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MANUAL 900-1

SECTION 02.9

PERMIT AND LEASE ENFORCEMENT

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BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

1. Purpose

The purpose of this procedure is to ensure consistency between Headquarters and Divisions with respect to: the enforcement of delinquent accounts receivables for permit fees and lease payments, lapsed insurance, or other violations of permit and lease terms and conditions.

2. Applicable Law and/or Guidance

New York State Canal Law

New York State Real Property Law

New York State Real Property Actions and Proceedings Law

21 NYCRR Subchapter D Canal System

Canal Real Property Management Policy (25-6-01C)

3. Introduction

The New York State Canal Corporation (Corporation) is responsible for the maintenance, operation, construction, reconstruction, improvement, development, financing and promotion of the Canal System and for implementation of the New York State Canal Recreationway Plan (CRP). In accordance with the provisions of the Canal Law, the Corporation has the authority to acquire, hold and dispose of real property to advance the purposes of the Corporation and thus, the interest of the State. The Corporation issues work and occupancy permits, and enters into leases.

Violations of permits and leases may occur due to nonpayment of fees, lapse of insurance or other violations of permit or lease terms and conditions. Following required notice, the Corporation will determine the appropriate response to the violation, which may include revocation of the permit, termination of the lease, collection activity, removal of encroachments, etc.

All permits will contain a provision identifying them as revocable permits. All leases will contain language allowing the Corporation the right to terminate the lease for failure of the lessee to perform under the terms of the lease.

4. Procedure

The Corporation may need to take appropriate action based on nonpayment, lapse of insurance or other violations of terms and conditions of permits and leases. Following notice, the appropriate response will be determined including permit revocation, lease termination, site visits, emergency action, collection of delinquent accounts, removal of encroachments, etc.

4.1. Delinquent Accounts for Nonpayment

- 4.1.1. The Credit and Collections Unit will send annual invoices for permits to permittees one month prior to the permit payment date and periodic invoices for leases per the terms and conditions of the lease. The PERMIT AND LEASE INVOICE¹ will state the consequences of late payment (e.g., applicable interest, collection fees and possible revocation of the permit or termination of the lease).
- 4.1.2. If payment is not received within 45 days from the date of the original invoice, the Credit and Collections Unit will send out a NONPAYMENT DELINQUENCY NOTICE² to the owner of the delinquent account and copy the Division Permit Engineer (DPE) and the Office of Land Management (OLM).
- 4.1.3. If payment is not received within 15 days from the date of the delinquency notice, the Credit and Collections Unit will send a NONPAYMENT FINAL NOTICE³ to the owner of the delinquent account stating that the permit will be revoked or the lease terminated within 30 days unless full payment, interest and any additional charges assessed to the account are received. A copy of the final notice will be sent to the DPE and OLM.
- 4.1.4. If payment is not received within 30 days from the date of the final notice, the Credit and Collections Unit will contact OLM, the Bureau of Real Property Management (BRPM), and the Legal Department to identify the appropriate action as described in Section 4.4.
- 4.1.5. If a late payment is received anytime prior to revocation of a permit, see Section 4.4.6.

1 Exhibit 1

2 Exhibit 2

3 Exhibit 3

4.2. Lapsed Insurance

For the protection of Corporation assets, it is critical that proper insurance coverage be maintained for all permits and leases. Once notified of lapsed insurance coverage, failure of the permittee/lessee to restore proper insurance coverage will result in the revocation of permits, and the possible termination of leases.

- 4.2.1. The Insurance Compliance Unit will identify accounts for which insurance has lapsed and where the permit or lease is still active and a LAPSED INSURANCE NOTICE¹ will be sent to the account owner. Permittees will be sent a PERMIT REVOCATION NOTICE-LAPSED INSURANCE² if proof of insurance is not provided within 30 days of notification. Lessees will be notified that failure to provide proof of insurance within 30 days may result in the termination of their lease per the terms of the lease. The Insurance Compliance Unit will send a copy of the REVOCATION NOTICE to the DPE and OLM.
- 4.2.2. If the permittee/lessee fails to provide documentation of insurance within 30 days of notification, the Insurance Compliance Unit will notify OLM and the Legal Department to determine the appropriate response as described in Section 4.4.

4.3. Other Permit or Lease Violations

- 4.3.1. Through periodic field inspections or other notice, the DPE or Division Canal Engineer (DCE) may identify conflicts between the permitted use of/work on the property and the CRP or Canal operations, or may identify that the permittee or lessee is not complying with the provisions of the permit or lease including Corporation employees/agents/contractors access to the property, exceeding the scope of the permit or lease, if the use and/or work obstructs the maintenance, operation or navigability of the Canal, or for other reasons.
- 4.3.2. OLM, in consultation with the Legal Department, will coordinate lease violation notices and actions in accordance with the terms and conditions of the lease.

1 Exhibit 4

2 Exhibit 5

- 4.3.3. The DPE, in consultation with the DCE, will coordinate permit notices for violations. The DPE will send a VIOLATION NOTICE⁺ notifying the permittee of the violation of permit conditions and copy OLM. The letter will allow the permittee 10 days to respond, except if the violation is causing a health, safety, or environmental impact or other emergency conditions requiring immediate action. The Corporation may also take any required steps to address the emergency immediately.
- 4.3.4. If the permittee responds within the 10 days, the DPE, in consultation with the DCE, may attempt to resolve the issue. This may require the permittee to cure any defects (e.g., remove illegal structure or dock, etc.).
- 4.3.5. If the permittee fails to respond within 10 days (or less if an emergency), the DPE will contact OLM to determine the appropriate response as described in Section 4.4.

4.4. Determining the Appropriate Response

- 4.4.1. OLM will coordinate a review of the proposed permit revocation or lease termination in consultation with staff from the Legal Department, BRPM and Credit and Collections Unit to determine the appropriate action to be taken. This may include revocation of the permit, termination of the lease or referral of the account to collection agencies and/or the Attorney General's Office. Collections of Delinquent Accounts will be handled as described in Section 4.5. As needed, OLM may request that the DCE or designee conduct a site inspection as described in Section 4.6. to assist in determining the appropriate response.
- 4.4.2. If an emergency situation exists which endangers life or the Canal System, the Legal Department will be notified immediately for guidance on the appropriate actions such as seizure of lands, equipment or supplies necessary to avert such endangerment. The Legal Department may forward these issues to the Attorney General's Office or take other action as permitted by statute and regulations.

- 4.4.3. If the permit is to be revoked or the lease terminated for nonpayment, the Credit and Collections Unit will send a CANCELLATION NOTICE⁺ notifying the permittee that the permit is revoked and that a site inspection will be conducted within 21 days. A copy of the notice will be sent to OLM and the DPE. The DPE will send a CANCELLATION NOTICE for other types of violations resulting in revocation of the permit or termination of the lease and copy OLM and the Credit and Collections Unit. For work permits, the revocation will be effective immediately. For occupancy permits, the permit will be revoked upon the lapse of the 30 day notice period. The Legal Department will coordinate the termination of any lease including termination notices. The Canal Board will be notified of the proposed lease termination.
- 4.4.4. The DPE or DCE will conduct a site inspection in accordance with Section 4.6.
- 4.4.5. No refunds will be given for revoked permits or terminated leases unless the permit conditions or lease terms require otherwise.
- 4.4.6. If a late payment is received anytime prior to revocation of a permit, the Credit and Collections Unit will take the account out of delinquency and notify OLM, the DPE, and the Legal Department. OLM, based on input from the Legal Department, BRPM, and the Credit and Collections Unit, may (a) continue the permit revocation; (b) stop the permit revocation; or (c) take other action as needed. A record of late payment will be maintained by the Credit and Collections Unit in the account file.
- 4.4.7. If permit account payment has been received after the permit has been revoked or the account closed, the Credit and Collections Unit will notify BRPM. BRPM, in consultation with OLM, the Legal Department, and the Credit and Collections Unit as needed, may direct that a new permit be issued or the old permit reinstated. BRPM will notify OLM and the DPE of its decision.
- 4.4.8. In the event that delinquent lease amounts are paid in full (including any interest and fines) prior to lease termination, OLM, in consultation with the Legal Department, BRPM, and the Credit and Collections Unit may (a) continue the lease termination process; (b) stop the lease termination process; or (c) take other action as needed. A record of late payment will be maintained by the Credit and Collections Unit in the account file.

4.5. Collections of Delinquent Accounts

4.5.1. When it has been determined by OLM, the Legal Department, and the Credit and Collections Unit that an account should be referred for collection, the Credit and Collections Unit will prepare a collection file. The Credit and Collections Unit will coordinate the collection of the delinquent account with the contracted collection agency, or forward the collection file to the Legal Department for forwarding to the Attorney General's office for action. At a minimum, the file should contain:

- Copy of the terminated lease or revoked permit
- Total amount of the delinquency (rents/fees, interest, additional fines, restoration costs, etc.)
- Current contact information (name, address, phone number)
- Copy of invoices and letters sent
- Copy of DIVISION INSPECTION CHECKLIST⁺
- Documentation of any other attempts or information regarding collection
- Other information pertinent to the permit/lease, such as environmental issues, encroachments or other structures, noncompliance or issues.

4.5.2. The Legal Department will receive reports from collection agencies and the Attorney General's Office regarding accounts that have been turned over to them for collection.

4.5.3. The Credit and Collections Unit will receive checks collected by collection agencies and the Attorney General's Office, and may also receive payment directly from delinquent account holders after the accounts have been turned over for collection. The Credit and Collections Unit will notify the Legal Department and OLM of any checks received. The Legal Department will review the individual case and approve the check, and provide notification that the check has been approved for deposit.

+ Exhibit 8

- 4.5.4. If the matter is deemed uncollectible by a collection agency or the Attorney General's Office, the matter will be referred to the Legal Department for determination of further appropriate action.

4.6. Division Inspections

The DPE or DCE will conduct site inspections on a periodic basis and when necessary, such as following permit revocation or lease termination.

- 4.6.1. The DPE or DCE will conduct a site visit using the DIVISION INSPECTION CHECKLIST to verify the address and inspect the site to ensure that the property has been vacated, no actions are required to rectify a potential environmental or navigation problem, and that the property has been restored to the same or better condition as existed prior to issuance of the permit/lease.
- 4.6.2. If the property has not been restored, the DPE or DCE will identify any work that is required or structures that should be removed. In the event the property has not been restored, and a structure remains on the property, follow Section 4.7. for encroachments.
- 4.6.3. The DPE or DCE will provide BRPM with a completed CHECKLIST documenting the site visit and noting any required follow-up action. This checklist will become part of the permit and lease project file and will be used by BRPM, OLM, the Credit and Collections Unit and the Legal Department to determine any restoration costs to be included in appropriate collection responses and other required actions.

4.7. Encroachments

- 4.7.1. Encroachments exist in two scenarios: A building, structure, or other personal property or parts of these erected, placed, maintained, or otherwise occupying Canal property as a result of (1) a revoked permit or terminated lease, or (2) an illegal occupation not covered by a permit or lease.
- 4.7.2. If environmental degradation is noticed or potentially could occur, then the Division Environmental Specialist or the DPE or DCE conducting the inspection will contact OLM for guidance on other appropriate actions. Code Compliance personnel may be contacted by the DPE or DCE to identify structural issues that may exist.

- 4.7.3. The DCE or designee will deliver, in person, an ENCROACHMENT NOTICE⁺ to the encroacher at the encroacher's address as listed on the tax roll and/or in the County Clerk's office. The notice will indicate that, unless the encroacher contacts the Corporation and proper authorization can be obtained, the property must be vacated and the encroaching building or structure removed within 30 days of service. The Legal Department will prepare an affidavit of service to be signed by the DCE or designee upon service. In the event the party cannot be located, the DCE or designee will securely affix the notice to the encroaching building or structure, using tacks, tape, etc. The DCE will send OLM and the Legal Department a copy of the notice and the affidavit of service.
- 4.7.4. If the encroacher responds within 30 days, the DCE will attempt to resolve the encroachment using one of the following methods:
- Have the encroacher apply for an occupancy permit or lease, as applicable, if removal is not, in the judgment of the DCE, necessary for the improvement, use, maintenance, control, management, repair or operation of the Canal System; or
 - Seek enforcement action against the encroacher if at the end of the 30 day period, in the judgment of the DCE, noncompliance will continue.
- 4.7.5. If in the event of noncompliance at the end of the 30 day period, the DCE will refer the matter to the Legal Department for commencement of a special proceeding pursuant to Article 7 of the Real Property Actions and Proceedings Law or to take other actions as deemed appropriate by the Legal Department.

5. Responsibilities

The Credit and Collections Unit is responsible for invoicing permittees and lessees and sending delinquency, final, and cancellation notices. The Unit will maintain the account files and prepare collection files for delinquent account and work with contract collection agencies.

The Bureau of Real Property Management will review Division site inspections and assist in determining the appropriate action when a permit has been revoked or a lease terminated or when other violations exist.

The Insurance Compliance Unit will determine if permittees and lessees have proper insurance coverage and notify applicants that do not have insurance coverage.

The DCE may conduct site inspections and coordinate resolution of permit violations, and oversee the encroachment notice and service.

The Division Code and Compliance personnel may assist in identifying structural or other issues affecting an encroachment.

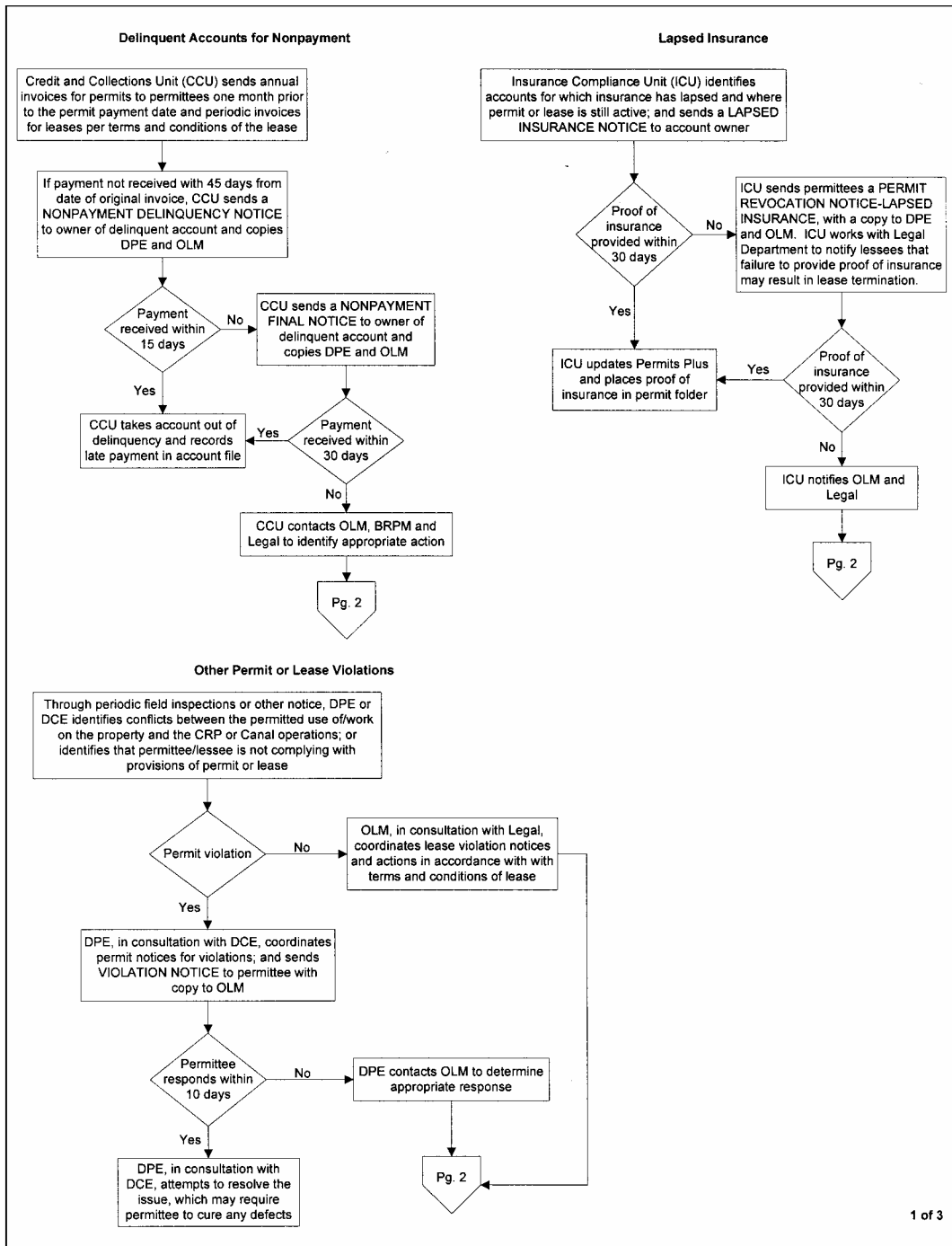
The Division Environmental Specialist will assist in identifying environmental issues associated with encroachments.

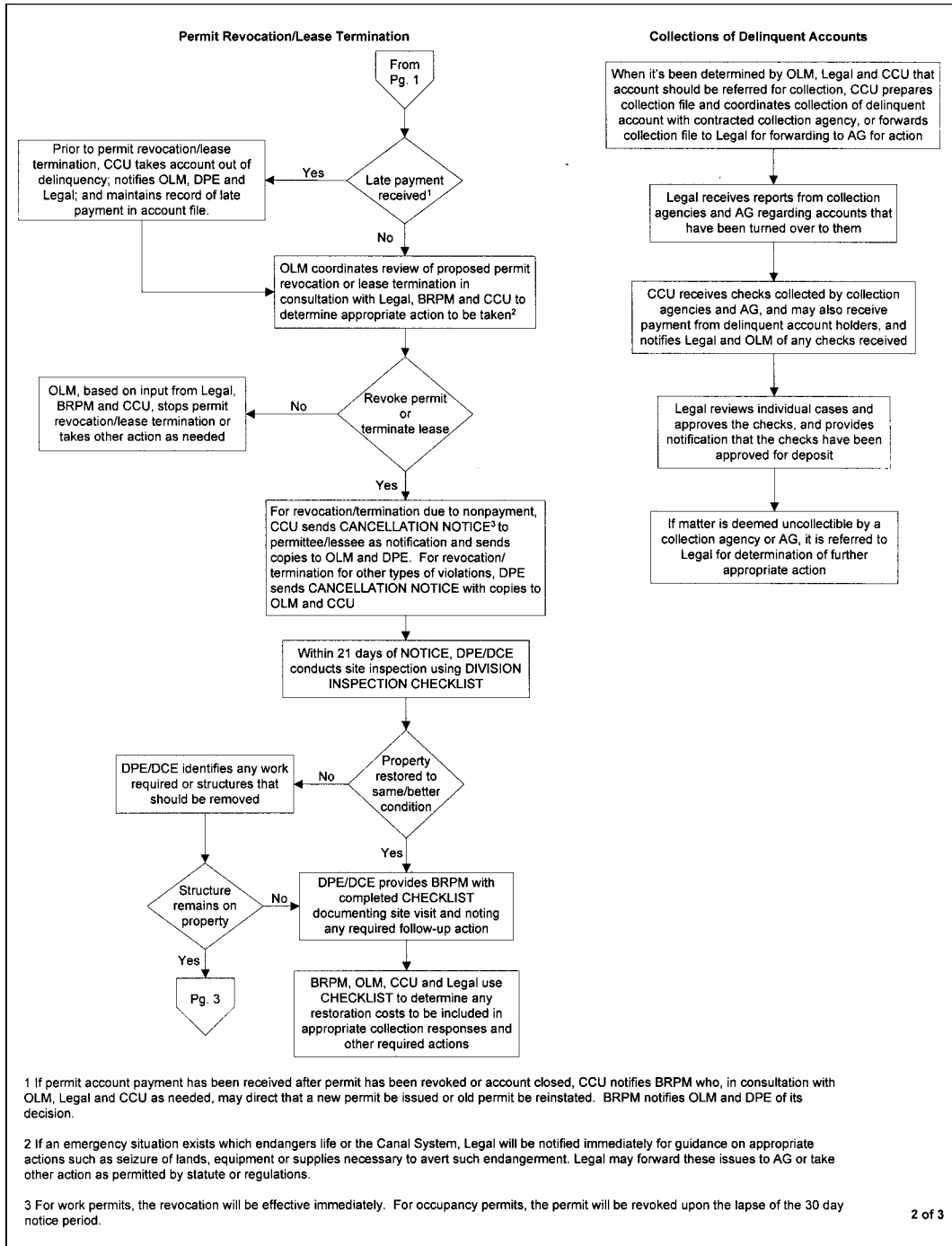
The DPE may conduct site inspections and coordinate resolution of permit violations.

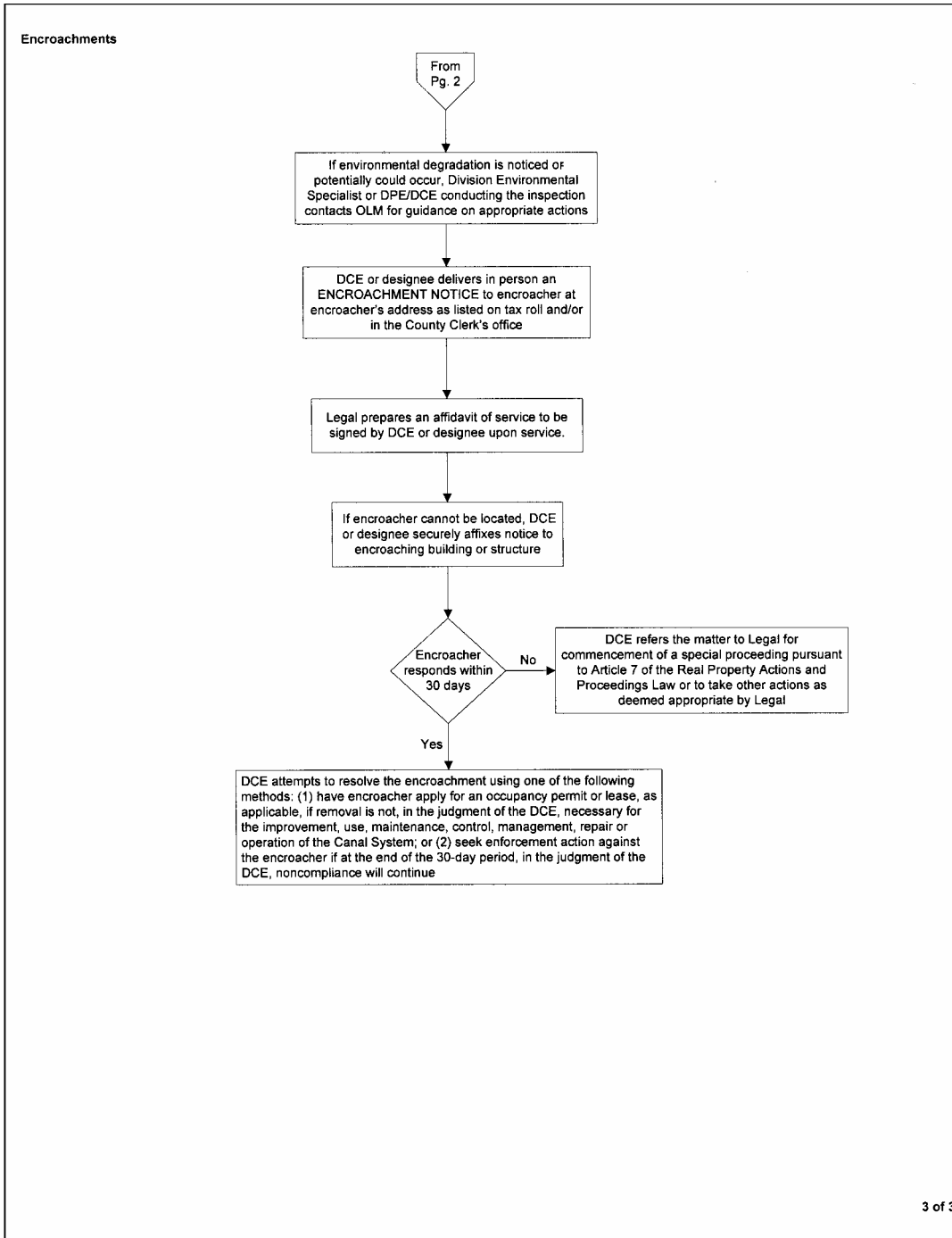
OLM will coordinate with the Legal Department and others, as necessary, to determine the appropriate response to lease and permit violations.

The Legal Department will assist OLM in determining the appropriate response to permit and lease violations and coordinate Attorney General Office assistance and the collections process.

6. Flowcharts







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EXHIBIT 1
SAMPLE PERMIT AND LEASE INVOICE

This form will be used by the Credit and Collections Unit for annual permit and lease invoices.



New York State Canal Corporation
P.O. Box 22058
Albany, New York 12201-2058

Canal Permit Revenue Unit
(518) 471-5051
Fax: (518) 471-5050
Real Property Unit
(518) 471-4334

INVOICE FOR CANAL PERMIT

Invoice #:
Date Billed:
Due Date:

Previous Balance:
Current Fee Due:
Total Fee Due:

Plate #:

For your convenience, we now accept payment by Mastercard, Visa, American Express or Discover.

NOTE:

This permit cannot be canceled or transferred without the express written consent of the New York State Canal Corporation. If you wish to cancel your permit, plan to sell or have sold your property, you must submit a cancellation request in writing to the Bureau of Real Property Management at the above address. For questions regarding the cancellation or transfer procedure, please contact the Real Property Unit at (518) 471-4334.

If your check is returned by the bank, a \$25 dishonored check processing fee will be charged. Late payment penalties may be assessed at a rate of 2% per month for payments made after the due date. This amount may include unpaid penalties from previous periods. For any questions regarding billing, please contact the Accounts Receivable Unit at (518) 471-5051.

Please retain this portion for records.

DETACH HERE

DETACH HERE

MAKE CHECK PAYABLE TO: NEW YORK STATE CANAL CORPORATION
DO NOT SEND CASH.

Invoice #:

Plate #:

Current Address:

Amount Due By

AMOUNT ENCLOSED:

Two empty rectangular boxes for amount enclosed.

New Address:

New York State Canal Corporation
P.O. Box 22058
Albany, NY 12201-2058

Three horizontal lines for new address.

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EXHIBIT 2
NONPAYMENT DELINQUENCY NOTICE

The notice will be sent by the Credit and Collections Unit to a permittee/lessee when payment has not been received within 45 days from the date of the original invoice.

< insert date >

Name
Address
City, State, Zip

DELINQUENCY NOTICE

On < insert date > we sent you our invoice number < insert number > in the amount of < insert amount > for permit fees due as per your Canal Use and Occupancy Permit agreement. Perhaps you have misplaced your invoice or your payment was overlooked. For your convenience, we have attached another copy of the invoice.

Please remit your payment in the amount of < insert amount > within fifteen days of the date of this letter in order to keep your permit active and to avoid the assessment of interest charges. For your convenience, we now accept payment by MasterCard, Visa, American Express, or Discover. All you need to do is fill out the attached credit card authorization form and submit it to us within fifteen days.

We look forward to hearing from you.

Sincerely,

Name
Supervisor, Accounts Receivable

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EXHIBIT 3
NONPAYMENT FINAL NOTICE

The final notice will be sent by the Credit and Collections Unit to a permittee/lessee within 15 days of the nonpayment delinquency notice if payment has not been received.

< insert date >

Name
Address
City, State, Zip

Re:

**FINAL NOTICE
VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

This letter serves as your 30-day written notice of the revocation of your Canal Use and Occupancy Permit due to non-payment of the annual fee, as per the General Conditions of your permit.

To date, the permit fee of <insert amount > due < insert date > has not been received. This amount represents the past due balance of < insert amount > plus interest charges of < insert amount >. Previously, an invoice and a delinquency notice were sent to you and no response has been received.

If you pay the past-due balance within 30 days of the date of this notice, your Use and Occupancy Permit will remain in effect. If this office does not receive the past-due balance within 30 days of the letter, your permit will be considered revoked and you must vacate the premises, turn in your Canal identification plate to the Real Property Unit at the above address and remove any structures and personal items currently on the property. If you fail to remove these structures and personal items, the Corporation will remove any such items structures and personal items at your expense.

If there is reason for the permit fee not being paid, please contact me today at < insert number >.

Sincerely,

Name
Supervisor, Accounts Receivable

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EXHIBIT 4
LAPSED INSURANCE NOTICE

The Insurance Compliance Unit will use this notice to notify account owners when insurance has lapsed.

Content under development

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EXHIBIT 5
PERMIT REVOCATION NOTICE – LAPSED INSURANCE

If a permittee has not provided documentation of insurance within 30 days of the lapsed insurance notification, the Insurance Compliance Unit will send the permit revocation notice for lapsed insurance.

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EXHIBIT 6
 SAMPLE VIOLATION NOTICE
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The letter will be used to notify a permittee or lessee of violations (other than for nonpayment or lapsed insurance) using this form.

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

< insert date >

< insert name of Encroacher >
 < insert address of Encroacher >

Re: < reason for notice >

Dear < insert name of Encroacher >:

A review of public records indicates that a portion of < insert description of property, structure, etc. > encroaches on Canal lands or waters.

According to the New York State Canal Corporation Rules and Regulations Part 156.2, Canal lands or waters may not be occupied or used except under the terms and conditions prescribed in a revocable permit. Any person occupying Canal lands or waters without a permit shall be subject to a penalty.

If you plan the continued use these lands and/or waters, the attached canal permit application package and instructions are provided for your convenience. They include:

- 1) Instructions for applying for a Canal Permit.
- 2) A CANAL PERMIT APPLICATION (TA-99072) - Please fill in all the information and include the following:
 - a) A sketch of the Canal lands to be permitted.
 - b) A copy of the deed to the property adjacent to the Canal lands to be permitted.
 - c) Your phone number and any other pertinent information pertaining to the permit.
- 3) Appendix C – State Environmental Quality Review – Short Environmental Assessment Form Part I - Project Information. Please fill out and return with your application.

The Canal Corporation requires liability insurance coverage in the amount of \$300,000 for all residential permits. Please provide a rider from your insurance company showing the required amount of coverage and naming the New York State Canal Corporation, the New York State Thruway Authority and the People of the State of New York each as additional insured. This rider must be sent to the Canal Corporation before your occupancy permit will be issued.

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SAMPLE VIOLATION NOTICE

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Send your completed APPLICATION, along with your non-refundable application fee of \$25.00 (by check or money order made payable to the New York State Canal Corporation) to the following address:

New York State Canal Corporation
Attention: Canal Permit Engineer
< **insert Division name** >
< **insert address** >
< **insert city, state, zip** >

Should you decide not to apply for a Canal Permit, or should your APPLICATION not be approved, you will need to vacate the above referenced real property and you will be responsible to restore the property to its original condition, or for all costs required to restore the property to its original condition.

If you have any questions, do not hesitate to contact me at < **insert phone number** >.

Sincerely,

< **insert Division name** > Division Canal
Division Permit Engineer

Encls.

Cc:

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EXHIBIT 7
CANCELLATION NOTICE

Upon a determination to revoke a permit or terminate a lease, a cancellation notice will be sent.

<insert date >

Name
Address
City, State, Zip

Re: < insert permit number >

**CANCELLATION NOTICE
VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

You are hereby notified that the above referenced Use and Occupancy permit has been cancelled. It is the responsibility of the permittee to remove all structures, works and personal property located on the permitted premises and restore it to the same or better condition that existed prior to issuance of the permit. In addition, please return your permit plate to the above address as soon as possible.

The New York State Canal Corporation or its representative will commence a site visit within 21 days from the date of this letter and without further notice may, if necessary, cause removal of any and all remaining structures, works and personal property from the Canal property at your expense.

Your cooperation will be appreciated.

Sincerely,

Name
Director
Office of Investments and Asset Management

cc:

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EXHIBIT 8
DIVISION INSPECTION CHECKLIST

This checklist will be used to document a site inspection by Division personnel.

Content under development

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EXHIBIT 9
ENCROACHMENT NOTICE

This notice is used to notify an encroacher of an encroachment.

NOTICE/REMOVAL OF ENCROACHMENTS

FORMER CANAL PERMIT NO. < insert number >

IT IS HEREBY ORDERED THAT All Buildings, Structures, Docks And/Or Other Personal Property Be Immediately Removed From This Canal Lot < insert Lot number(s) and address >.

Special Arrangements For Such Removal Can Be Made By Calling () - . No Other Occupation or Entrance Is Permitted Other Than As Pre-Arranged.

Upon The Failure Of The Property To Be So Removed, By Or Before < insert date >, The Canal Corporation Shall Be Authorized To Do So, Without Liability On The Part Of The State Or The Corporation.

**NYS Canal Corporation
< insert date >**