provision of wastewater service to any Customer.

- (21) “Termination of Service Regulation” means Water Board Regulation No. 2, Termination of Service, effective February 29, 2008, as subsequently amended through the amendment effective July 1, 2025.
- (22) “Water Board” means the New York City Water Board.
- (23) “Water Board Regulations” means collectively, the Termination of Service, Denial of Access and Billing Interference Regulations.
- (24) “Water Supply System” and “Wastewater System” means, respectively, the water system and wastewater system under the control and jurisdiction of the Board.

Section 2. General

- 2.1 **Authorization to Pursue Enforcement Actions.**
Upon a Determination of Denial of Access, DEP is hereby authorized to pursue all actions in accordance with the Rate Schedule including the imposition of a Denial of Access Account Administration Fee and Attributed Consumption Charges and all such other enforcement actions as authorized by the Rate Schedule and the Water Board Regulations. Customers that disagree with the imposition of the Denial of Access Account Administration Fee or Attributed Consumption Charges imposed pursuant to this Regulation may utilize the Board’s complaint and appeal process as provided for in the Rate Schedule
- 2.2 **Authorization to Terminate Service.**
DEP is hereby authorized by the Board to Terminate the supply of water and/or the provision of wastewater service to any Customer for Denial of Access, in such circumstances as are specified in, and subject to, the requirements of the Termination of Services Regulation.
- 2.3 **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 Determination of Denial of Access.
- 2.4 **Termination in Addition to Other Remedies.**
Anything in this Regulation to the contrary notwithstanding, Termination of Service, pursuant to the Termination of Service Regulation, shall be in addition to, and not in lieu of, any other right or remedy available to DEP or the Board with respect to Delinquent Charges or Open Charges, including (without limitation) the imposition and enforcement of a lien on real property or a collection action to the extent permitted by applicable law.

2.5 Delivery of Notices.

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

Section 3. Denial of Access Notice Procedures, Fee, and Attributed Consumption Charges

- 3.1 Denial of Access Notice Procedure. If a Customer fails to provide and/or facilitate Access as required by DEP, DEP may issue a first written notice to the Customer that requires the Customer to provide and/or facilitate Access to DEP within a fixed period of time. This first written notice shall be sent by regular mail to the Owner and any Authorized Representative at the property address and any other address to which the Customer receives the bills for water and wastewater charges, to any Authorized Representative at the address provided to DEP, and to any email addresses of the Customer or Authorized Representative on file with DEP.

If Access has not been provided and/or facilitated by the expiration date set forth in the first written notice, the account will be subject to the imposition of a Denial of Access Account Administration Fee. The owner will be notified of the imposition of the Denial of Access Account Administration Fee through the issuance of a second written notice sent by regular and certified mail to the owner and any Authorized Representative at the property address and any other address to which the Customer receives the bills for water and wastewater charges, to any Authorized Representative at the address provided to DEP, and to any email addresses of the Customer or Authorized Representative on file with DEP. This second notice will cite the Denial of Access Account Administration Fee and require that the Customer provide and/or facilitate Access to DEP within an additional fixed period of time. If a Customer fails to provide and/or facilitate Access by the expiration date set forth in the second written notice, the account will be subject to the imposition of Attributed Consumption Charges from the expiration date of the second written notice to the date the Customer provides and/or facilitates Access in a manner acceptable to DEP.

The bill containing Attributed Consumption Charges and a third written notice requiring the Customer to provide and/or facilitate Access to DEP within a fixed period of time will be sent by regular and certified mail to the owner and any Authorized Representative at the property address and any other address to which the Customer receives the bills for water and wastewater charges, to any Authorized Representative at the address provided to DEP, and to any email addresses of the Customer or Authorized Representative on file with DEP. The third written notice will advise the Customer that if Access is not provided and/or facilitated by the expiration date set forth in this third notice, the account will be subject to any and all enforcement options available to DEP, including those noted

in the Rate Schedule or this Water Board's Regulation Number 3 – Denial of Access.

Should DEP does not make any of the mailings or email notifications set forth in this Section 3.1, it shall have no bearing on DEP's ability to impose the Denial of Access Account Administration Fee or any Attributed Consumption Charges, provided that DEP has proof of the Customer's or Authorized Representative's actual knowledge of the Denial of Access condition.

3.2 Denial of Access Account Administration Fee. DEP shall impose a Denial of Access Account Administration Fee of \$500 on each account when a Customer fails to provide and/or facilitate Access as required by DEP in a first written notice. DEP will refund the Denial of Access Account Administration Fee to the Customer by issuing a credit on the Customer's Water Board account, under the following circumstances:

- (a) Access has been facilitated and/or provided;
- (b) DEP has ceased billing any Attributed Consumption Charges placed on the Customer's Water Board account as a result of the Determination of a Denial of Access because the issue requiring Access has been resolved to DEP's satisfaction;
- (c) Other than the Denial of Access Account Administration Fee and any related Attributed Consumption charges, there are no other Delinquent Charges on the Customer's Water Board account;
- (d) There has been no Termination of Service as a result of the Denial of Access;
- (e) The number of calendar days between the date of the first Demand for Access and the date when Access is facilitated and/or provided is less than 90 days, unless an appointment for a DEP inspection is not available within 90 days of the first Demand for Access and the Customer facilitates and/or provides Access to DEP at the first available, scheduled appointment date; and
- (f) Notwithstanding whether the Customer meets the requirements of subsections (a) to (e) above, the Deputy Commissioner of DEP's Bureau of Customer Services, under appropriate, extenuating circumstances, may agree to refund the Denial of Access Account Administration Fee.

3.3 Attributed Consumption Charges. DEP shall impose Attributed Consumption Charges, as calculated and specified in the Rate Schedule, for each applicable service where a Customer fails to provide and/or facilitate Access as required by DEP in a second written notice. DEP will stop billing based upon Attributed

Consumption Charges once Access has been facilitated and/or provided to DEP's satisfaction. Should any inspection of the Customer's premises reveal conditions constituting a Billing Interference condition, as provided for in the Billing Interference Regulation and following the procedures specified therein, DEP may impose the Billing Interference Account Administration Fee, as defined in the Billing Interference Regulation, and may impose Attributed Consumption Charges based upon the Billing Interference condition, notwithstanding a prior imposition of Attributed Consumption Charges resulting from a Denial of Access. However, in no event, shall DEP impose Attributed Consumption Charges during the same period for both Denial of Access and Billing Interference.

Section 4. Termination of Service

4.1 (a) Classes of Accounts Where Service May Be Terminated.

Subject to the procedures set forth in the Termination of Services Regulation, service may be Terminated to any class of accounts for Denial of Access.

(b) Additional Criteria for Prioritizing Termination of Service.

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 facilitate and/or provide Access to the premises; the dollar amount of Delinquent Charges; the length of time the Delinquent Charges have remained open and unpaid; 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.

(c) Exemptions. A Customer may be eligible for an exemption to Termination, where a resident living at the subject property (i) has a significant medical condition, (ii) is blind, (iii) is disabled, (iv) is a child under the age of 6, or (v) is 62 years of age or older. The procedure to claim such an exception is set forth in Section 5 of the Termination of Services Regulation.

Section 5. Denial of Access Complaints

5.1 Challenges to Notice of Denial of Access.

If a Customer receiving a Notice of Denial of Access wishes to submit a complaint about such notice, such Customer shall comply with the procedures set forth in the Complaint Resolution and Appeal Process set forth in the Rate Schedule.

Section 6. Restoration of Service

In the case of a Denial of Access where service has been Terminated pursuant to the Termination of Service Regulation, such service shall not be restored unless and until Access to the premises has been facilitated and/or provided and any outstanding fees owing to the Board for the Denial of Access Account Administration Fee and any other fees imposed as a result of the Termination pursuant to the Termination of Service Regulation, or for the restoration of service, shall have been paid to the Board in full or have been accounted for in a payment agreement acceptable to DEP and the Board.