

New York City Water Board

Conservation Program For Multiple Family Residential Buildings Administrative Guidelines

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Section 1. Program Overview

The Conservation Program for Multiple Family Residential Buildings (“Multi-Family Conservation Program”) offers owners of multiple family housing consisting of six or more dwelling units, an option to elect billing based on a fixed charge per dwelling unit in lieu of metered billing, if the owner invests in low-consumption plumbing hardware and fixtures and cooperates with DEP in conservation efforts in their buildings. The objectives of the program are to promote water conservation in multi-family buildings and to give owners of such buildings a measure of control over their water and sewer costs, while at the same time being revenue neutral relative to the water system as a whole and to other customer classes.

Owners are advised that it is the intent of the Board to phase out and discontinue all currently existing frontage and flat-rate billing bases effective June 30, 2009. After this date, the only permissible billing bases for multi-family residential buildings consisting of six or more units will be charges determined in accordance with actual consumption based on a meter or charges determined in accordance with the Multi-Family Conservation Program as described herein. Owners are also advised that any frontage property that has not applied for and met the requirements of the Multi-Family Conservation Program by December 31, 2008, maybe converted to metered billing automatically.

As more fully described herein, to be eligible, a property must be residential, consisting of six or more dwelling units, and must be metered. The property also must have any leaks repaired and at least 70% of the toilets, faucets and showerheads must be low-

consumption types. If the property has a central laundry room, washing machines must be of the low-consumption type. If they are not, any common area washing machines must be replaced with low-consumption machines at the next contract award, renewal or extension if such machines are provided by a vendor, or within a five-year period if owned by the building owner.

The program provides that DEP will audit each building's water consumption periodically to ensure that conservation is being achieved and that water usage is being reasonably controlled by the owner. A building's failure to meet reasonable conservation objectives will subject it to increased monitoring and possible enforcement actions. Buildings having substantial increases in water consumption caused by leaks or waste which go unrepaired may subject the property to removal from the program and conversion to metered billing.

Under this Multi-Family Conservation Program, in exchange for making an investment in low-consumption plumbing fixtures and repairs, the owner may elect to be billed on the basis of a fixed charge per dwelling unit ("fixed charge"). For the fiscal year beginning July 1, 2006 ("FY2007"), the fixed charge will be \$583.35 per billable unit. Subsequent to ~~FY2006~~, the Board may adjust the fixed charge in proportion to any future adjustments to metered and/or frontage water and sewer rates and may adjust the fixed charge to ensure that it continues to be consistent with the Board's objectives of water conservation and revenue neutrality.

The implementation period for this Program will conclude in July 2009, after which any multiple family property which has not qualified for and enrolled in the Program will be subject to metered billing.

Section 2. Definitions

Billable Units: means the number of dwelling units as determined by the Certificate of Occupancy or other acceptable records of the Department of Buildings or the Department of Finance plus the number of low-consumption commercial dwelling unit equivalents, as approved by the Commissioner.

Commissioner: means the Commissioner of the Department of Environmental Protection (DEP) of the City of New York, or designee.

Complete Application: means a written submission to DEP in which all the information requested on the "MULTI-FAMILY CONSERVATION PROGRAM" application form is provided, that is signed by the owner or managing agent and notarized, and is accompanied by a copy of the Certification of Occupancy. A copy of the laundry room contract showing expiration or renewal date must also be provided if applicable. If the Contact Name on the application form is someone other than the Owner or Managing Agent, an Owner Authorization Letter must be attached as well specifically designating the representative as authorized to submit an application for the program.

DEP: means the Department of Environmental Protection of the City of New York.

Dwelling Unit(s): means the number of residential dwelling units.

Dwelling Unit Equivalent: means a low-consumption commercial unit in a building whose water use is primarily for the sanitary use of its employees and is determined to be less than or equal to a residential dwelling unit.

Expected Consumption: means that quantity of water consumption that DEP determines represents a reasonable consumption for the premises assuming its plumbing fixtures and piping is in good order and in compliance with the requirements of this program. In determining an Expected Consumption for a property, the consumption history for the building, occupancy rates and consumption levels realized after entry the program shall also be considered by DEP.

Fixed Charge: means the flat-rate charge per Billable Unit per fiscal year.

FY: means fiscal year and comprises the period beginning July 1 of one year and ending June 30 of the following year.

Letter of Authorization: means a document bearing a contemporary date and signed by the owner of a specific property which designates an individual or organization other than the owner to act on the owner's behalf as the owner's authorized representative in connection with preparing and submitting a Complete Application for this Program and selecting a billing basis for the subject property.

Substantial Leak(s): means i) a water leak from a toilet or any other water plumbing fixture measured at two (2) gallons per day or greater, or ii) water leaks of any flow rate in 10% or more of the apartment units in a building.

Unit(s): means a Billable Unit or Billable Units.

Water Board: means the New York City Water Board.

Section 3. Eligibility and Program Requirements

3.1 Eligible Properties

- A. Only residential properties, which contain multiple family buildings consisting of six or more Dwelling Units per building, are eligible for the program.
- B. Initial eligibility is open to any such building irrespective of whether it is currently subject to metered or frontage billing, or is being billed under the Board's Transition Program or Pre-Transition Program Flat-Rate Charge (formerly known as the Retroactive Transition Program).
- C. Only properties that have been metered to the satisfaction of the Commissioner are eligible. Properties which have not installed appropriate meters will be subject to the surcharge for failing to install a meter as set forth in Part II - Section 3 of the Board's Water and Wastewater Rate Schedule.

3.2 Specific Conservation Requirements

- A. No property shall be eligible for this program or shall be continued in eligibility that is found to have substantial water leaks or waste. The Commissioner in his/her sole discretion shall determine the significance of any water leak(s) and whether such leak(s) should affect a property's program eligibility.

- B. Low-Consumption Plumbing Fixture Requirements: No property shall be approved for the program unless it shall have installed low-consumption plumbing fixtures as follows.
- i. At least seventy percent (70%) of the water closets in the building must be a low-consumption type (1.6 gallons per flush or less).
 - ii. At least seventy percent (70%) of the showerheads must be a low-consumption type (no more than 2.5 gallons per minute as measured at the showerhead).
 - iii. At least seventy percent (70%) of the faucets shall flow at 2.5 gallons per minute or less (either through the design of the faucet or by the installation of a “tamper-resistant” aerator).
 - iv. Any building with a central laundry room shall replace its clothes washing machines with models which meet or exceed a 9.5 gallons/cubic foot water efficiency standard. Replacement of such clothes washers shall occur within five years from acceptance into the program if the machines are the property of the owner. If machines are provided by contract, the 9.5 gallons/cubic foot of machine capacity standard shall be required of any contract renewal or any new contract award with a laundry room contract vendor.
 - v. In addition to compliance with the thresholds set forth above, the owner shall replace all fittings and fixtures with low-consumption fixtures in 100% of all apartment units that become vacant and which do not have low-consumption fixtures.
 - vi. Only replacement parts which are designed for use in the specific low-consumption toilet model that has been installed shall be used in any repairs. Replacement faucets shall be of the washerless type (ceramic disk or cartridge models). DEP shall maintain an advisory list of acceptable products.

3.3 Eligibility of Mixed Use Properties

- A. Mixed use properties with combined residential and commercial use measured by an entire premise (EP) meter may be eligible for the program. The criteria for eligibility are whether the predominant use of the property is residential and whether the commercial water use generally can be considered to be equivalent to or less than a typical residential unit.
- B. In cases where the predominant use of a mixed use property is residential, the Commissioner shall determine whether each commercial unit(s) is such that its expected and usual consumption is less than or equal to a typical residential unit. Each commercial unit so determined will be counted as an additional Unit for the purpose of billing.
- C. A mixed-use property will not be eligible if the predominant use of the property is residential and the Commissioner determines that the consumption of any of the commercial uses is greater than that of a typical residential user. Such tenants include but are not limited to laundromats, food-related businesses, taverns, medical facilities or other occupancies which in the Commissioner’s judgment are likely to consume more than a residential unit. In such situations, the eligibility of the property will only be approved if the ineligible commercial usage whose

consumption is judged by the Commissioner to be greater than a typical residential unit is separately metered at the owner's expense and billed by DEP for its metered water use.

- D. No property whose predominant water use is other than residential will be eligible for this program.

3.4 Responsibilities of Owners

- A. Eligibility for this program shall be established only upon the owner's submission of a Complete Application and the approval of such application by DEP as set forth herein.
- B. Owners are solely responsible for analyzing their properties and determining which billing method is best suited to their specific circumstances. Neither DEP nor the Water Board will be responsible for any decision made by any owner, owner agent or Authorized Representative, to elect either metered billing or billing pursuant to the fixed charge per Unit and will not be liable for any financial loss incurred by an owner's incorrect choice.
- C. In order for a property to remain eligible owners must:
 - i. allow DEP access to read, test, repair or replace any meters DEP deems necessary or to install an automatic reading device at DEP's expense;
 - ii. allow DEP access to inspect the premises and perform leaks surveys;
 - iii. promptly repair any water leaks as they occur and are discovered, and as may be identified by DEP.
 - iv. maintain all water using plumbing fixtures in good working order.
- D. DEP shall deny eligibility or continued eligibility for this Program to any property that is or that becomes more than 90 days delinquent with respect to water and sewer charges billed to the property or with respect to the terms of a valid agreement to pay delinquent charges over time. At the time of application, DEP shall require any property that is delinquent with respect to previously billed charges to pay such charges in full or execute an agreement to pay such charges plus accrued interest over a reasonable period of time as may be specified by DEP.

Section 4. Application Procedure

4.1 General

An owner or his Authorized Representative must file a Complete Application with DEP in order to be approved for billing under this Program. A separate application shall be submitted for each building on a block/lot or account containing more than one building. If an Application is being submitted by someone other than an owner, a Letter of Authorization acceptable to DEP must be attached giving that individual or organization authority to select the billing basis. A separate Application and Authorization Letter shall be submitted for each building for which the program is requested.

4.2 Complete Application

DEP may reject any Application, which at the time of filing is missing information or documentation, has illegible printing or is not signed or notarized.

4.3 Rejected Application

An Applicant whose Application has been rejected in accordance with 4.2 above may re-file the Application upon inclusion of the information or documentation that DEP previously determined to be missing. If, after refiling, the property is found eligible, the effective date of Program eligibility will be determined based on the date the re-filed Application was approved.

4.4 Where to Obtain Application Forms and Where to File Completed Applications

Applications can be obtained by visiting any Borough Office of DEP or by calling 718-595-7000. Applications may also be found by visiting DEP's website at **www.NYC.GOV/DEP**. Applications must be filed by mail *at the Water Board's designated P.O. Box as set forth in the Application*.

4.5 Application Fee

A non-refundable Application fee of \$25 will be charged and collected by DEP to cover the administrative cost of reviewing and resolving each Application. The Application fee will not be refunded if an incomplete Application is rejected, and DEP may in its discretion impose an additional non-refundable \$25 Application fee upon resubmission of a previously rejected Application.

4.6 Approved/Rejected Application

DEP or its designee will either approve or reject Applications upon review for completeness and conformance with all eligibility requirements of the Program. Upon determination of eligibility, DEP will issue either an approval letter or a rejection letter. Approval letters shall state the latest date on which the fixed charge per Unit will be effective and the number of Units determined for the property. Rejection letters shall state the reason(s) for which the property's Application has been denied and describe the appeal procedure.

Section 5. Fixed Charge Per Billable Unit

5.1 Fiscal Year ~~2005~~ Charge

For FY2007 (July 1, 2006 through June 30, 2007) the fixed charge per Billable Unit will be \$583.35.

5.2 Future Changes To the Fixed Charge

Subsequent to FY2007 the Board may adjust the fixed charge in proportion to any future adjustments to general water and sewer rates, and to ensure that the fixed charge continues to be consistent with the Board's objectives of revenue neutrality and water conservation.

5.3 Rate Schedule Incorporation

The FY2007 fixed charge, and all future changes to the fixed charge, shall be promulgated by the Board pursuant to the Board's statutory requirements for

establishing and fixing water rates and charges and shall be incorporated into the Board's annual Water and Wastewater Rate Schedule.

Section 6. Effective Date of Billing

6.1 Application Acceptance Period

DEP will accept Applications over a period extending through **December 31, 2005.**

6.2 Effective Date of Fixed Charge

- A. The effective date of the fixed charge shall be prospective only.
- B. For any Complete Application received before December 31, the effective date of the fixed charge will be July 1 of the subsequent fiscal year.
- C. For any Complete Application received after December 31, DEP shall be allowed a reasonable period of time not to exceed six months between the receipt of a Complete Application and the effective date of the fixed charge. In the case of metered accounts, before an account can be converted from metered billing to the fixed charge, DEP must obtain or establish a final meter reading for the account to close out metered billing for the property. The meter must be registering properly at the time of the final read. DEP may withhold approval of an Application in the event DEP cannot obtain access to read a meter. DEP may also withhold approval in cases where meters are missing, not registering properly, and in cases where commercial uses determined by the Commissioner to require metering are not metered. In such cases, the effective date of the fixed charge shall be a date not to exceed six months from the date DEP gains access to the premises, or where missing, malfunctioning or inadequate meters are at issue, a date not to exceed six months from the date DEP determines the property is appropriately metered to the satisfaction of the Commissioner.
- D. In each fiscal year in which the Fixed Charge is billed to any account or property under this program, the entire annualized amount of the fixed charge shall be due and payable on the first day of such fiscal year provided that DEP may allow for and establish a normal grace period for payment.

Section 7. Conversion to and From the Fixed Charge

7.1 Electing Metered Billing

In writing on DEP's Election of Metered Billing form and any property being billed on the fixed charge may elect to convert to metered billing at any time. An owner's request for conversion to metered billing must be in writing and sent to DEP/BCS; P.O Box 739055; Elmhurst, NY 11373-9055. Meter based charges will be effective upon DEP's obtaining a meter reading to establish the initial consumption baseline on the meter and confirming that the meter is registering accurately. This initial reading will be obtained by DEP within 30 days of the customer's request to be converted to metered billing. If DEP has obtained a valid reading within 3 months prior to the application date, DEP may, at its option, use this reading as the initial reading for billing purposes.

7.2 Mandatory Metered Billing Period

Any property which has converted to metered billing from the fixed charge shall not be eligible to convert back to the fixed charge for four (4) years from the start date of metered billing.

7.3 Reversion From Metered Billing to the Fixed Charge

Any property reverting to the fixed charge after a period of metered billing shall submit a Complete Application as set forth herein and shall be subject to all requirements, restrictions and procedures as if such Application were an original and first time Application.

Section 8. Related Provisions

8.1 Elimination of Existing Billing Programs

Effective FY2010 (the year beginning July 1, 2009) the following billing bases and programs will be eliminated and discontinued for multiple family residential buildings consisting of six units or more:

X Frontage Billing

X Transition Billing

X the Pre-Transition Flat Rate Billing Program (formerly the Retroactive Transition Program)

X Metered Billing Caps (maximum metered charges per dwelling unit) for six or more family unit buildings only.

8.2 Single Alternative to Fixed Charge Per Dwelling Unit

In accordance with Section 8.1 above, any property consisting of six (6) or more dwelling units which is being billed on the Frontage, Transition or Pre-Transition basis, and which has not applied for and met the requirements of the Multi-Family Conservation Program by December 31, 2008, will be converted by DEP to and be subject to metered billing effective July 1, 2009.

8.3 Continuation of Bill Caps for Properties Consisting of Five or Fewer Units

Metered Billing Caps as set forth in Part VI - Section 4 of the Board's Water and Wastewater Rate Schedule shall be continued for all properties consisting of five (5) or fewer dwelling units.

8.4 New Construction and Substantially Renovated Properties

Newly constructed or substantially renovated properties are eligible for this program only if the multiple family building is and will be subject to rent regulation and rent limitations under the laws of New York State. New construction and substantial renovations must also be in compliance with New York City building codes and must meet all other specific eligibility, application and conservation requirements of the Program.

8.5 No Cooling Tower Allowances

Any sewer allowances previously authorized in connection with cooling towers for a property shall be discontinued coincident with the effective date of the fixed charge for any property electing the Multiple Family Conservation Program.

8.6 Boiler Makeup Water Lines

DEP may require the installation of a meter on the makeup line of a boiler to monitor condensate or return water leaks. Such submeter installations and maintenance shall be at the owner's expense.

Section 9. Enforcement

DEP will establish a baseline water consumption value for each property participating in the program. This value will represent the approximate expected consumption for the property. DEP will monitor the actual consumption of each property enrolled in the Program and compare it with the expected consumption for the property. Properties which regularly demonstrate consumption variations in excess of the expected consumption will be identified. Such properties will be subject to inspection and increased monitoring for the purpose of explaining the elevated consumption level. The inspection will survey for leaks and waste, continued compliance with program requirements and review any commercial uses.

The failure by an owner or a representative of an owner to provide DEP or its agent with access to the premises in order to conduct any required inspections will be deemed sufficient grounds to deny the property continued eligibility for the Program.

If leaks are found, the owner will be given appropriate notice and a reasonable time to effect repairs. This reasonable period of time may vary depending on the severity and nature of the leak. An owner's failure to repair a substantial leak(s) detected by DEP will be deemed sufficient grounds to deny the property continued eligibility for the Program. In addition, DEP may issue notices of violation subject to adjudication by the Environmental Control Board which may result in the assessment of fines and penalties.

If no leaks are found or if after leak repairs are made consumption remains substantially above the expected consumption for the property, the owner must take reasonable actions within their control, including those actions that may be directed by DEP, to minimize consumption. Failure by an owner to take such actions that are within the owner's control and are directed by DEP will be deemed sufficient grounds to deny the property continued eligibility for the Program.

After acceptance into the Program, failure by an owner to remain in compliance with any Program requirements, including the required ratio of low-consumption plumbing fixtures, will be deemed sufficient grounds to deny the property continued eligibility for the Program.

Consumption greater than a property's expected consumption shall not in and of itself constitute sufficient grounds to deny a property continued eligibility for the Program. If accompanied by one or more of the following conditions, however, consumption greater than a property's expected consumption shall be deemed sufficient grounds to deny the property continued eligibility for the Program: i) a failure to allow DEP access to inspect the premises; ii) a failure to remain in compliance with any Program requirements,

including the 70% low-consumption fixtures requirement; iii) the presence of and failure to repair a substantial leak(s); iv) a failure to take actions to reduce water consumption directed by DEP that are within the owner's control; v) a failure to report to DEP material changes in commercial uses that may affect a property's eligibility for the Program or its appropriate billing basis.

Any property removed from eligibility for the Program by DEP will be subject to metered billing. Any property so removed from eligibility may, after a six month period of metered billing, apply to return to fixed charge billing under this Program. Any such property shall submit a Complete Application as set forth herein and shall be subject to all requirements, restrictions and procedures as if such Application were an original and first time Application.