

1 RCNY §103-09

CHAPTER 100

Subchapter C Maintenance of Buildings

§103-09 Retaining Wall Inspections, Filing Requirements, Penalties and Waivers.

(a) Definitions

- (1) *Acceptable report.* A report of condition assessment filed by a qualified retaining wall inspector that meets the requirements of the Administrative Code and this rule as determined by the Department.
- (2) *Amended report.* A report of condition assessment filed by a qualified retaining wall inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that the retaining wall is no longer unsafe.
- (3) *Close-up inspection.* A physical examination performed on a retaining wall for the purpose of performing a condition assessment.
- (4) *Condition assessment.* An examination conducted to review a retaining wall and all parts of it to determine whether the retaining wall and its parts are either safe, unsafe, or safe with a repair and maintenance program and whether, in the judgment of a qualified retaining wall inspector, it requires remedial work.
- (5) *Filed (in reference to a report).* A report is deemed filed with the Department when it has been received by the Department.
- (6) *Filing window.* The one-year period during which an acceptable report for a particular retaining wall may be filed with the Department without penalty.
- (7) *Fronting.* The length of a retaining wall running parallel or near parallel to a public right-of-way.
- (8) *Height (of retaining wall).* The vertical distance, measured from the ground surface above the toe of the wall to the top of the wall, wall stem, or wall step for tiered walls, including any parapets or fencing intended for retaining material.
- (9) *Maintenance.* The cyclical or recurring upkeep of a retaining wall including, but not limited to, vegetation removal, weep holes, cleaning wall drains, removing debris from culverts, replacing dislodged chinking, painting soldier piles, cleaning and sealing concrete and wood facings.
- (10) *Public right-of-way.* A public highway, railroad, street, avenue, alley, public driveway, sidewalk, roadway or any other public place or public way.
- (11) *Qualified Retaining Wall Inspector ("QRWI").* A qualified retaining wall inspector as defined in section 101-07 of the rules of the Department.
- (12) *Repair.* The non-routine fixing and restoring of wall elements to their intended function, including, but not limited to, resetting dislodged stonework, repointing stone masonry, re-grading or reseeding adjacent slopes, patching concrete spalls, mending damaged wire baskets, and repair or replacement of the drainage system.
- (13) *Report of condition assessment ("Report").* A written report filed with the Department by a qualified retaining wall inspector clearly documenting the conditions noted during the assessment; areas that need repair, maintenance, or engineering monitoring; a final wall rating; and any other requirements mandated by this rule.
- (14) *Report filing cycle.* The five-year time interval established by the Commissioner for the filing of each successive report for each successive condition assessment of every retaining wall subject to the requirements of Article 305 of Title 28 of the Administrative Code.
- (15) *Retaining Wall.* A wall that resists lateral or other forces caused by soil, rock, water or other materials, thereby preventing lateral displacement and the movement of the mass by sliding to a lower elevation. Such term does not include basement walls and vault walls that are part of a building, and underground structures, including but not limited to utility vault structures, tunnels, transit stations and swimming pools.
- (16) *Safe.* A final wall rating in which a retaining wall is determined to be fully functional with no action required at the time of assessment.
- (17) *Safe with minor repairs or maintenance.* A final wall rating in which a retaining wall is found at the time of assessment to be safe, but requires minor repair or routine maintenance within the next five

years to correct minor deficiencies in order to minimize or delay further wall deterioration and remain safe.

- (18) *Safe with repairs and/or engineering monitoring.* A final wall rating in which a retaining wall is found at the time of assessment to be safe but requires repair within the next five years to correct minor to severe deficiencies in order to minimize or delay further wall deterioration and remain safe. In addition to repair, the qualified retaining wall inspector deems it necessary to regularly monitor and/or investigate further the retaining wall to determine the nature or cause of observed distresses and what action may be required.
- (19) *Subsequent report.* A technical examination report that is filed by a qualified retaining wall inspector after an acceptable report in order to change the status of a retaining wall for that reporting cycle to reflect changed conditions, except where an amended report should be filed.
- (20) *Unsafe.* A condition of a retaining wall and any appurtenances found at the time of assessment that is a hazard to persons or property and requires immediate abatement and/or public protection.

(b) Responsibilities of qualified retaining wall inspectors.

- (1) A QRWI must conduct condition assessments and file reports in accordance with this section and section 28-305.4 of the Administrative Code.
- (2) A QRWI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QRWI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

(c) Condition assessments.

- (1) In accordance with Article 305 of Title 28 of the Administrative Code, a condition assessment of all parts of retaining walls with any portion of the wall having a height of ten feet or more at any location and fronting a public right-of-way must be conducted by a qualified retaining wall inspector once every five (5) years. The results of the condition assessment must be submitted to the Department in the form of a report of condition assessment.
- (2) Before performing a condition assessment of a retaining wall, the qualified retaining wall inspector retained by or on behalf of the owner must review the most recent report and any available previous reports. The Department will maintain a file of such reports submitted in conformance with article 305 of Title 28 of the Administrative Code, and provide copies upon payment of fees set forth in the rules of the Department.
- (3) The qualified retaining wall inspector must design and implement an assessment program that is specific to the retaining wall to be assessed, including, but not limited to, observations, data collection and method of evaluation. The assessment program and methods to be employed must be based on the consideration of the wall construction type, wall function, year built, location and failure consequence. Consideration must be given to the retaining wall's history of maintenance and repairs as described in previous reports and submittals to the Department, if applicable. The assessment program must be provided to the Department for approval no fewer than 90 days prior to implementation. The Department reserves the right to object to the proposed program.
- (4) The methods used to assess the retaining wall in question must permit a complete condition assessment of the wall, including, but not limited to, selective probes, cores and measurements of wall dimensions, including, but not limited to, thickness.
- (5) The qualified retaining wall inspector must utilize a professional standard of care to assess the condition of the retaining wall and surrounding elements that impact the wall's stability. The following elements must be assessed as applicable:
 - (i) Primary wall elements, including, but not limited to, piles and shafts, lagging, anchor heads, wire or geo-synthetic facing elements, bins or cribs, concrete, shotcrete, mortar, manufactured block or brick, placed stone and wall foundation material.
 - (ii) Secondary wall elements and appurtenances, including, but not limited to, wall drains and water management systems, architectural facing, traffic barrier, fencing, roads, sidewalks, shoulders, upslope, downslope, lateral slope, vegetation, culverts, curbs, berms and ditches.

- (6) The qualified retaining wall inspector must amend the scope of the condition assessment and add additional testing and investigation as required to characterize wall distresses, overall performance or if distresses warrant additional investigations.
 - (7) During the course of the condition assessment, photographs must be taken and sketches made to document the exact location of all distresses that require repair, maintenance, or monitoring, or that cause a retaining wall to have a final wall rating of unsafe.
 - (8) Upon the discovery of an unsafe condition, the qualified retaining wall inspector must notify the Department by calling 311 and then calling the Department directly with the 311 complaint number within 24 hours of discovering the unsafe condition.
 - (9) The condition assessment must include close-up inspections of the retaining wall. It is not acceptable to base a condition assessment on a drive-by inspection or a prior report without a close-up inspection of the retaining wall.
- (d) Report requirements.
- (1) The qualified retaining wall inspector must file with the Department and submit a copy to the owner of the retaining wall a written report of condition assessment. The report must clearly document all conditions noted during the assessment and state that the assessment was performed and completed in accordance with the Administrative Code and this rule. An acceptable report may be prepared and filed for multiple owners where a retaining wall which is required to comply with article 305 of Title 28 of the Administrative Code and this rule spans numerous blocks and lots.
 - (2) Technical information in the report must adhere to and follow the sequence and the labeling of the report requirements as listed in paragraph (3) of this subdivision, and must be provided on such forms and in such format as the Department requires. Additional information may be provided. All items in subparagraphs (i) – (xiv) of paragraph (3) must be listed in the report. If a requirement is not applicable, this must be indicated on the report under the relevant number.
 - (3) The report must include an executive overview that consists of a summary of findings and recommendations, a concise statement of the scope of the assessment and findings, the conclusions and recommendations and a final wall rating that categorizes the retaining wall as “safe,” “safe with minor repairs or maintenance”, “safe with repairs and/or engineering monitoring” or “unsafe.” The report must also include, but not be limited to:
 - (i) The address, any a.k.a. addresses, the Block and Lot number, the Building Identification Number (“BIN”) for the block and lot on which the retaining wall is located, the location from the nearest cross street, and a copy of the Property Profile Overview from the Buildings Information System (“BIS”) found on the Department’s website;
 - (ii) The name, mailing address and telephone number of the owner of the retaining wall, or, if the owner is not an individual, the name, mailing address, telephone number, and position/title of a principal of the owner;
 - (iii) A detailed description of any maintenance, repairs, or the results of engineering monitoring performed to the retaining wall since the previous report;
 - (iv) A detailed description of the scope and procedures used in making the condition assessment that should include:
 - (A) The dates of start and completion of the condition assessment;
 - (B) The extent and location of all physical examinations performed;
 - (C) A location or plot plan of a discernible scale and with a north arrow that shows the entire earth-retaining length of the wall, all structures located on the block or lot and within the zone of influence of the wall, including the number of stories and the type of occupancy, and any and all public rights-of-way adjacent to the retaining wall; and
 - (D) locations and dates of close-up inspections and tests performed;
 - (v) At least one cross-section of the retaining wall with details adequate to indicate the following:
 - (A) Retaining wall construction type;
 - (B) Architectural finishes or surface treatment;
 - (C) Maximum exposed wall height;
 - (D) Height of earth on each side of the retaining wall;

- (E) Average vertical distance from the public right-of-way to cut wall toe or ground-line at the top of the fill wall;
 - (F) Horizontal distance to wall face from the edge of the public right-of-way;
 - (G) Wall face angle (batter) measured from the vertical;
 - (H) Maximum earth retaining length of the wall;
 - (I) Surcharges applied to the wall; and
 - (J) Additional cross-sections when the wall geometry and/or plumbness changes;
- (vi) A description of each significant distress observed with supporting photographic documentation. Distresses must be mapped using gridlines enabling all distresses to be positively located;
 - (vii) An analysis of the cause of each significant distress reported;
 - (viii) A final wall rating that categorizes the retaining wall as “safe,” “safe with minor repairs or maintenance,” “safe with repairs and/or engineering monitoring” or “unsafe.” A detailed description of the overall rating and factors attributing to the rating assigned must accompany the final wall rating.
 - (ix) Where a retaining wall is categorized with a final wall rating of safe with repairs and engineering monitoring:
 - (A) A plan detailing the proposed monitoring program;
 - (B) The name of the engineer performing the monitoring; and
 - (C) A stability analysis of the retaining wall that reports a “factor of safety” which shows that the wall is stable under current and expected loading conditions.
 - (x) A comparison of currently observed conditions with conditions observed during the previous report filing cycle examinations, including the status of the repairs or maintenance performed with respect to the prior conditions. The following must be included and discussed:
 - (A) Work permit numbers relating to repairs performed;
 - (B) Job numbers, status and sign-off dates for any retaining wall related jobs, where applicable; and
 - (C) Violation numbers of any open Environmental Control Board (“ECB”) violations associated with the retaining wall and the status of the repairs of the conditions cited in the ECB violations.
 - (xi) Detailed recommendations for repairs or maintenance for retaining walls with final wall ratings of “safe with minor repairs or maintenance” or “safe with repairs and/or engineering monitoring,” including:
 - (A) The recommended time frame for such repairs or maintenance to be performed, which must indicate the date by which the work will be performed (MM/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;
 - (B) Time frames of less than one (1) year, “ASAP,” or “immediately,” will not be accepted.
 - (xii) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason must be indicated;
 - (xiii) Color photographs of the retaining wall and at least one view of the entire street front elevation for all reports regardless of the retaining wall’s final wall rating. Photographs must be at least 3” x 5” (76mm x 127mm) in size, unless otherwise requested by the Department. The photographs must be dated and both the original photographs and all required copies shall be in color. The page/sheet size for attachments must not exceed 11” x 17” (280mm x 430mm).
 - (xiv) The seal and signature of the qualified retaining wall inspector under whose direct supervision the condition assessment was performed.
- (4) All reports and supporting documents must be submitted to the Department in an electronic format.
- (e) Report filing requirements.

- (1) The requirements of this rule apply to owners of retaining walls with a height of ten feet or more and fronting a public right-of-way.
 - (2) Owners of retaining walls who are required to file a report must do so once during each five-year report filing cycle established by the Department, depending on the borough, as described in subsection (5) below. The next complete report filing cycle runs from January 1, 2014 to December 31, 2018.
 - (3) An acceptable report must be filed within the applicable one-year filing window to avoid a late filing penalty.
 - (4) The report must be submitted to the Department along with a filing fee as specified in the rules of the Department.
 - (5) Beginning January 1, 2014 an acceptable report for each retaining wall to which this rule applies is due in accordance with the following filing windows:
 - (i) For retaining walls located within the Borough of the Bronx, an acceptable report must be filed within the filing window starting January 1, 2014 and ending December 31, 2014.
 - (ii) For retaining walls located within the Borough of the Manhattan, an acceptable report must be filed within the filing window starting January 1, 2015 and ending December 31, 2015.
 - (iii) For retaining walls located within the Borough of Staten Island, an acceptable report must be filed within the filing window starting January 1, 2016 and ending December 31, 2016.
 - (iv) For retaining walls located within the Borough of Queens, an acceptable report must be filed within the filing window starting January 1, 2017 and ending December 31, 2017.
 - (v) For retaining walls located within the Borough of Brooklyn, an acceptable report must be filed within the filing window starting January 1, 2018 and ending December 31, 2018.
 - (6) A report must be filed within sixty (60) days of the date on which the qualified retaining wall inspector completed the condition assessment, but not more than one (1) year after completion of the close-up inspection. If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing requires a new conditional assessment, including a new close-up assessment.
 - (7) A subsequent report may be filed within a five-year report filing cycle to change a retaining wall's status for that cycle.
- (f) Unsafe conditions.
- (1) If any retaining wall is found in an unsafe condition, the qualified retaining wall inspector or the person in charge of the retaining wall must notify the Department by calling 311 and then calling the Department directly with the 311 complaint number within 24 hours of discovering the unsafe condition.
 - (2) Upon discovery of an unsafe condition, the owner of the retaining wall, his or her agent, or the person in charge of the retaining wall must immediately commence such repairs or reinforcements and any other appropriate measures required to secure the safety of the public and to make the retaining wall safe.
 - (3) Within two weeks after repairs to correct the unsafe condition have been completed, the qualified retaining wall inspector must inspect the premises. The qualified retaining wall inspector must obtain permit sign-offs as appropriate and must promptly file with the Department a detailed amended report stating the revised report status of the retaining wall, along with a filing fee as specified in the rules of the Department. Protective measures must remain in place until an amended report is accepted; however, the qualified retaining wall inspector may request permission for the removal of the protective measures upon submission of a signed and sealed statement certifying that an assessment was conducted, the conditions were corrected, and the protective measures are no longer required. Permission may be granted at the Commissioner's sole discretion.
 - (4) The Commissioner may grant an extension of time of up to ninety (90) days to complete the repairs required to remove an unsafe condition upon receipt and review of an initial extension application submitted by the qualified retaining wall inspector on behalf of the owner, together with:
 - (i) A copy of the original report for that report filing cycle and all required documentation submitted with such report;
 - (ii) Notice that the retaining wall and surrounding area have been secured for public safety by means of a shed, bracing, or other appropriate measures as may be required;

- (iii) A copy of the contract indicating scope of work to remedy unsafe conditions;
 - (iv) The qualified retaining wall inspector's estimate of length of time required for repairs;
 - (v) A statement of all applicable permit requirements;
 - (vi) A notarized affidavit by the owner of the retaining wall that work will be completed within the time of the qualified retaining wall inspector's stated estimate; and
 - (vii) a fee as specified in the rules of the Department.
- Financial considerations will not be accepted as a reason for granting an extension.
- (5) A further extension will be considered only upon receipt and review of a further extension application, together with notice of:
 - (i) An unforeseen delay (e.g., weather, labor strike) affecting the substantially completed work; or
 - (ii) Unforeseen circumstances; or
 - (iii) The nature of the hazard that requires more than ninety (90) days to remedy (e.g., new retaining wall to be built).

Financial considerations will not be accepted as a reason for granting an extension.
 - (6) Notwithstanding any extensions granted to commence the repair of an unsafe condition, all work to repair an unsafe condition must be completed within 365 days of filing a report of an unsafe condition with the Department.
- (g) Conditions classified as safe with repair and/or engineering monitoring.
- (1) The owner of the retaining wall is responsible for ensuring that the conditions described in the report of condition assessment as safe with repair and/or engineering monitoring are repaired, the wall is restored to a safe condition, and all actions recommended by the qualified retaining wall inspector are completed within the time frame recommended by the qualified retaining wall inspector, and are not left to deteriorate into unsafe conditions before the next condition assessment. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in qualified retaining wall inspector's report. Such notification must be accompanied by supporting documents from the qualified retaining wall inspector justifying the request for a new time frame. The Department may approve or disapprove such request.
 - (2) A report may not be filed describing the same condition and pertaining to the same location on the retaining wall as safe with repair and/or engineering monitoring for two consecutive report filing cycles.
 - (3) The qualified retaining wall inspector must certify the correction of each condition reported as requiring repair in the previous report filing cycle, or report conditions that were reported as safe with repair and/or engineering monitoring in the previous report filing cycle as unsafe if not corrected at the time of the current assessment.
- (h) Civil Penalties.
- (1) Failure to file. An owner who fails to file the required acceptable condition assessment report will be liable for a civil penalty of one thousand dollars (\$1,000) per year immediately after the end of the applicable filing window.
 - (2) Late filing. In addition to the penalty for failure to file, an owner who submits a late filing will be liable for a civil penalty of two hundred fifty dollars (\$250.00) per month, commencing on the day following the filing deadline of the assigned filing window period and ending on the filing date of an acceptable initial report.
 - (3) In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition will be liable for a civil penalty of one thousand dollars (\$1,000) per month, pro-rated daily, until the unsafe condition is corrected, unless the commissioner grants an extension of time to complete repairs pursuant to this section. This penalty will be imposed until the Department receives an acceptable amended report indicating the unsafe conditions were corrected, or until an extension of time is granted.
- (i) Challenge of civil penalty.
- (1) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof must include, but are not limited to, a copy of an acceptable initial report, a copy of the acceptable amended report, copies of

approved extension of time requests while work was/is in progress, or written proof from a qualified retaining wall inspector that the unsafe conditions observed at the retaining wall were corrected and the violation was dismissed.

(2) Challenges must be made in writing within thirty (30) days from the date of service of the violation by the Department and must be sent to the office/unit of the Department that issued the violation. The decision to dismiss or uphold the penalty is at the sole discretion of the Department.

(j) Penalty waivers; eligibility and evidentiary requirements. Owners may request a waiver of penalties assessed for violation of Article 305 of Title 28 of the Administrative Code, or rules enforced by the Department. Requests must be made in writing and must meet eligibility and evidentiary requirements as follows:

(1) Owner status.

(i) A new owner requesting a waiver due to change in ownership must submit proof of a recorded deed showing evidence of transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. The new owner may only request a waiver in one of the following circumstances:

(A) The new owner has obtained full tax exemption status from the New York City Department of Finance; or

(B) The new owner took title of the property as part of an economic development program sponsored by a government agency.

(ii) A new owner of a government-owned property requesting a waiver due to change in ownership must submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.

(iii) An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition, together with proof that either the Department or the New York City Law Department was served with a "Notice of Bar Date."

(2) Retaining wall status. An owner requesting a waiver because the wall was removed must submit city or Departmental records showing evidence of the removal of the retaining wall prior to the filing deadline.

(k) Alternate report filing requirements for owners of more than 200 retaining walls in multiple boroughs. Notwithstanding any other provisions of this section, the inspection and reporting requirements set forth above for retaining walls shall not apply to owners of 200 or more retaining walls in multiple boroughs with a height of ten feet or more and fronting on a public right-of-way who on the effective date of this rule (i) employ full-time professional engineers and (ii) have an established inspection procedure for such retaining walls acceptable to the Department. Such inspection procedure must comply with Article 305 of Title 28 of the Administrative Code. Such owners must file inspection reports for all such retaining walls in a form acceptable to the Department.