



Information for Homeowners Regarding Sewer Surcharge Laws

Brought to you by the Niagara Falls Water Board

With melting snow and heavy spring rains upon them, there is an unfortunate possibility that some homeowners may soon be dealing with flooded basements. While the Water Board knows how costly, difficult, and frustrating these flood situations can be, it is important to remind homeowners that in most cases the NFWB is not legally responsible for such damages. That is why we encourage all ratepayers to purchase property insurance with water backup coverage.

Most backups resulting from too much rain or melting snow occur because portions of the sewer system are “surcharged,” meaning that inflow and infiltration of water exceeds the sewer’s design capacity. The existing pipes are not large enough to carry away all the water that is entering the system at a given time, and water fills the mains and homeowners’ connected sewer laterals. On rare occasions, this water rises high enough to flow into basements through drains. Once the rain lets up, the sewer mains are able to drain, and water usually drains from the basement.

A surcharge situation—which is the subject of this community alert—is different from when a main backs up due to an obstruction, in which case the basement typically will not drain until the obstruction is removed. The Water Board’s operations team pursues aggressive maintenance, such as sewer flushing and chemical treatments to remove roots, in order to try and prevent those types of issues.

When a backup occurs because the sewer pipes are not large enough to carry away all of the water that is entering the system, the Water Board, a municipal entity, is not liable for the resulting damage. This reflects

the reality that when the sewer mains were installed, discretionary decisions had to be made regarding the size of those pipes, including consideration of costs, anticipated usage, and the engineering challenges of a larger system.

Thus, New York State courts have held that a claim of flooding “caused by the backflow of a sewer system, standing alone, is insufficient to maintain an action against a municipality to recover damages for injury to property.” As well as that there is no liability where a “claim relates to an influx of rain water through basement walls during periods of severe and protracted rain such that the municipal storm sewers are overwhelmed.” In a claim that arose after sewage effluent flooded a residence during a severe storm, a court found that the “municipality is immune from liability arising out of claims that it negligently designed the sewerage system.” This is the case because “a municipality is not an insurer of its sewer system and cannot be held liable for injury unless it is shown that the injury was caused by active negligence in the maintenance of the system.”

The key reminder being that while the Water Board owns and operates the sewer system, it does not insure property owners against loss when overall system design is cause for damages. And that is why insurance companies offer **water backup coverage**, and why the NFWB **highly recommends** that homeowners consider purchasing such coverage from their property insurance providers.

Thank you, as always, for your attention to this important matter.

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