



## **Big changes to NYC Local Law 11 Façade Inspection and Safety Program for Cycle 9 - by Alison Hoffmann**

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In December 2019, terracotta fell from a Manhattan tower, killing a passerby and prompting the New York City Department of Buildings to step up enforcement of the Façade Inspection and Safety Program (FISP). A new rule in effect this month makes substantial changes to the inspection and reporting requirements.

In past cycles, Qualified Exterior Wall Inspectors (QEWIs) needed to be registered architects or engineers with at least one year of relevant experience. Now, QEWIs must have seven years' experience and demonstrated familiarity with facade rules. No longer can QEWIs delegate to tradesmen and technicians; only architects, engineers, and those with an architecture or engineering degree and three years of FISP experience – or without a degree but at least five years' experience – can perform inspection tasks, and only under QEWI supervision.

Previously, close-up inspection was required for “a representative sample” of the exterior wall. Now, close-up inspections must be performed at least every 60 ft. along every exterior wall fronting a public right-of-way, a major increase in the time and expense of physical examinations.

The other big change is the requirement for cavity wall probes. Starting this cycle, and in every odd-numbered cycle thereafter, probes must be performed on all cavity wall construction. At a minimum, a probe must be completed along each close-up inspection interval, to identify wall tie conditions and spacing. Exceptions for new and recently rehabilitated buildings are provided, but the rule is a wide-reaching effort to address recent failures due to deficient wall ties. Still, the destructive nature of invasive probes should not be taken lightly. Sidewalk protection needs to be erected, and relevant permits obtained. Historic buildings likely require additional permitting. For large buildings, where probes exceed 150 s/f total, a work permit is required. Finding a contractor when thousands of buildings are up against the deadline is also a significant consideration.

Critical examination reports now must specify all materials present in exterior walls, a challenge for

some buildings, and must include dated photo documentation of QEWS performing inspections, along with photographs of elevations, all Safe with a Repair and Maintenance Program (SWARMP) and unsafe conditions, typical conditions for buildings classified as safe, and multiple shots of every cavity wall probe.

To better distinguish SWARMP conditions from unsafe ones, the new rule specifies that conditions requiring repair within one year are Unsafe, while those to be addressed in the next five years – but not less than one year – are SWARMP. In response to concerns about pedestrian safety, QEWS are now charged with recommending public protection measures in the report.

Unsafe and SWARMP conditions will now be assigned an exact date by which work must be completed. The updated rule extends the 30-day period for correcting unsafe conditions to 90 days. If a condition cannot be corrected in that period, the QEWS may recommend an extended timeframe. Corrections made in the previous cycle will now need to be reported as unsafe if they need further or repeated repair at the time of the Cycle 9 inspection.

Penalties receive a big boost in the new version of the rule. Failing to file an acceptable report means a civil penalty of \$5,000, a fivefold increase. Late filing incurs a penalty of \$1,000 per month, four times the \$250-per-month penalty of last cycle.

New for Cycle 9, failing to correct a SWARMP condition from the previous cycle now carries a penalty of \$2,000. Owners who fail to correct Unsafe conditions are liable for a \$1,000-per-month penalty, plus a monthly fine for each linear foot of sidewalk shed. Keeping sidewalk sheds up for years is an ongoing issue, so the rule aims to remove sheds—and address unsafe conditions—more quickly.

Façade condition status must now be posted in the lobby or vestibule of the building. The hope is that having to prominently display a certificate declaring a building “unsafe” will motivate owners to make repairs.

Owners should act now to address remaining unsafe and SWARMP conditions from Cycle 8, plan for additional drops to meet close-up inspection requirements, budget for exploratory probes (if the building has cavity walls), and allow additional time to arrange for scaffolding, sidewalk bridging, and contractors.

For Cycle 9, the filing windows are:

- Subcycle A (blocks ending 4, 5, 6, or 9) is 2/21/2020 – 2/21/2022;
- Subcycle B (blocks ending 0, 7, 8) is 2/21/2021 – 2/21/2023; and
- Subcycle C (blocks ending 1, 2, 3) is 2/21/2022 – 2/21/2024.

With penalties at four and five times what they were in the past, and the reputation of a building

hanging in the balance, the incentive to inspect thoroughly, file on time, and make repairs promptly couldn't be clearer. New Yorkers are worn down by reports of citizens struck by façade debris, and the drive to make buildings safer has reached a tipping point.

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