

RIGHTS OF NEW YORK HEATING FUEL CUSTOMERS

New York's Utility Project Law Manual
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RIGHTS OF NEW YORK HEATING FUEL CUSTOMERS

I. Introduction

More than 2.5 million households in New York heat their homes with home heating fuels.¹ “Heating fuel” is defined in New York State regulations as follows:

No. 2 distillate fuel oil, No. 4 blended fuel oil, No. 6 residential fuel oil, kerosene, liquid propane gas, or any other fuel, other than natural gas or electricity, used for heating residential buildings.²

In 1976, the New York Legislature enacted a new “Energy Law” chapter to the state statutes, abolishing the state Atomic Energy Council and transferring all of its powers to the State Energy Office (“SEO”), which was created by the new law.³ In 1980, the SEO enacted regulations to protect heating fuel customers faced with fuel delivery cutoffs for nonpayment⁴ that were enforced by the SEO Commissioner. In 1995, the Legislature abolished the SEO and transferred its functions to the New York State Energy Research and Development Authority (“NYSERDA”)⁵ and to the New York State Consumer Protection Board (“CPB”).⁶

Customers who have disputes with a home heating fuel dealer that they are unable to successfully resolve with the company may complaint to the CPB. The CPB has offices in Albany at 5 Empire State Plaza, Suite 2101, Albany, NY 12223-1556, and in New York City at

¹ New York State Consumer Protection Board, *Home Heating With Oil and Propane* (March 2007) (hereinafter “CPB March 2007”).

² 9 NYCRR § 7870.1(h).

³ New York Consolidated Law Service, Energy Note (2008).

⁴ 9 NYCRR § 7870.1, *et seq.*

⁵ Energy Law § 67 *et. seq.*

⁶ Ch. 83 §§ 50 – 53, 1995 N.Y. Laws, LEXIS 1995 N.Y. ALS 83,

1740 Broadway, 15th Floor, New York, NY 10019. The toll-free number is 800-697-1220.

Complaints may also be filed on-line at the CPB website: www.nysconsumer.gov.⁷ The CPB has no express authority to make administrative adjudications of customer disputes with home heating fuel distributors. Compliance with these procedures is enforced by the New York Attorney General, upon referral from the CPB.⁸ Civil penalties for noncompliance are forfeited to the People of the State of New York, and cannot exceed \$1,000 per violation or three times the profit received from each violation, whichever is greater.⁹

The procedures described below provide far fewer protections than those afforded to residential customers of gas and electric service under the Home Energy Fair Practices Act (“HEFPA”). For example, although public utilities must provide gas or electric service to eligible applicants within 5 business days of application¹⁰ and are subject to payment of a \$25 per day fine to the applicant if they fail, without good cause, to provide timely service,¹¹ home heating fuel distributors have no obligation to sell fuel to any applicant and they may refuse to do so in some situations, for example, if the applicant has a poor credit history.

Home heating fuel distributors are not required to offer customers deferred payment agreements, allowing customers to pay outstanding fuel charges over a period of time to prevent delivery cutoff.¹² Although public utilities cannot terminate residential service during the two-week period encompassing Christmas and New Year’s Day, and may only terminate between

⁷ CPB March 2007.

⁸ Energy Law § 5-119(2).

⁹ Energy Law § 5-119(1).

¹⁰ PSL § 31(5); 16 NYCRR § 11.3(a)(4)(i-iv).

¹¹ PSL § 31(5); 16 NYCRR § 11.3(c).

¹² *See, e.g.*, PSL § 37.

8:00 am and 4:00 pm Monday through Thursday, providing those days are not public holidays,¹³ there are no such restrictions on home heating fuel distributors. The procedures that home heating fuel distributors must follow before cutting off delivery of fuel allow short notice, contain no protections for elderly, blind or disabled customers, and make no special provisions to allow for continuation of fuel delivery service in cases of medical emergency.

II. Notice of Refusal, Suspension or Termination of Heating Fuel Deliveries

During the heating season (November 1st through April 15th), home heating fuel distributors must comply with emergency procedures before cutting off delivery to customers for nonpayment.¹⁴ For purposes of the emergency procedures, a “distributor” is “any person, firm, partnership or corporation delivering heating fuel to customers for consumption in residential buildings located within New York State.”¹⁵

The notice requirements vary, depending on the type of delivery the customer takes. *Automatic delivery* is made under contract with the distributor. The distributor determines when fuel is needed and makes a regularly scheduled delivery automatically, without obtaining a separate request or authorization from the customer.¹⁶ A *will-call account* is an arrangement for the sale of fuel without a contract. Will-call customers call the distributor to request a delivery and pay cash on delivery.¹⁷

¹³ PSL § 32(4).

¹⁴ 9 NYCRR § 7870.3.

¹⁵ 9 NYCRR § 7870.1(e).

¹⁶ 9 NYCRR § 7870.1(a).

¹⁷ 9 NYCRR § 7870.1(o).

Both types of customers may designate a third party (such as a friend, relative or social services agency) to receive notice of automatic or will call delivery cutoffs.¹⁸ Distributors are required to contact customers annually, on or before November 1st, to update their third party notification preferences.¹⁹ For new customers, distributors must collect third-party notification information when new accounts are established.²⁰

A. Written and Telephone Notice to Automatic Delivery Customers

A distributor must give three calendar days written notice to an automatic delivery customer before suspending or terminating regularly scheduled deliveries.²¹ The written notice must:

- § Inform the customer of the cutoff and the reason for it;²²
- § Inform the customer that financial assistance may be available from a local department of social services (“LDSS”);²³ and
- § Provide the customer with the name, address and telephone number of the LDSS for the county in which the residential building is located.²⁴

In addition to written notice, the distributor must make at least three attempts to notify the automatic delivery customer of a cutoff by telephone, at least three calendar days before the suspension or termination takes effect.²⁵ In the telephone communication, the distributor must:

- § Inform the customer of the cutoff and the reason for it;²⁶

¹⁸ 9 NYCRR § 7870.2(a)

¹⁹ 9 NYCRR § 7870.2(a)

²⁰ *Id.*

²¹ 9 NYCRR § 7870.4(a).

²² 9 NYCRR § 7870.4(b)(1).

²³ 9 NYCRR § 7870.4(b)(2)

²⁴ *Id.* The regulations provide a list of the LDSS by county, attached as *Appendix A*.

²⁵ 9 NYCRR § 7870.5 (b).

²⁶ 9 NYCRR § 7870.5(c)(1).

- § Ask whether the building is out of fuel and if it is not, ask when the customer anticipates fuel will be needed;²⁷
- § Ascertain whether the building is a one- or two-family house or a multiple dwelling;²⁸
- § Ask whether the customer wishes to designate a third-party designee to be notified of the cutoff;²⁹
- § Ask whether the customer is unable to protect himself or herself and all other inhabitants of the building from health and safety risks caused by a cutoff, by getting fuel from another source or by securing adequate alternative shelter;³⁰
- § Inform the customer that (i) if the affected building is a multiple dwelling, (ii) if the customer is unable to obtain fuel from another source, or (iii) if the customer is unable to secure adequate alternative shelter, then the distributor must notify the customer's third-party designee and the LDSS;³¹ and
- § Inform the customer that financial assistance may be available from the LDSS; and provide the customer with the name, address and telephone number of the LDSS for the county in which the residential building is located.³²

If the distributor cannot contact the customer by telephone, it must notify the customer's third-party designee and the LDSS.³³

B. Telephone Notice to Will-Call Customers

Heating fuel distributors must notify will-call customers of suspension or termination of deliveries when the customer telephones to request a delivery.³⁴ In the telephone notification,

²⁷ 9 NYCRR § 7870.5(c)(2).

²⁸ 9 NYCRR § 7870.5(c)(5).

²⁹ 9 NYCRR § 7870.5(c)(7).

³⁰ 9 NYCRR § 7870.5(c)(4).

³¹ 9 NYCRR § 7870.5(c)(3).

³² 9 NYCRR § 7870.5(c)(6).

³³ 9 NYCRR § 7870.5(b). *See*, "Notice to Third Party Designees" and "Notice to Local District Social Services Offices," *infra*.

³⁴ 9 NYCRR § 7870.5(a).

the distributor must obtain and impart the same information as required for automatic delivery customers, above.³⁵

C. Notice to Third-Party Designees

Home heating fuel distributors are required to contact each customer annually, on or before November 1st, to determine whether the customer wishes to designate a third party (such as a friend, relative or social services agency) to receive notice of delivery cutoffs.³⁶ For new customers, distributors must collect third-party notification information when the new accounts are established.³⁷

If customers have designated third-parties to receive notices of cut-off, the distributor must notify the designee³⁸ by telephone, on the same day the distributor attempts telephone notification to the customer.³⁹ The distributor must make two attempts to notify the designee by telephone.⁴⁰ If the designee is reached, the distributor must identify the name and address of the customer, and provide the designee with the same telephone notification that the customer is required to receive.⁴¹

D. Notice to Local District Social Services Office

Distributors who plan delivery cutoffs to residential buildings must also notify the LDSS under the following circumstances:⁴²

³⁵ 9 NYCRR § 7870.5(c).

³⁶ 9 NYCRR § 7870.2(a)

³⁷ *Id.*

³⁸ 9 NYCRR §7870.6(a).

³⁹ 9 NYCRR § 7870.6(b).

⁴⁰ *Id.*

⁴¹ 9 NYCRR § 7870.6(c).

⁴² 9 NYCRR § 7870.7(a). For a list of LDSS offices by county, see *Appendix A*.

- § If distributor's records, or its contact with the customer or the third-party designee indicate that a cutoff will involve a severe or hazardous health situation;⁴³
- § Attempts to notify the customer by telephone have been unsuccessful;⁴⁴ or
- § If the residential building affected is a multiple dwelling.⁴⁵

If an emergency exists (defined by the regulations as “a situation in which an occupied residential building is currently without heating fuel or is anticipated to be without heating fuel within 48 hours”⁴⁶) the distributor must notify the LDSS by telephone immediately,⁴⁷ or by messenger on the same day the distributor attempts to give telephone notice to the customer.⁴⁸ In notifying the LDSS, the distributor must provide the following information:

- § The name and telephone number of the customer and of any third-party designee;
- § Whether the building is a one- or two-family house or a multiple dwelling;
- § The reason for the fuel cutoff and the type of fuel;
- § Whether contact with the customer or the customer's third-party designee indicates that a severe or hazardous health situation is involved;
- § The date on which the customer is expected to require a supply of heating fuel; and,
- § Whether the building is currently without fuel or is anticipated to be without fuel within 48 hours.⁴⁹

⁴³ 9 NYCRR § 7870.7(a)(1). A “severe or hazardous health situation” is defined by the regulations as “a situation in which a customer is unable to protect himself or herself, and all other inhabitants of the residential building for which the customer is purchasing fuel, from danger to health or safety caused by a cutoff, by obtaining heating fuel from another source or by securing adequate alternative shelter.” 9 NYCRR § 7870.1(k)(1).

⁴⁴ 9 NYCRR § 7870.7(a)(2).

⁴⁵ 9 NYCRR § 7870.7(a)(3). A “multiple dwelling” is defined by the regulations as “any residential building or structure, or portion thereof, which is either rented, leased, let or hired out to be occupied, or is occupied, as the temporary or permanent residence or home of three or more families living independently of each other.” 9 NYCRR § 7870.1(i).

⁴⁶ 9 NYCRR § 7870.1(f).

⁴⁷ 9 NYCRR § 7870.7(b)(1).

⁴⁸ 9 NYCRR § 7870.7(b)(2).

⁴⁹ 9 NYCRR § 7870.7(c)(1) – (3).

When a distributor notifies the LDSS of a cutoff, the LDSS must investigate the customer's circumstances and take appropriate steps, including providing financial assistance to eligible customers and providing or arranging for other forms of assistance that may be available from the LDSS or from other government agencies.⁵⁰ The customer must cooperate with the LDSS in providing documentation – applicants for emergency assistance who cooperate but lack required eligibility information may still be granted short-term assistance until verification can be obtained or until they are determined to be ineligible.⁵¹

The LDSS must meet the emergency needs of home fuel heating customers who are already recipients of Temporary Assistance. Same day interviews must be granted and interviews may be completed over the telephone.⁵² Payments made for non-utility fuel deliveries for Temporary Assistance recipients are always subject to recoupment.⁵³

Households who do not receive Temporary Assistance and households receiving SSI may receive emergency fuel assistance in an amount limited to the cost for fuel to meet the emergency.⁵⁴ These households are not required to sign repayment agreements as a condition of receiving assistance.⁵⁵

⁵⁰ 9 NYCRR § 7870.9(a).

⁵¹ New York State Office of Temporary and Disability Assistance (“OTDA”) 2002 ADM 2.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ OTDA-4357-EL, Temporary Assistance Payments to Meet Utility and Non-Utility Emergencies, Dec. 20, 2005.

⁵⁵ *Id.*

E. Notice to an Emergency Agency

If the distributor cannot contact the LDSS by telephone after two attempts, it must contact an “emergency agency.”⁵⁶ An emergency agency is defined by the regulations as “the municipal or county agency or private organization for a municipality or county. . . .”⁵⁷ If initial attempts to contact the emergency agency are unsuccessful, the distributor must continue to call until it reaches the emergency agency.⁵⁸ In notifying the emergency agency, the distributor must provide the same information notification that it would give the LDSS.⁵⁹

When an emergency agency receives notice of a cutoff from a distributor, it must “take any reasonable action as if immediately necessary on a temporary basis to prevent loss of life or serious danger to public health.”⁶⁰ The emergency agency is also charged with notifying the appropriate LDSS by telephone on the next business day following its receipt of notification from a distributor, to advise the LDSS of the circumstances and to describe the temporary actions it has taken to prevent loss of life or danger to public health.⁶¹

⁵⁶ 9 NYCRR § 7870.7(b)(1).

⁵⁷ 9 NYCRR § 7870.1(g). The regulations provide a list of emergency agencies by county, attached as **Appendix B**.

⁵⁸ 9 NYCRR § 7870.8(a).

⁵⁹ 9 NYCRR § 7870.8(b).

⁶⁰ 9 NYCRR § 7870.9(b)(1).

⁶¹ 9 NYCRR § 7870.9(2).

APPENDIX A

LIST OF MUNICIPAL AND COUNTY SOCIAL SERVICES AGENCIES FOR NOTICE OF REFUSAL, SUSPENSION OR TERMINATION OF HEATING FUEL DELIVERIES MUNICIPAL DISTRICT OFFICES

New York City - multifamily dwellings:
Department of Housing Preservation and
Development
Basic Operations Division
125 Church Street, 2nd Floor
New York, NY 10007
212-566-7332

New York City - other:
Department of General Social Services
250 Church Street
New York, NY 10013
212-533-6393

DSS COUNTY DISTRICT OFFICES

Albany County
40 Howard Street
Albany, NY 12207
Fuel Unit 518-471-5923

Allegany County
Allegany County Court House
Belmont, NY 14813
716-268-7612 Ext.276

Broome County
36-38 Main Street
Binghamton, NY 13905
607-772-2832

Cattaraugus County
265 No. Union Street
Olean, NY 14760
716-372-0030

Cayuga County
County Office Building
160 Genesee Street
Auburn, NY 13021
315-253-1355

Chautauqua County
Hall R. Clothier Health & Soc. Serv. Building
Mayville, NY 14757
716-753-4374

Chemung County
203-209 William Street
Elmira, NY 14901
607-737-2874

Chenango County
County Office Building
Norwich, NY 13815
607-355-4568

Clinton County
30 Durkee Street (Mail-P.O. Box 990)
Plattsburgh, NY 12901
518-563-4560 Ext.357

Columbia County
610 State Street
Hudson, NY 12534
518-828-9411

Cortland County
133 Homer Avenue
Cortland, NY 13045
607-753-9681 Ext.40

Delaware County

126 Main Street
Delhi, NY 13753
607-746-2325

Dutchess County

County Office Building
14 Academy Street
Poughkeepsie, NY 12601
914-431-5000 Ext.237

Erie County

95 Franklin Street, 8th Floor
Buffalo, NY 14202
716-846-8642

Essex County

Essex County Court House
Elizabethtown, NY 12932
518-873-6301; 716-284-3067

Franklin County

Franklin County Court House
Malone, NY 12953
518-483-6767

Fulton County

County Building
Johnstown, NY 12095
518-762-4671 Ext.48

Genesee County

3837 West Main Road
Batavia, NY 14020
716-344-2580

Greene County

465 Main Street
Catskill, NY 12414
518-943-3200

Hamilton County

Hamilton County Court House
Lake Pleasant, NY 12108
518-548-3462

Herkimer County

County Office Building
Herkimer, NY 13350
315-867-1222

Jefferson County

175 Arsenal Street
Watertown, NY 13601
315-785-3141

Lewis County

Stowe Street, P.O. Box 193
Lowville, NY 13367
315-376-3536

Livingston County

Livingston County Campus
Building No. 3
Mt. Morris, NY 14510
716-658-2801 Ext.20

Madison County

Wampsville, NY 13163
315-366-2211 Ext.219

Monroe County

111 Westfall Road, Rm. 660
Rochester, NY 14620
716-442-4000 Ext.2613

Montgomery County

County Office Building
Fonda, NY 12068
518-853-3491

Nassau County

Administration Building
900 Ellison Avenue
Westbury, NY 11590
516-535-2064

Niagara County

100 Davison Road (P.O. Box 506)
Lockport, NY 14094
716-284-3067

Oneida County

County Office Building
800 Park Avenue
Utica, NY 13501
315-798-5021; 315-798-5059

Onondaga County

Onondaga County Civic Center
421 Montgomery Street
Syracuse, NY 13202
315-425-2793

Ontario County

120 North Main Street
Canandaigua, NY 14424
716-394-1440

Orange County

Quarry Road, Box Z
Goshen, NY 10924
914-294-9361

Oswego County

County Office Building
Spring Street
Mexico, NY 13114
315-963-7271

Orleans County

Route 31
Albion, NY 14411
716-589-5676

Otsego County

County Office Building
197 Main Street
Cooperstown, NY 13326
607-547-4292

Putnam County

50 Main Street
Brewster, NY 10509
914-279-7185

Rensselaer County

133 Bloomingrove Drive
Troy, NY 12180
518-283-2000

Rockland County

Building L
Sanatorium Road
Pomona, NY 10970
914-623-1155; 354-0200 Ext. 3130

St. Lawrence County

Harold B. Smith County Office Building
Judson Street
Canton, NY 13617
315-379-2150; 315-379-2174

Saratoga County

Saratoga Municipal Center, Bldg. A
Ballston Spa, NY 12020
518-885-5381

Schenectady County

487 Nott Street
Schenectady, NY 12308
518-382-3468

Schoharie County

Professional Building
Schoharie, NY 12157
518-295-8173/34

Schuyler County

County Office Building
Watkins Glen, NY 14891
607-535-4965, 2780 and 2789

Seneca County

R.D. No. 3, Box 179
County Road 118
Waterloo, NY 13165
315-568-9854

Steuben County

County Home, Box 631
Bath, NY 14810
607-776-7611

Suffolk County

Box 2000, 10 Oval Drive
Hauppauge, NY 11787
516-348-4000 Ext. 4375

Sullivan County

Box 231 (Infirmiry Road)
Liberty, NY 12754
914-292-4900 Ext. 28

Tioga County

Box 394, Rt. 38
Owego, NY 13827
607-687-5000 Ext. 64

Tompkins County

108 East Green Street
Ithaca, NY 14850
607-274-5289

Ulster County

Ulster County Office Building
244 Fair Street
Kingston, NY 12401
914-331-9300

Warren County

Warren County Municipal Center
Lake George, NY 12845
518-792-9951

Washington County

6 Church Street
Granville, NY 12832
518-642-2800 Ext. 23

Wayne County

16 Williams Street
Lyons, NY 14489
315-946-9733

Westchester County

150 Grand Street
White Plains, NY 10601
914-682-2469

Wyoming County

466 North Main Street
Warsaw, NY 14569
716-786-3111

Yates County

County Office Building
P.O. Box 257
Penn Yan, NY 14527
315-436-4451

APPENDIX B

**LIST OF MUNICIPAL AND COUNTY EMERGENCY AGENCIES
FOR NOTICE OF REFUSAL, SUSPENSION OR TERMINATION
OF HEATING FUEL DELIVERIES**

New York City Single Dwelling
NYC Human Resources Administration
(212) 483-1193

New York City Multiple Dwelling
NYC Housing Preservation & Development
(212) 960-4800

COUNTY AGENCIES

Albany County
Red Cross
(518) 462-7461

Allegany County
DSS Answering Service
(716) 593-1864

Broome County
Red Cross
(607) 722-1240

Cattaraugus County
Office for the Aging
(716) 372-0303

Community Action
(716) 938-2021 or 945-5114

Cayuga County
DSS
(315) 253-1333

Chautauqua County
Sheriff
(716) 753-2131

Chemung County
DSS Answering Service
(607) 737-2077

Chenango County
Sheriff
(607) 334-2000

Clinton County

Community Action (Ad Hoc Committee)
(518) 561-8800

Columbia County

Sheriff
(518) 828-3344

Cortland County

Sheriff
(607) 753-3311

Delaware County

Sheriff-Delhi
(607) 746-2336

Dutchess County

Red Cross
(914) 471-0200

Erie County

Sheriff
(716) 846-6300

Essex County

Sheriff
(518) 873-6321

Franklin County

State Police - Malone
(518) 483-5000

Fulton County Sheriff

(518) 762-3151

Genesee County

Nursing Home
(716) 344-0584

Greene County

Sheriff
(518) 943-3300

Hamilton County

Child Protective
(518) 548-3113

Herkimer County

DSS Staff:
(315) 866-7036
(315) 866-6875
(315) 823-4545

Jefferson County

Sheriff
(315) 785-3050 Ext. 3175

Lewis County

Sheriff
(315) 376-3511

Livingston County

Sheriff
(716) 243-1212

Madison County

Sheriff
(315) 366-2311

Monroe County

Child Protective
(716) 461-5690

Montgomery County

Sheriff
(518) 853-4312

Nassau County

DSS Emergency Number
(516) 542-3143

Niagara County

CPS Answering Service
(716) 284-8332

Oneida County

Sheriff
(315) 736-0141

Onondaga County

Volunteer Center
(315) 474-7011

Ontario County

Sheriff
(716) 394-4560

Orange County

Sheriff
(914) 294-6166

Orleans County

Sheriff
(716) 589-5527

Oswego County

Sheriff
(315) 343-5490

Otsego County Sheriff

(607) 547-2500

Putnam County

Sheriff
(914) 225-5523

Rensselaer County

DSS Switchboard

(518) 283-2000

Rockland County

DSS Energy Unit:
(914) 623-1115

St. Lawrence County

Sheriff
(315) 379-2222

Saratoga County

Sheriff
(518) 885-6761

Schenectady County

DSS Answering Service
(518) 382-3470

Sheriff
(518) 382-3300

City Police
(518) 374-7744

Schoharie County

Sheriff
(518) 295-8114

Schuyler County

Sheriff
(607) 535-2767

Seneca County

Sheriff
(315) 539-9241

Steuben County

Civil Defense
(607) 776-3333

Suffolk County

DSS Answering Service
(516) 348-4000

Sullivan County

DSS Answering Service
(914) 292-6444

Tioga County
Sheriff
(607) 687-1010

Tompkins County
County Dispatch
(607) 273-8000

Ulster County
Sheriff
(914) 338-3640

Warren County
Sheriff
(518) 792-9921

Washington County
Sheriff--Salem
(518) 854-7487

Sheriff--Hudson Falls
(518) 747-4623

Wayne County
Sheriff
(315) 946-9711

Westchester County
DSS Answering Service
(914) 592-3791

Wyoming County
Sheriff
(716) 786-2255

Yates County
Sheriff
(315) 536-4438