



# New York City Department of Buildings

## Outstanding Violations

Report 2010-N-5



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

December 1, 2011

Robert D. LiMandri  
Commissioner  
New York City Department of Buildings  
280 Broadway, 7<sup>th</sup> Floor  
New York, NY 10007

Dear Commissioner LiMandri:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of New York City Department of Buildings' Outstanding Violations. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### Audit Objective

The objective of our audit was to determine whether managers at the New York City Department of Buildings (Department) assure timely follow-up on immediately hazardous building violations that put the health and safety of the public at risk.

#### Audit Results – Summary

Building code violations are serious and can often jeopardize people's health, safety, property and even their lives if left uncorrected. Class 1 violations are the most serious and must be corrected immediately, often to avoid endangering a significant number of people or the public at large. However, we found Department managers do not have effective systems in place to ensure hazardous violations are resolved quickly. As a result, they are allowing some Class 1 violations, which represent the most immediate and severe threat to life and safety, to remain open for as long as six months before following up to see if the problems have been corrected. In the meantime, these delays are placing the public at risk. Examples include a building in Manhattan cited for an air conditioner blocking the entrance to a fire escape. Inspectors did not return for more than six months to follow-up, at which time they found the air conditioner had yet to be moved. In another case, inspectors found a partial roof collapse in Queens that remained uncorrected after more than four months.

The law requires the Department to re-inspect all Class 1 violations within 60 days if the owner has not filed a Certificate of Correction indicating problems have been fixed. However, Department managers do not even begin scheduling re-inspection of these open violations until the fourth month following the citation. Our review of 1,206 open violations written in April 2010 and scheduled for re-inspection during August showed that 1,063 re-inspections were performed. Of the 1,063, 94 percent of inspections did not actually occur until the fourth, fifth or sixth month. Department officials explained that limited resources and other safety priorities have prevented their inspectors from conducting timely re-inspections.

Further, when these inspections took place, almost half of the time (47 percent) inspectors found the conditions had not been corrected and continued to pose an immediate threat to life and safety. In another 12 percent of these cases, inspectors were not able to gain access to the buildings to perform the inspection and could not determine if corrections had been made.

In these cases, they simply left a notice for the owner asking that they call in and schedule a new visit. Department managers do not automatically schedule any additional follow-up if the owner does not comply.

Since 2002, the Department has had a program to test the reliability of the Certificates of Correction by re-inspecting a sample of cases. During the first half of 2010, the Department selected 2,607 cases for verification. However, at the beginning of December 2010, one-fourth of these inspections had still not been done; half because inspectors did not gain access to the building on their initial visit and the other half simply because they had not yet been scheduled.

For the three-fourths of these inspections that were done, the Department found 91 percent of the owners' Certificates of Correction were accurate and violations had been corrected. However, for seven percent, inspectors concluded they were false and the hazardous conditions continued. Still, inspectors only issued new violations related to these false certifications in about half of the cases. Managers did not provide specific explanation of why no further action was taken against the other owners who falsely claimed to have corrected these dangerous problems. Instead, they noted that most of them were older violations originally issued during a time that did not provide for a second violation to be issued for false certification. They further explained that a new selection system was implemented in January 2011, which they believe will help better target higher risk certifications.

Improving the inspection system is not only vital to public safety, but can also impact property transfers because violations must be corrected before a new or amended Certificate of Occupancy can be issued. When a building cited for a Class 1 violation is not re-inspected, the Department cannot be assured that the violation was actually corrected and that the building is, in fact, safe for occupancy.

Our report contains four recommendations for improving the Department's follow-up on immediately hazardous violations that remain outstanding. Department officials agreed with our recommendations and stated that they have taken steps to improve this oversight.

This report dated December 1, 2011, is available on our web site at <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
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## Introduction

### Background

The New York City Department of Buildings (Department) is responsible for ensuring the safe and lawful use of over 950,000 buildings and properties located throughout the five boroughs. These buildings are subject to various sections of the New York City Building Code and the Rules of the City of New York.

The Department's Enforcement unit conducts inspections and is responsible for ensuring that buildings comply with all applicable laws. When an Enforcement inspector discovers violations, the responsible party is cited. The most common type of citation issued is called an Environmental Control Board Notice of Violation (violation). There are three classes of violations:

- Class 1 (immediately hazardous), which presents a severe threat to life and which must be corrected immediately
- Class 2 (major violation), which must be corrected within 40 days
- Class 3 (lesser violation), which corresponds to the former classification of "non-hazardous," and also must be corrected within 40 days

Violations contain an order for the property owner to correct the violating condition and submit a Certificate of Correction to the Department. When a Class 1 violation is issued, the law requires the Department to re-inspect the property within a specified time period if a Certificate of Correction is not filed.

According to the February 2010 Mayor's Management Report, the Department issued 63,575 violations between July 1, 2008 and June 30, 2009 (fiscal year 2009) and 76,870 in fiscal year 2010. The Department database shows 57,338 Class 1 violations issued during the period of July 1, 2008 through August 4, 2010.

### Audit Scope and Methodology

Our audit determined whether managers at the Department assure timely follow up on hazardous building violations that put the health and safety of the public at risk. Our audit scope period was July 1, 2008 through December 14, 2010.

We met with Department officials to gain an understanding of their practices for re-inspections of outstanding violations. We reviewed Department policies and procedures, including the Hazardous Re-inspection Program manual and the Certificate of Correction Audit Program protocol. We reviewed a random sample of 50 violations selected from the database of 57,338 Class 1 violations issued from July 1, 2008 through August 4, 2010. We reviewed a database containing violations scheduled for re-inspection for the month of August 2010, and reviewed the Certificates of Correction selected for audit by the Department from January 1, 2010 through June 30, 2010.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In the representation letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials will not

provide representation letters in connection with our audits. As a result, we lack assurance from agency officials that all relevant information was provided to us during the audit.

**Authority**

We did this audit according to the State Comptroller's authority in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

**Reporting  
Requirements**

A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this report and are included at the end of this report.

In their response, Department officials agreed with our recommendations and stated that they have taken steps to improve its oversight.

Within 90 days after final release of this report, we request that the Commissioner of the New York City Department of Buildings report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

**Contributors to  
the Report**

Major contributors to this report include David R. Hancox, John Buyce, Walter Irving, Christine Chu, Jeremy Mack, Carole LeMieux, Lillian Fernandes and Sue Gold.

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## Audit Findings and Recommendations

### **Violations Not Re-Inspected Timely**

Building code violations are serious and can often jeopardize people's health, safety, property and even their lives if left uncorrected. Class 1 violations are the most serious and the law requires them to be corrected immediately, often to avoid endangering a significant number of people or the public at large. A law requiring Class 1 violations to be re-inspected within 60 days if the owner has not filed a Certificate of Correction went into effect on January 28, 2010. Previously, the Department was required to re-inspect these properties within 120 days. We found the Department's enforcement managers do not have effective systems in place to ensure Class 1 violations are resolved quickly and re-inspected in a timely manner. As a result, enforcement managers are allowing some Class 1 violations to remain open for as long as six months before following up to see if the problems have been corrected.

Each month, the Special Operations Unit receives a list of all open hazardous violations, excluding those violations involving the use of technical knowledge and must be followed up by the issuing units. Special Operations Unit inspectors are responsible for re-inspecting every violation on the list to determine whether the hazardous conditions still exist. If it is found that the violation has not been corrected, additional violations are to be issued. We reviewed 1,206 open violations written in April 2010 and found that Department managers did not even begin scheduling re-inspection of these open violations until 120 days after the violation; not 60 days, as required by the new law. In fact, 94 percent of these inspections were not even attempted until the fourth, fifth or sixth month.

In the end, only 1,063 properties (88 percent) were actually re-inspected because inspectors could not gain access to the other 143 locations. Inspection results are summarized in the following table. These violations included faulty construction, illegal conversions (i.e., apartments that are separated so landlords can rent out the same space to more people and make more money), and faulty wiring.

Number of Violations	Percent	Re-Inspection Result
<b>572</b>	47%	Not Corrected
<b>211</b>	18%	Corrected
<b>167</b>	14%	Work in progress
<b>143</b>	12%	Could not gain access
<b>113</b>	9%	Other (no longer applicable, etc.)
<b>1,206</b>	<b>100%</b>	<b>Total</b>

As shown above, 572 violations (47 percent) had not been corrected and the buildings continued to pose an immediate threat to life and safety. In one of these instances, a building in Queens had been cited for a partial collapse of its roof. Inspectors did not return to the site for more than four months, at which time they found the roof had yet to be repaired. In another case, inspectors originally cited a building in Manhattan when they found an air conditioner had been installed in a manner that blocked second floor access to the building's fire escape. When inspectors returned more than six months later, the air conditioner had still not been moved.

We also found Enforcement managers do not require inspectors to take additional measures to gain access to the property. When inspectors are not able to gain access, they simply leave a form requesting that the property owner call the Department and schedule an appointment for the re-inspection. However, there are no procedures in place for tracking these forms or following up on re-inspections of these properties.

To determine whether late re-inspections have been an ongoing problem, we randomly selected 50 out of 57,338 Class 1 violations that were issued between July 1, 2008 and August 4, 2010 and reviewed when follow-up actions were taken. Of the 50 violations, 33 (66 percent) were still open and not resolved timely. Four of these cases had been open over 700 days.

Department officials said that they developed a plan for re-inspecting Class 1 violations in October 2010. However, as of March 14, 2011, the Department has not fully implemented the re-inspection of all Class 1 violations within 60 days. They also said that limited resources and other safety priorities have prevented their inspectors from conducting timely re-inspections.

- Recommendations**
1. Communicate the plan for re-inspecting Class 1 violations to all Enforcement managers and inspectors and ensure properties are re-inspected within the required 60 days.

2. Establish procedures for following-up on cases where inspectors could not access premises for re-inspections. Monitor compliance by staff to ensure the follow-up inspections are done.

### **Verifying Property Owner Claims**

Since 2002, the Department has had a program in place to test the reliability of Certificates of Correction by re-inspecting a sample of those submitted. The Department's Enforcement Analysis unit selected 2,607 Certificates of Correction for re-inspection during the first six months of 2010. Of these, Enforcement inspectors visited 1,967 (75 percent) properties. As of December 2010, the remaining 640 properties (25 percent) still had not been inspected; half because inspectors did not gain access to the building on their initial visit and the other half simply because they had not yet been scheduled.

For the 1,967 properties that were re-inspected, the Department found that 1,799 (91 percent) of the owners' Certificates of Correction were accurate and violations had been corrected. However, for 139 violations (7 percent), inspectors concluded the Certificates of Correction were false and the hazardous conditions continued. Yet, inspectors only issued new violations related to these false Certificates of Correction in just 77 of the 139 cases (55 percent). Enforcement managers did not provide specific explanation of why no further action was taken against the remaining 62 owners who falsely claimed to have corrected these dangerous problems. Instead, they noted that most of them were older violations originally issued during a time that did not provide for a second violation to be issued for false certification. They also indicated that certain circumstances may preclude taking additional action against a building owner, such as an administrative error or cases where the violation was issued to a previous owner.

Department officials said that re-inspections in this program were not always done due to understaffing or because other safety-related inspections were given a higher priority. Department officials also explained that a new selection system was implemented in January 2011, which they believe will help better target higher risk certifications.

Improving the inspection system is not only vital to public safety, but can also impact property transfers because violations must be corrected before a new or amended Certificate of Occupancy can be issued. When a building cited for a Class 1 violation is not re-inspected, the Department cannot be assured that the violation was actually corrected and that the building is, in fact, safe for occupancy.

- Recommendations**
3. Complete all re-inspections for the Certificates of Correction listed in the monthly samples.
  4. Enhance the Certificates of Correction audit program by implementing the automated selection system and completing the evaluation of audit results.



## Agency Comments



Robert D. LiMandri  
Commissioner

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October 7, 2011

Mr. John Buyce  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236-0001

Dear Mr. Buyce:

Thank you for the opportunity to respond to the recommendations of the above mentioned final audit report. We generally agreed with all of your recommendations, and are already making the necessary improvements to existing procedures thus enhancing the efficiency of our enforcement and oversight efforts.

As your report indicates, the audit was conducted to determine whether the NYC Department of Buildings assures timely follow-up on immediately hazardous building violations that may put the public's safety at risk.

### RESPONSES TO RECOMMENDATIONS

#### Violations Not Re-inspected Timely

<b>Recommendation 1</b>	<b>Communicate the plan for re-inspecting Class 1 violations to all Enforcement managers and inspectors and ensure properties are re-inspected within the required 60 days.</b>
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Agency Response:	As part of our implementation of the State legislation, we are re-inspecting open Class 1 violations every 60 days until the condition is corrected. Currently the Department is scheduling re-inspections after 46 days and re-inspecting within an average of 68 days.
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**Recommendation 2**

**Establish procedures for following up on cases where inspectors could not access premises for re-inspections. Monitor compliance by staff to ensure the follow-up inspections are done.**

**Agency Response:**

As part of our implementation of the State legislation, we are re-inspecting open class 1 violations approximately every 60 days until a re-inspection confirms compliance. In addition to the initial re-inspection approximately 60 days after the violation is issued, we are including on the inspection route sheets the violations where the previous inspection had a "no access" or "work-in-progress" result. This will ensure the follow-up of potentially hazardous conditions.

**Verifying Property Owner Claims**

**Recommendation 3**

**Complete all re-inspections for the Certificates of Correction listed in the monthly samples.**

For all audit inspections performed by the Enforcement inspection units, a second attempt is made if there is no access on the first attempt.

**Recommendation 4**

**Enhance the Certificates of Correction Audit Program by implementing the automated selection system and completing the evaluation of audit results.**

**Agency Response:**

The Department has completed and fully implemented an automated system for selecting certificates of corrections for its audit program. The Department has also cleared up the inspection backlog and is monitoring these sites for compliance.



#### Clarifying Comments:

Prior to the implementation of the 2008 Construction Codes (Code), violations were classified as hazardous and non-hazardous. The 2008 Code classifies violations as “immediately hazardous” (Class 1), major violation (Class 2) and lessor violation (Class 3). Hazardous violations under the 1968 code do not have a one-to-one relationship to Class 1 violations (2008 code). For example, some previously classified hazardous violations were re-classified under the 2008 code as Class 2 or major violation, as they were not immediately hazardous.

The period examined in this audit included data which was covered under both the 1968 code and the 2008 code. Based on the 2008 code, new violations cannot be written to address a violation issued under the 1968 code. This limits our enforcement action against previously written violations that may still be outstanding. That said, prior to January 28, 2010 the effective date of the law mandating re-inspections of immediately hazardous violations every 60 days, the Department was already re-inspecting the most dangerous violations to ensure that they were being corrected. Additionally, the Department utilizes other enforcement mechanisms including issuing stop work orders, vacate orders or declaring a building unsafe in conjunction with writing violations where additional enforcement is required to address safety issues.

Improving the Department’s inspection procedures is vital to public safety but currently does not impact property transfers. The Department does not issue or reissue a new or amended Certificate of Occupancy upon the transfer of property. Where necessary to address enforcement needs, the Department may require additional legal authority.

We appreciate the opportunity to address your audit findings and concerns and will use it as a guide to further improve our policies and procedures.

Sincerely,

Thomas Fariello, RA  
First Deputy Commissioner

Comment  
\*

#### \* State Comptroller’s Comment

Although the Department does not issue a Certificate of Occupancy automatically, they are issued upon the request of the property owners or finance companies who require them for the transfer of property ownership.