

(b) An inspector, or team of inspectors, on presentation of proper credentials, shall have the right to enter and inspect such premises, and any and all construction thereon, for purposes of insuring compliance with the provisions of the applicable construction permit, and the regulations. All inspection pursuant to the act and the regulations shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days, or when construction is actually being undertaken; provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, or his agent, architect, engineer or builder. No person shall accompany an inspector or team of inspectors on any inspection pursuant to the regulations, unless his presence is necessary for the enforcement of the regulations, or unless consent is given by an owner or his agent, architect, engineer or builder.

(c) Any construction official, subcode official or any inspector, presenting themselves for inspection of any occupied building shall present to the owner the owner's agent or occupant their personal identification as provided by the municipality.

(d) After the certificate of occupancy shall have been granted, the construction official shall not enter upon such premises for purpose of inspection, unless upon reasonable grounds to believe that a condition of the certificate of occupancy has been violated, or in the case of equipment granted approvals of limited duration pursuant to this subchapter, or in the case of emergencies, or unsafe buildings, or upon reasonable cause to believe construction work is underway without a permit having been issued.

(e) Nothing herein is intended to limit the right of a municipality to adopt property maintenance regulations and provide for inspection, pursuant to any other law, ordinance or judicial decision of this State. However, no such regulation shall conflict with any provision of the regulations.

Administrative Correction to (b): Changed "than" to "that".
See: 22 N.J.R. 2503(b).

5:23-2.30 Violation, notice and orders

(a) Whenever the construction official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations or where there exists a violation of a permit or certificate issued under the regulations, the construction official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.

(b) The notice and orders shall contain at least the following information:

1. The name and address of the owner; the address at which the violation occurred; the name and address of the person to whom the order is directed, and if it be other than the owner, a copy shall be delivered to the owner or his agent stating that the owner bears joint responsibility for bringing about compliance with the person named and that if a penalty is imposed, the enforcing agency will not issue a certificate of occupancy until such penalty has been paid; the permit number, a citation to the sections of the regulations violated; an order to terminate violations within a time specified in the order; the amount of penalty assessed, if any, and if cumulative, an explanation of the method of computation; and shall be signed by the appropriate subcode official and the construction official.

2. Unless an immediate hazard to health and safety is posed, the construction official shall permit such time period for correction as is reasonable within the context of the situation.

(c) Extensions: The construction official may grant extensions of time whenever he shall determine that despite diligent effort, compliance cannot be accomplished within the time specified in the notice. If, however, such extension shall be for a period in excess of three business days, or if more than one extension of less than three business days is sought, the construction official shall require a written application of extension stating the need, upon which he shall rule in writing, and which shall be made a part of the permanent file of the project.

Amended by R.2003 d.216, effective May 19, 2003.
See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (a), deleted ", or of a detailed statement or plan approved thereunder," following "provisions of the regulations".

Case Notes

Penalty assessed against property owners for violations of housing code; failure to request an extension of time for reinspection. *Piercy v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 27.

5:23-2.31 Compliance

(a) If the notice of violation and orders to terminate have not been complied with, the construction official in addition to any other available remedies likely to bring about compliance, may request the legal counsel of the municipality, or of the joint enforcement agency, or the Attorney General in the case of the State, to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of the regulations or of the order or direction made pursuant thereto.

(b) Penalties;

1. Any person or corporation, including an officer, director or employee of a corporation, shall be subject to a penalty of not more than \$500.00 if that person:

i. Violates any of the provisions of the act or the regulations;

- ii. Constructs a structure or building in violation of a condition of a building permit;
- iii. Fails to comply with any order issued by an enforcing agency or the department;
- iv. Makes a false or misleading written statement, or omits any required information or statement in any application or request for approval to an enforcing agency or the department.

2. Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to the act or the regulations, or who unreasonably interferes with such an inspection, shall be subject to a fine of not more than \$250.00.

3. With respect to (b)1iii above, a person shall be guilty of a separate offense for each day that he fails to comply with a stop construction order validly issued by an enforcing agency or the department and for each week that he fails to comply with any other order validly issued by an enforcing agency or the department. With respect to (b)1i and iv above, a person shall be guilty of a separate offense for each violation of any provision of the act or the regulations and for each false or misleading written statement or omission of required information or statement made in any application or request for approval to an enforcing agency or the department. With respect to (b)1ii above, a person shall be guilty of a separate offense for each violation of conditions of a construction permit.

4. No such penalty shall be assessed except upon notice of violation and orders to terminate and upon the expiration of the time period delineated in the notice; except that in the case of a false or misleading statement pursuant to (b)1iv above, the failure to obtain a construction permit or request required inspections, or allowance of occupancy prior to receipt of a certificate of occupancy, an order to pay a penalty shall be issued immediately upon the discovery of the violation.

5. The construction official may separately serve a notice of penalty assessment and order to pay a penalty, whenever he shall not have done so in the original notice and orders.

6. The penalties pursuant to this section may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law" (N.J.S.A. 2A:58-1 et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court in addition to the courts specified by N.J.S.A. 2A:58-2. Suit may be brought by a municipality or the State of New Jersey. Payment of a money judgment pursuant hereto shall be remitted in the case of a suit brought by a municipality to the municipal treasurer and in the case of a suit brought by the State of New Jersey to the State Treasurer.

(c) The construction official may assess a monetary penalty whenever such shall be likely to assist in bringing about compliance.

(d) Stop construction order: If the construction of a structure or building is being undertaken contrary to the provisions of the regulations, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the reasons for such order and the conditions upon which construction may be resumed and which shall be given to the owner or the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction. No person shall continue, or cause to allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order. If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of, any other remedies provided by the regulations, law or ordinance.

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1. Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (d)12.

Amended by R.2002 d.240, effective August 5, 2002.

See: 33 N.J.R. 4178(a), 34 N.J.R. 2784(a).

Rewrote the section.

5:23-5.23A Examination requirements for State-jurisdiction subcode technical licensure

(a) Applicants for licensure as amusement ride inspector I.C.S. and amusement ride inspector H.H.S. shall demonstrate competence by successful completion of the relevant examinations of the National Association of Ride Safety Officials (NAARSO). Requirements for specific licenses are as follows:

1. Examination requirement for amusement ride inspector I.C.S.:
 - i. Successful completion of the Level I (Basic) Inspector examination;
2. Examination requirement for amusement ride inspector H.H.S.:
 - i. Successful completion of the Level II (Advanced) Inspector examination.

(b) Applicants for licensure as boiler, pressure vessel and refrigeration inspector R.C.S., boiler, pressure vessel and refrigeration inspector I.C.S. and boiler, pressure vessel and refrigeration inspector H.H.S. shall demonstrate competence by successful completion of the following examinations:

1. Examination requirements for boiler, pressure vessel and refrigeration inspector R.C.S.:
 - i. Successful completion of the examination for a Certificate of Competency administered by the Division of Codes and Standards;
2. Examination requirements for boiler, pressure vessel and refrigeration inspector I.C.S.:
 - i. Successful completion of the Basic examination of the National Board Commission.
3. Examination requirements for boiler, pressure vessel and refrigeration inspector H.H.S.:
 - i. Successful completion of the Basic, Level A (Shop) and Level B (Supervisory) examinations of the National Board Commission.

New Rule, R.2001 d.303, effective September 4, 2001.

See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

5:23-5.24 Procedure for approving educational programs

(a) Any licensed institution of higher education may submit any credit or noncredit course for approval as a component of the educational programs required by N.J.A.C. 5:23-5.20 herein. The application should be in letter form,

be submitted at least 60 days prior to the first class session of the course, and contain all the information specified herein.

(b) Each application should be submitted in the name of the institution by a person authorized to do so. It should contain the following minimum information:

1. The name of the course or program;
2. A description of the length of each session, the frequency of the sessions and the total number of sessions;
3. An outline showing the course or program content broken down by session. Any laboratory or practical work should be identified as such;
4. A description of any texts or materials to be used. The description should identify whether the text or materials will be mandatory or suggested;
5. A description of the institution's standard for faculty members who will be employed to instruct the course or program;
6. An estimate of the program's duration (that is, the number of times it will be offered);
7. A statement that the institution will notify the department if the program is withdrawn or changed at anytime;
8. A statement that the institution will conduct the course or program in accordance with N.J.A.C. 5:23-5.20 herein and will maintain such records as are therein required;
9. A statement of such charges as the institution has established for the course or program.

(c) The Department reserves the right to undertake such reviews as may be necessary to verify the accuracy of an application or conformity with these regulations. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) An institution may conduct a program which satisfies only a portion of the requirements established in N.J.A.C. 5:23-5.20 or may establish a series of courses designed to fulfill all the requirements for the educational program of that article.

(e) Upon verification that the program or course will satisfy some or all of the educational program requirements, the department will:

1. Issue a letter of approval to the institution which letter shall contain any terms or conditions of such approval;
2. Place the name of the institution and the course on the Department's list of approved courses. That list will be made available to the public.

i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(f) Whenever a course or program has been approved by the department, the institution offering the course may include the statement "This course is approved for credit toward a license issued by the Department of Community Affairs pursuant to the State Uniform Construction Code Act" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(g) The Department may revoke its approval, after notice and the opportunity to be heard, whenever it ascertains that a course has lapsed or is no longer in conformity with the requirements of these regulations, and/or the terms of the department's approval. Whenever approval has been revoked or a course has been withdrawn by an institution, a new application and approval shall be required before the course may again be offered as providing credit toward a license.

Amended by R.1985 d.612, effective January 6, 1986.
See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.10.

Amended by R.1987 d.509, effective December 7, 1987.
See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Recodified from section 25.

Administrative Correction to (a), (b)8 and (d).
See: 22 N.J.R. 2503(b).

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke a license, suspend a license for not more than 60 days and/or assess a civil penalty of not more than \$500.00, if the Department determines that the person involved:

1. Has violated the provisions of the Uniform Construction Code regulations;
2. Has obtained a license by fraud or misrepresentation, or the person named in the licensed has obtained it by fraud or misrepresentation;
3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;
4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;
8. Has failed to comply with any order issued by the department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the department;

10. Has engaged in any conduct which demonstrates incompetency or dishonesty; or

11. Has failed to enforce the Uniform Construction Code Act or regulations.

(b) The Department, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand or censure. Such letters, in addition to any other filing of requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, shall constitute grounds for revocation or suspension of a license.

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons who are licensed as subcode officials in the subcode, and are currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment to a review committee, a construction official shall have had experience as a subcode official employed by a municipality in that subcode. Of the persons appointed, at least two shall also be licensed as construction officials and at least one shall be employed by at least one enforcing agency for a total of not more than 20 hours per week.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years, and until their successors shall have been appointed; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person shall be a member of a review committee for more than two consecutive terms.

3. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed as subcode officials in the subcode and currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment as an alternate member of a review committee, a construction official shall have had experience as a subcode official employed by a municipality in

that subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, and until their successors shall have been appointed, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

4. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members or alternate members of each review committee prior to their appointment.

5. No review committee shall hear any case or issue any recommendation without three members, who may be either regular or alternate members, being present.

6. In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

7. The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

8. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

9. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

10. A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

(e) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

As amended, R.1978 d.350, effective October 1, 1978.
See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

As amended, R.1981 d.134, effective April 10, 1981.
See: 13 N.J.R. 119(a), 13 N.J.R. 258(b).

(b) added, and old (b) renumbered as (c).
As amended, R.1982 d.8, effective February 1, 1982.
See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

Catchline: added "and alternative sanctions".

(a): added "or assess ... \$500.00"; (a)8-10 added.

(b): added "or assessing a penalty"; deleted "does not warrant ... suspension"; added "warrants... censure"; deleted "of warning... censure".

As amended, R.1982 d.436, effective December 20, 1982.
See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added "of a crime, or conviction of an offense" and "shall constitute" to (c).

Amended by R.1985 d.528, effective October 21, 1985.
See: 17 N.J.R. 1705(a), 17 N.J.R. 2535(b).

Added test in (a) "suspend a license for not more than 60 days and".
Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).
Was 5:23-5.11.

Amended by R.1986 d.173, effective May 19, 1986.
See: 18 N.J.R. 16(b), 18 N.J.R. 1099(b).

(a)10 added; old (a)10 renumbered (a)11. This amendment was proposed under the old citation 5:23-5.11.

Amended by R.1987 d.509, effective December 7, 1987.
See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

This section recodified from section 26.
Amended by R.1992 d.68, effective February 3, 1992.
See: 23 N.J.R. 3441(a), 24 N.J.R. 406(a).

Text on review committees added at (d).
Amended by R.1992 d.272, effective July 6, 1992.
See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.
Amended by R.1993 d.187, effective May 3, 1993.
See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (e).
Amended by R.1996 d.545, effective December 2, 1996.
See: 28 N.J.R. 3997(a), 28 N.J.R. 5071(b).

Case Notes

Fraud and deceit while practicing as a licensed code enforcement official or inspector warranted license revocation. *Regulatory Affairs v. Zieniuk*, 95 N.J.A.R.2d (CAF) 15.

Elevator inspector's misconduct warranted revocation of elevator subcode official and elevator inspection license. *Garcia v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 63.

False information on applications for electrical inspector, fire protection inspector, plumbing inspector, and subcode official warranted revocation. *Department of Community Affairs v. Zieniuk*, 93 N.J.A.R.2d (CAF) 35.

Appearance of conflict of interest was ground for revocation of license of fire protection subcode official. *Wood v. Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (CAF) 133.

Construction official who was convicted of theft by deception forfeited his licenses to practice under the Uniform Construction Code. *Bureau of Regulatory Affairs v. Gaipa*, 92 N.J.A.R.2d (CAF) 129.

Licenses of construction and fire protection subcode official of Class II municipality were revoked for violations of provisions of the New Jersey Administrative Code. *Stankard v. Department of Community Affairs, Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (CAF) 77.

SUBCHAPTER 6. REHABILITATION SUBCODE

5:23-6.1 Introduction; using this subcode

(a) This section is a guide to the use of the rehabilitation subcode. It should not be interpreted as containing substantive requirements and it is not intended to be cited for enforcement purposes.

1. The provisions of the other subcodes of the Uniform Construction Code do not apply to work in existing buildings, changing the use of an existing building or work in an existing building related to an addition unless the provisions of this subcode specifically reference them and make them applicable.

2. Traditionally, the New Jersey Uniform Construction Code has made the requirements that are applicable to new buildings also apply to buildings whose use is changed; applicable to buildings undergoing rehabilitation with the extent of the requirements depending on the amount of money being spent on the building; and to some extent applicable to existing buildings that have an addition constructed. Buildings whose use was changed and buildings receiving rehabilitation costing more than 50 percent of the replacement cost of the building were required to comply with all the provisions of the Uniform Construction Code for new buildings.

3. This subcode takes a new approach. The requirements that apply to a project are based upon the type of work being done rather than on the extent of the work. There is only one exception to this rule. In the case of reconstruction work, as the term reconstruction is defined in this subcode, there are some requirements which must be met when the project is a large one in floor area.

4. In this subcode, work is classified into six categories. Each category has a separate section which describes the requirements for that category of work. The categories are repair, renovation, alteration, reconstruction, change of use and additions. These terms are defined in N.J.A.C. 5:23-6.3. The definitions are critical to understand the distinctions between these six categories of work. Where a project contains more than one category of work, each applicable category must be consulted for the requirements for that category of work.

(b) Repair Work: The requirements that apply to repair work are in N.J.A.C. 5:23-6.4. The requirements for repairs are brief due to the limited nature of the work. There is a short list of materials that may not be used for repair work due to their inherently hazardous nature and another list of materials which must be used in connection with repair work where applicable. These lists should be used when planning the repair components of any project.

1. This subcode does not establish when a permit is required for a project. Those requirements are in N.J.A.C. 5:23-2. Although it is generally true that repair work undertaken by itself does not require a construction

permit, it is important to understand that any repair work undertaken in connection with a project that involves other categories of work is required to meet only the provisions for the repair category established by this subcode. There is no limit to the amount of repair work which may be undertaken. The decision to renovate rather than repair is made only by the owner.

(c) Renovation Work: The requirements that apply to renovation work are in N.J.A.C. 5:23-6.5. Renovation is defined in N.J.A.C. 5:23-6.3.

1. There are short lists of materials that may not be used and materials or practices which must be used, where applicable, when renovation work is undertaken. These lists should be used when planning a project which involves renovation work.

2. The installation of smoke detectors is required in any building of Group R-3 and R-5 which undergoes a renovation.

3. Renovation work must comply with N.J.A.C. 5:23-6.8, Materials and methods. All materials used for the renovation work must meet the standards for those materials established by N.J.A.C. 5:23-6.8 and methods of installation must comply with that section. N.J.A.C. 5:23-6.8, Materials and methods, references and makes applicable to renovation work certain specified subsections of the other subcodes of the Uniform Construction Code. Only those subsections specifically referenced in N.J.A.C. 5:23-6.8 apply to renovation work. All materials and methods used in renovation work must comply with the requirements of that section.

4. This subcode never requires renovation. Any existing work may be repaired. The requirements for renovation apply only where the owner decides to renovate.

(d) Alteration Work: The requirements that apply to alteration work are in N.J.A.C. 5:23-6.6. Alteration is defined in N.J.A.C. 5:23-6.3.

1. N.J.A.C. 5:23-6.6, Alteration work, contains short lists of materials that may not be used and materials or practices which must be used, where applicable, when alteration work is undertaken. These lists should be used when planning a project which includes alteration work.

2. The installation of smoke detectors is required in any building of Groups R-3 and R-5 which undergoes an alteration.

3. Alteration work must also comply with materials and methods that are set forth in N.J.A.C. 5:23-6.8.

4. In alteration work, the configuration of the building is changed in some manner. The definition of "alteration" in N.J.A.C. 5:23-6.3 provides the information needed to fully understand this term. Because improper alteration work could create a safety hazard in the building, this subcode contains specific requirements which define these hazards. These are the basic requirements of the subcode which can be found in N.J.A.C. 5:23-6.10 through 6.30.

5. The subcode includes basic requirements, listed by group, with the exception of egress capacity, interior finish requirements, commercial cooking operations, and windowless stories which apply to all groups. Reference should be made to the list of basic requirements applicable to the particular group in which the building being altered falls. Care should be taken to ensure that the alteration will not create a non-conformity with any of the basic requirements which did not exist before the alteration was undertaken.

6. Certain alterations create what are defined to be new building elements. There is a specific listing of those items which are to be treated as newly-created building elements which can be found in N.J.A.C. 5:23-6.9. The elements on that list are required to conform to certain specific sections of the other subcodes of the Uniform Construction Code. The sections with which each newly-constructed element must comply are listed in N.J.A.C. 5:23-6.9. Any alteration which creates one of the elements listed in that section must comply with the specific requirements listed in N.J.A.C. 5:23-6.9.

7. Improvements to the accessibility of buildings may be required when alteration work is undertaken. Those requirements are specified in N.J.A.C. 5:23-6.6(e) and (j).

(e) **Reconstruction Work:** The requirements that apply to reconstruction work are in N.J.A.C. 5:23-6.7. Reconstruction is defined in N.J.A.C. 5:23-6.3. Unlike repair, renovation, and alteration, reconstruction is not a kind of work. A reconstruction may, as the definition of the term makes clear, include a combination of repair, renovation, and alteration work. It is the extent and nature of the work which makes a project a reconstruction. There are no quantitative criteria which determine whether a project is a reconstruction. A project becomes a reconstruction when the area where the project is taking place cannot be occupied while the work is in progress and when a new certificate of occupancy is required before the area can be re-occupied. Both criteria must be met.

1. This subcode requires that a reconstruction project have a delineated work area. This area is established by the permit applicant. The term "work area" is defined in N.J.A.C. 5:23-6.3. A reconstruction project must always involve an entire use, primary function space, or tenancy as those three terms are defined in N.J.A.C. 5:23-6.3. **Projects which do not involve an entire use, primary function space, or tenancy are not reconstruction projects.**

2. Although a reconstruction project is comprised of repair, renovation and alteration work, all of the requirements that apply are found in N.J.A.C. 5:23-6.7. For ease of use, this section has been written to include all of the requirements applicable to reconstruction. The entire work area must conform to the basic requirements in N.J.A.C. 5:23-6.10 through 6.30. These sections must be carefully reviewed when a reconstruction project is being planned.

3. The basic requirements are organized by individual groups in N.J.A.C. 5:23-6.12 through 6.28. Only the sections relevant to the building's group must be consulted. Where a project involves mixed uses, then the special provisions of N.J.A.C. 5:23-6.29 should also be consulted. Basic requirements that apply to all groups are in N.J.A.C. 5:23-6.11 and 6.30. Therefore, N.J.A.C. 5:23-6.11, 6.30, and the specific group section between 6.12 and 6.28 must be consulted for the basic requirements which apply to a project.

4. In addition to meeting the basic requirements, certain reconstruction projects must meet the supplemental requirements found in N.J.A.C. 5:23-6.10 through 6.30. There is a specific section for each group as is the case with the basic requirements. Supplemental requirements that apply to all groups are in N.J.A.C. 5:23-6.11A and 6.30. The supplemental requirements apply only when the work area for a reconstruction project exceeds a certain size. Each supplemental requirement has its own threshold of applicability.

5. The owner of a building in which a reconstruction project is planned must review the supplemental requirements applicable to the use of the project to determine if any of those requirements applies to the project. In addition to the specific group section between N.J.A.C. 5:23-6.12A and 6.28A, N.J.A.C. 5:23-6.11A and 6.30 should be consulted for the supplemental requirements that apply to a project.

(f) **Applying the Subcode to a Project:** The requirements of this subcode applicable to a project can be found as follows:

1. Separate the project into its component parts of repair, renovation, and alteration;
2. Where a portion of the work is repair, consult the repair section of this subcode (N.J.A.C. 5:23-6.4) to ensure that prohibited materials are not being used and that any applicable required materials or practices are being used;
3. Where a portion of the work is renovation:
 - i. Consult the renovation sections of this subcode (N.J.A.C. 5:23-6.5);
 - ii. Ensure that the renovation work does not use any prohibited materials and that any applicable required materials or practices are being used; and
 - iii. Ensure that renovation materials and the methods of their installation conform to the Materials and Methods section of this subcode (N.J.A.C. 5:23-6.8).
4. Where a portion of the work is alteration work:
 - i. Consult the alteration section of this subcode (N.J.A.C. 5:23-6.6);

v. Documentation that all buildings will be unoccupied at the time an asbestos abatement project takes place, except as approved by the asbestos safety control monitor as delineated in N.J.A.C. 5:23-8.19;

vi. The name and address of the New Jersey Department of Environmental Protection and Energy registered waste hauler and of the New Jersey Department of Environmental Protection and Energy registered landfill where asbestos waste will be deposited;

vii. The scheduled starting and completion dates for the asbestos abatement project;

viii. The method of air analysis used pursuant to N.J.A.C. 5:23-8.21 for determining the final clearance level in order to reoccupy the building.

3. It shall be the responsibility of the owner or his agent to file with the enforcing agency, in the event of any change in (d)2i, iii and vi above. Such change shall be filed as an amendment to the application and shall be forwarded to the Department as set forth in (h) below. The replacement firm shall assume all responsibilities for the asbestos abatement work to continue, while the preceding firm still bears responsibility for its action.

(e) The issuance of a construction permit for asbestos abatement shall be subject to the following:

1. Submission of a completed application;

2. The described work and containment measures shall conform to the requirements of this subchapter and the requirements of any other applicable law or rule adopted or enforced by any other State agency;

3. A written release of the plans and specifications by the asbestos safety control monitor.

4. Cursory plan review shall be done by the enforcing agency to determine the need of replacement material for maintaining the structural integrity of a building; if required, a separate construction permit shall be issued by the enforcing agency. In addition, a review shall be done to ensure that means of egress are maintained in occupied buildings.

(f) The issuance of the construction permit for asbestos abatement authorizes preparation of the work area. This initial preparation of the work area shall be observed by the asbestos safety technician to ensure compliance with this subchapter. No actual asbestos abatement work shall commence until a pre-commencement inspection has been conducted and approved by the asbestos safety technician.

(g) A permit, once issued, shall remain valid only as long as all of the information contained in the application remains correct and is adhered to. Any change shall require

an amendment to the application before the change takes place. Failure to adhere to these requirements may result in a stop work order.

(h) The owner or his or her agent shall notify the Department in writing within three business days of the issuance of the construction permit for asbestos abatement, if the enforcing agency is a municipal enforcing agency and not the Department. Such notice shall be supplied in the form of a copy of the completed application for a construction permit for asbestos abatement and a copy of the permit.

1. Notification shall be sent to:

New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN 816
Trenton, New Jersey 08625-0816

(i) The owner or his or her agent shall notify the following in writing as required in NESHAPS (40 CFR Part 61, Subpart M):

1. Notification shall be sent to:

i. U.S. Environmental Protection Agency
Region II NESHAP
26 Federal Plaza, Room 1033
New York, New York 10278; and
ii. New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN 816
Trenton, New Jersey 08625-0816

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.6 as new 8.7 with stylistic changes. Section 8.7 was formerly "Inspections; violations".

In (a): deleted "Health and New Jersey Department of Education . . ." from text.

In (b)2ii: Added text regarding required accreditation of an asbestos hazard assessor.

In (b)2iv-v: revised text to clarify plans and specifications and added new (b)2viii.

In (f)1: changed address and name of "Asbestos Safety Unit."

In (g): deleted "10 days prior to the start of the asbestos abatement project" and added text requiring compliance with Federal register.

Added new (g)1i.

Recodified from 5:23-8.7 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Minor asbestos hazard abatement project," recodified as 5:23-8.14.

5:23-8.6 Coordination with other permits

(a) When a building owner or an authorized representative on behalf of the owner submits an application for a construction permit for repair, renovation, or demolition work, the following information shall be required to be given to the construction official having jurisdiction before a construction permit is issued:

1. An architect/engineer certification concerning whether asbestos will be disturbed and to what extent it will be disturbed during the planned construction work.
 - i. Where any work not requiring an architect/engineer is involved then this certification will be required of the contractor undertaking the work.

(b) When it is certified that asbestos may become disturbed in a building or structure subject to this subchapter, an assessment performed by the New Jersey Department of Health, county or local health department, or by a private business entity authorized by the New Jersey Department of Health shall be required, unless the requirement for an assessment has been waived.

1. Boiler and water storage tank removal projects which require the removal of asbestos insulation from the boiler, water storage tank and piping shall not require an assessment before a permit is issued by the enforcing agency.
2. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard abatement work necessary, then the construction official shall inform the building owner, or his agent, that all asbestos abatement work shall conform to this subchapter.
 - i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.
 - ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Recodified from 8.15 and (b) substantially amended. Old 8.16 has been repealed.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added text in (b) "county or local ..."; added new (b)1 and renumbered old (b)1 to 2.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.17 as new 8.18. Section 8.17 was formerly "Asbestos safety control monitor".

Recodified from 5:23-8.17 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Variations," recodified as 5:23-8.4.

5:23-8.7 Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. Notification in writing to the Asbestos Safety Control Monitor shall be made by the applicant or contractor

to request a pre-commencement inspection at least 48 hours in advance of the desired date of inspection. This inspection shall be requested each time another work area is started in a multi-phase project.

2. The asbestos safety technician shall ensure that:

- i. The work area is properly prepared and that all containment measures are in place pursuant to this subchapter;
- ii. All workers shall present to the asbestos safety technician a valid work permit issued by the New Jersey Department of Labor;
- iii. Measures for the disposal of removed asbestos material are in place and shall conform to the adopted standards;
- iv. The contractor has a list of emergency telephone numbers at the work area which shall include the asbestos safety control monitor firm employed by the building owner and telephone numbers for fire, police, emergency squad, local hospital and health officer, New Jersey Department of Labor and New Jersey Department of Health and New Jersey Department of Community Affairs.

3. If all is in order, the asbestos safety technician, shall issue a written notice to proceed with the asbestos abatement in the field. If the project site is not in order, then any needed corrective action must be taken before any work is to commence. Conditional approval shall not be granted.

4. The Department reserves the right to make a pre-commencement inspection in addition to the required pre-commencement inspection conducted by the asbestos safety technician before a written notice to proceed is issued.

(b) Progress inspections shall be conducted as follows:

1. Primary responsibility for ensuring that the asbestos abatement work progresses in accordance with this subchapter rests with the asbestos safety technician. This asbestos safety technician shall continuously be present to observe the progress of work and perform required inspections and tests.

2. If the asbestos safety technician observes irregularities at any time, the asbestos safety technician shall direct such corrective action as may be necessary.

3. Where a sealant is required to be applied after removal, a pre-sealant inspection shall be conducted to ensure that all asbestos-containing material has been removed properly before the sealant is applied. If the pre-sealant inspection is acceptable to the asbestos safety technician, he should indicate this acceptance in writing.

(c) Clean-up inspections shall be conducted as follows:

1. Notice for clean-up inspection shall be requested by the contractor at least 48 hours in advance of the desired date of inspection;

2. The clean-up inspection shall be conducted prior to the removal of the critical barriers;

3. The asbestos safety technician shall ensure that:

i. The project site has been properly cleaned and is free of all visible dust and asbestos and asbestos-containing material; and

ii. All abated asbestos-containing material has been properly placed in a locked secure container outside of the work area.

4. If all is in order, and acceptable air results have been achieved, the asbestos safety technician shall issue a written notice of authorization to remove barriers from the work area.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and within 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials and that all removed asbestos and asbestos contaminated materials have been properly disposed of off-site in accordance with the rules of the New Jersey Department of Environmental Protection and Energy, N.J.A.C. 7:26-1, which is referenced in N.J.A.C. 5:23-8.22.

2. The Department reserves the right to make a final inspection in addition to the required final inspection conducted by the asbestos safety technician before a certificate of occupancy is issued by the enforcing agency.

(e) The Department inspections shall be conducted as follows:

1. The Department shall make scheduled and/or unannounced periodic inspections of any work area involving asbestos abatement work for the purpose of enforcing this subchapter.

(f) Violations: The asbestos safety technician shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to comply with the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any rule, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the enforcing agency, which shall issue a stop work order to the contractor, have the work area secured until all violations are abated, and assess a penalty of \$500.00 which shall not be reduced or settled for any reason.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added New Jersey Department of Community Affairs.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.7 as new 8.8 with various stylistic changes. Section 8.8 was formerly "Certificate of occupancy; certificate of completion".

In (a): added new 4.

In (d): added new 2.

In (f): revised language to specify order procedures regarding violations.

Administrative correction to (a)2.

See: 21 N.J.R. 3747(a).

Recodified from 5:23-8.8 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Construction permit for asbestos abatement," recodified as 5:23-8.5.

Case Notes

Asbestos safety technician properly penalized; failure to spray additive prior to removing asbestos. *Bowes v. Bureau of Code Services*, 95 N.J.A.R.2d (CAF) 7.

5:23-8.8 Certificate of occupancy; certificate of completion

(a) Certificate of occupancy requirements are as follows:

1. It shall be unlawful to re-occupy the portion of a building that was vacated during an asbestos hazard abatement project until a certificate of occupancy has been issued by the enforcing agency. The certificate of occupancy shall be issued upon receipt of a certificate of completion issued by the asbestos safety control monitor and verified by the enforcing agency that the building or a portion of a building is in conformance with all applicable requirements of the Uniform Construction Code and that any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired or refinished to match existing materials.

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the Department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1) The name and address of the owner;

(2) The address of the building or structure;

(3) Certificate of Completion submitted by the asbestos safety control monitor.

3. If all the information required is complete and in accordance with this subchapter, a certificate of occupancy shall be issued.

(b) Certificate of Completion requirements are as follows:

1. It shall be unlawful to apply for a certificate of occupancy until a certificate of completion has been issued by the asbestos safety control monitor.

2. Within five days of completion of an asbestos hazard abatement project the owner/agent shall file for a certificate of completion from the asbestos safety control monitor.

3. The application for a certificate of completion shall be in writing and submitted in such form as the department may prescribe.

4. A Certificate of Completion shall be issued only if:

i. All information is complete.

ii. Final inspection by the asbestos safety technician reveals no visible evidence of asbestos.

iii. All requirements of this subchapter have been met.

iv. An acceptable final air monitoring level has been attained pursuant to N.J.A.C. 5:23-8.21 and documentation of that air level has been submitted in writing.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Changed level of fibers from .01 to .010.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.8 as new 8.9. Section 8.9 was formerly "Fees".

Deleted old (a)2i.(4) regarding air monitoring level requirement.

In (b)4iv.: added "an acceptable" defining Final air monitoring levels and deleted "of .010 fibers per cc or lower". Also added text regarding N.J.A.C. cite and "submitted in writing" requirement.

Recodified from 5:23-8.9 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Inspections; violations", recodified as 5:23-8.7.

Case Notes

Inability to travel due to weather did not exonerate asbestos safety technician from being held responsible for deficiencies previously left at work site. Department of Community Affairs v. Stewart, 95 N.J.A.R.2d (CAF) 62.

5:23-8.9 Fees

(a) The enforcing agency that issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation/ordinance the following flat fee schedule:

1. An administrative fee of \$84.00 for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of \$17.00 for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

(b) The authorization and reauthorization fees for the asbestos safety control monitor are delineated in N.J.A.C. 5:23-8.11.

(c) The application fee for certification as an asbestos safety technician is delineated in N.J.A.C. 5:23-8.10.

(d) All fees shall be paid by check or money order, payable to "Treasurer, State of New Jersey".

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.9 as new 8.10. Section 8.10 was formerly "Precautions and procedures during a large asbestos abatement job."

In (b): changed "defined" to "delineated" and "8.17" to "8.18".

Added new (c).

Amended by R.1991 d.181, effective April 1, 1991.

See: 23 N.J.R. 257(b), 23 N.J.R. 1029(a).

In (a)1, increased fee from \$50.00 to \$65.00.

In (a)2, increased fee from \$10.00 to \$13.00.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased at (a)1 and 2.

Recodified from 5:23-8.10 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Certificate of occupancy; certificate of completion", recodified as 5:23-8.8.

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (a), substituted "\$84.00" for "\$70.00" in 1 and substituted "\$17.00" for "\$14.00" in 2.

5:23-8.10 Asbestos safety technician

(a) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (c) below. The requirements for certification as an asbestos safety technician are as follows:

1. At least 24 college credits in academic sciences, including biology, chemistry, industrial hygiene, environmental science, physics, geology or related fields; or one year of work experience which included performing environmental assessment activities, which may be substituted for this education requirement;

2. Successful completion of a course in air monitoring methods consisting of a minimum of 30 contact hours that shall include hands-on experience with using and calibrating various types of air monitoring equipment; or six months of work experience performing air monitoring including at least 30 hours of on-the-job training, which may be substituted for this education requirement;

3. Successful completion of a training course for asbestos worker/supervisors approved by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60;

i. One year of experience in monitoring asbestos abatement activities may be substituted for completion of an approved training course;

ii. Six months of experience monitoring asbestos abatement may be substituted for completion of an approved training course if the individual is an industrial hygienist certified by the American Board of Industrial Hygiene;

4. Successful completion of a course for asbestos safety technicians approved by the New Jersey State Department of Community Affairs;

5. Successful passing of an examination for asbestos safety technicians administered by the National Assessment Institute in cooperation with the National Asbestos Council, or any equivalent examination approved by the Department.

(b) The Department shall renew the certification following submission of an application, payment of the required fee pursuant to (c) below, and verification by the Department that the applicant meets the requirements for the certification in this section.

1. Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Department that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the certification previously issued for a term of two years. The renewal date shall be 45 days prior to the expiration date. The expiration dates shall be July 31 or January 31.

2. The Department shall issue, upon application, a duplicate certification upon a finding that the certification has been issued and the applicant is entitled to such certification to replace one which has been lost, destroyed, or mutilated. Payment of a fee as established by N.J.A.C. 5:23-8.10(c) shall be required.

3. The Department may establish by rule continuing education requirements as deemed necessary for the renewal of a certification.

(c) No application for certification or recertification shall be acted upon unless said application is accompanied by a \$52.00 fee.

(d) Duties of the asbestos safety technician shall be as follows:

1. The asbestos safety technician shall perform all air sampling specified in this subchapter, as delineated in N.J.A.C. 5:23-8.21 and shall be thoroughly familiar with this subchapter. He or she shall inform the department who his or her employer is at the time of his or her application for certification, and shall notify the department in writing within 10 working days of any change in status or employer. He or she shall have access to all areas of the asbestos abatement project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter while work is in progress. The asbestos safety technician shall be on site from the initial preparation of the work area through the approved final visual inspection, and shall perform all inspections pursuant to N.J.A.C. 5:23-8.7.

2. The asbestos safety technician shall direct the actions of the contractor verbally and in writing to ensure compliance with this subchapter. The asbestos safety technician shall require that all workers present a valid asbestos worker performance permit issued by the New Jersey Department of Labor before entering the work area. In matters of negligence and/or flagrant disregard for the safety of any person, including the possibility of contaminating the building environment and the emergence of an unsafe condition at the work area, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of his or her employees continually violates the requirements of any regulation, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, the asbestos safety technician shall notify the enforcing agency, who shall issue a Stop Work Order to the contractor and have the work area secured until all violations are abated.

3. The asbestos safety technician shall calculate, based on the actual available output (not the rated output) of the air filtering units, the required number of air filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor, and the abatement project designer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the enforcing agency who shall take necessary measures to ensure corrective action;

4. At the beginning of each work shift, every four hours thereafter, and at the end of the contractor's work day, the asbestos safety technician shall monitor pressure differential by digital manometers with continuous print-out or other approved low pressure monitoring devices for each work area. One or more separate monitoring systems shall be installed for every 10,000 square feet of separation surface adjacent to the work area. Pressure monitoring shall be representative of all adjacent areas. The pressure differential shall meet the minimum requirement set forth in N.J.A.C. 5:23-8.15(b)9 or 8.17(d)6i or 8.19(c)4ii, as appropriate.

5. The asbestos safety technician shall ensure that the contractor smoke tests all the glovebags after they are attached and before the commencement of work.

6. For unoccupied buildings, upon receipt of testing results indicating that concentrations above the acceptance criteria established in N.J.A.C. 5:23-8.21 have occurred during the abatement project, the asbestos safety technician shall immediately direct corrective action and verbally report these results within 24 hours to the contractor, the owner and the abatement project designer. Such verbal notification shall be followed by written notification to the contractor, the owner and the abatement project designer. A copy shall be sent to the enforcing agency and the Department within three business days from receipt of the results. For occupied buildings, the procedure set forth at N.J.A.C. 5:23-8.19 shall be followed.

7. The asbestos safety technician shall monitor the removal of all asbestos-contaminated waste from the work area to ensure that it takes place in conformance with N.J.A.C. 5:23-8.22, in the following manner:

i. Direct removal by a collector/hauler registered with the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:26 and pursuant to New Jersey Department of Transportation rules at N.J.A.C. 16:49.

ii. Indirect removal by placement in a locked and secure container, for temporary storage, awaiting the New Jersey Department of Environmental Protection registered waste hauler.

8. The asbestos safety technician shall keep an up-to-date and comprehensive daily log of on-site activities. The log shall be updated continuously. The name of the project, name of the asbestos safety technician, and date shall be recorded daily. Each entry shall contain the event, the time of event and shall be initialed by the asbestos safety technician. One section of the log shall contain observations concerning contractor compliance with activities required under this subchapter listing all deficiencies encountered. In addition, the log shall list the name of each person entering the work area. The log shall be a bound book and all entries shall be in ink. The log shall be kept at the project site and shall be made

available upon request at all times to the owner, the abatement project designer and to appropriate local and State agencies.

9. The asbestos safety technician shall prepare a comprehensive final report to include daily logs, required inspection reports, observations and air monitoring results. This report shall be made part of the official record filed by the asbestos safety control monitor.

(e) Penalties: The Department may suspend or revoke a certification, or assess a civil penalty of not more than \$500.00, for each offense, if the Department determines that an individual:

1. Has violated the provisions of the Uniform Construction Code regulations;

2. Has obtained a certification by fraud or misrepresentation;

3. Has aided or abetted in practice as an asbestos safety technician any person not authorized to practice as an asbestos safety technician under the provisions of this subchapter.

4. Has fraudulently or deceitfully practiced as an asbestos safety technician.

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed to maintain a minimally acceptable level of competence;

7. Has been found to have accepted or failed to report an offer of a bribe or other favors in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;

8. Has failed to comply with any order issued by the Department;

9. Has made a false or misleading written statement, or has made a willful material omission in any submission to the Department;

10. Has failed to enforce this subchapter; or

11. Has performed the duties of an asbestos safety technician without being certified as such.

(f) In addition to, or as an alternative to, revoking or suspending a certification or assessing a penalty, the Department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants such a letter. Such letter shall be made a part of the certification file of the individual. A copy of such action shall be sent to an officer of the asbestos safety control monitor firm employing the individual.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of a certification.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Recodified from 8.14 and substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Repeal and New Rule, R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Repealed old 8.15 and replaced with new rule 8.16. Section title remains same; new rule includes substantive changes regarding asbestos safety technician duties.

New Rule R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.18 to new 8.19. Section 8.18 was formerly "Application of asbestos".

In (d)3: added language regarding professional experience substitution for education requirements.

In (d)5: added New Jersey Administrative code citations.

Amended by R.1991 d.181, effective April 1, 1991.

See: 23 N.J.R. 257(b), 23 N.J.R. 1029(a).

In (i)1 and 2, fee increased from \$30.00 to \$40.00.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased.

Recodified from 5:23-8.16 and 8.19 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Fees", recodified as 5:23-8.9.

Amended by R.1994 d.436, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 2183(a), 26 N.J.R. 3707(a).

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (c), substituted "\$52.00" for "\$43.00".

Case Notes

Asbestos safety technician unauthorized to issue waiver of codified asbestos hazard abatement procedures. *Gromen v. Bureau of Code Services*, 97 N.J.A.R.2d (CAF) 35.

5:23-8.11 Asbestos safety control monitor

(a) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subchapter.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner or his authorized agent. The contract shall specify: the scope of the project with the provision that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subchapter, how the asbestos safety control monitor is to be paid for its services and the name of the employee who shall serve as the representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subchapter.

2. Each asbestos safety control monitor authorized by the Department shall organize its operation to effectively fulfill the requirements of this subchapter. Each person assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the Department.

3. The asbestos safety control monitor shall report to the Department through its designee and shall be subject to the orders and directives of the Department in matters relating to the enforcement of this subchapter.

(b) The Department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the Department.

i. Except that applicants who have received notice from the Department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the time of undertaking any such activity that he has not yet been authorized by the Department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application on the prescribed form, with the required fee pursuant to (h) below, and any additional information the Department may require.

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons for denial.

4. The application for authorization shall contain information relating to:

i. The financial integrity of the applicant as evidenced by a reviewed financial statement prepared by an independent certified public accountant;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel who are to be assigned as asbestos safety technicians are certified by the Department;

- iii. The type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall be accredited by the National Institute of Standards and Technology (NIST). The laboratory shall be a current proficient participant in the American Industrial Hygiene Association Proficiency Analytical Testing Program or any other recognized equivalent program for PCM. All laboratory analysis shall be performed in accordance with N.J.A.C. 5:23-8.21;
 - iv. The names of all technical personnel, including asbestos safety technicians with their certification numbers, and their range of salaries and other compensation;
 - v. The policies and procedures of the applicant for the hiring, training, education, and supervision of all technical personnel involved in the supervision and performance of duties pursuant to this subchapter;
 - vi. The prior experience of the applicant in performing similar or related functions;
 - vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subchapter;
 - viii. A statement that the applicant is not affiliated with, or influenced or controlled by any producer, manufacturer, supplier or vendor of products, supplies or equipment used in asbestos hazard abatement or by any abatement contractor; and
 - ix. Proof of insurance as required pursuant to N.J.A.C. 5:23-8.11(c)3v.
5. Authorization shall be valid for a period of one year. The expiration dates shall be March 31 or September 30.
6. Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration for the current authorization from the Department. The asbestos safety control monitor shall make current the information previously submitted to the Department. The asbestos safety control monitor shall provide additional information as the Department may request. The application shall be accompanied by the fee established pursuant to (h) below. The Department may conduct such additional investigations of the applicant as it may deem necessary.
- i. Within 30 days following receipt by the Department of an application for reauthorization, the Department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the Department shall provide the asbestos safety control monitor with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the Department.
 - ii. The Department, on its own motion or at the request of any asbestos safety control monitor, may grant a temporary reauthorization of such agency for a period not to exceed 60 days.
- (c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, approved plans, air tests, log sheets and any other information that may be required by the enforcing agency or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.
1. The asbestos safety control monitor shall provide the Department with written notification of any change of licensed personnel and any change of principals within 30 days.
 2. The enforcing agency shall be the sole agent for the collection of all fees and penalties from the property owner, the designated agent or anyone in their employ.
 3. Each asbestos safety control monitor shall have the following responsibilities:
 - i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode for the projects contracted;
 - ii. To review and approve the plans and specifications, release them in writing, and forward them to the enforcing agency for issuance of a permit;
 - iii. To be subject to the department's rulings, directives and orders;
 - iv. To provide adequate supervision to its employees to ensure conformance to the provisions of this subchapter;
 - v. To carry liability insurance equal to that required of private enforcing agencies pursuant to N.J.A.C. 5:23-4.14(e)5;
 - vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subchapter.
 - vii. To provide technical assistance to the building owner in the preparation of a construction permit application;
 - viii. To provide written notification of the start of a project to the department a minimum of 10 days prior to the start of the project and telephone notification to the department by the asbestos safety technician on the first day of the start of the project;
 - ix. To perform all required inspections and re-inspections pursuant to this subchapter;

- x. To perform all tests required by this subchapter;
- xi. To give testimony at a hearing or in court, as required by the construction official or the Department;
- xii. To prepare all reports required by this subchapter or as may be required by the Department from time to time;
- xiii. To meet its obligations under its contract with the building owner;
- xiv. To issue and maintain documentation and certification, including, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work;
- xv. To ensure the attendance of all technical and supervisory employees at required training and orientation programs; and
- xvi. Upon completion of an asbestos hazard abatement project, the asbestos safety control monitor shall submit a final comprehensive report consisting of, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The final report shall be submitted to the building owner within 60 days of issuance of the Certificate of Completion. A copy of the final report shall be made available to the Department within 10 days of written request.

(d) Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitoring services in connection with an asbestos hazard abatement project, the asbestos safety control monitor shall not have any economic relationship with another party involved with the project. Laboratory services needed by the asbestos safety control monitor shall not be provided by any laboratory that has any economic relationship with the abatement contractor.

1. The asbestos safety control monitor may perform air monitoring required pursuant to the related OSHA requirements only through a contract with the building owner.

(e) Penalties, suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the department may suspend or revoke its authorization of any asbestos safety control monitor or assess a civil penalty of not more than \$500.00 per violation, if the department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of this subchapter, or that a change of facts or circumstances makes it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subchapter in a satisfactory manner, or any provision of this subchapter has been violated, or that the asbestos safety control monitor has been negligent or has emerged in misconduct in the performance of any of its duties, or that the asbestos safety control monitor has failed to maintain a minimally acceptable level of competence.

i. During the period of suspension, the affected asbestos safety control monitor shall not be authorized to discharge any of its responsibilities under this subchapter unless otherwise specified in the notice of suspension or order of the Department.

2. The Department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the Department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The Department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the Department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization stating the grounds therefore. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereunder and to enter into an implementing contract with any other asbestos safety control monitor.

(f) In addition or as an alternative to revoking or suspending an authorization, or assessing a penalty, the department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants such a response. Such letter shall be made part of the authorization file of the firm.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of an authorization.

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subchapter for approval as an asbestos safety control monitor shall pay a fee of \$4,200 for the authorization which is sought.

2. Once authorized, the asbestos safety control monitor shall pay a fee of six percent of the gross revenue earned solely from asbestos safety control monitoring activities. This fee shall be payable quarterly, accompanied by a completed form prescribed by the Department, and is due within one month of the close of the indicated quarter according to the following schedule: First quarter—January 1 to March 31; second quarter—April 1 to June 30; third quarter—July 1 to September 30; and, fourth quarter—October 1 to December 31. The monies obtained from the preparation of plans and specifications and payments for laboratory services shall not be included in the calculation of this quarterly fee.

3. Reauthorization fee: Any asbestos safety control monitor submitting an application to the Department under this subchapter for reapproval as an asbestos safety control monitor shall pay a fee of \$2,100.

New Rule R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.490, effective November 16, 1987.

See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Fee raised from \$1,000 plus five percent to \$1,250 plus six percent.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Correction: Asbestos safety control monitor fee raised from \$2,000 to \$2,500 equal to six not five percent and reapproval fee raised from \$1,000 to \$1,250 equal to six not five percent.

See: 20 N.J.R. 1115(a).

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.17 to new 8.18, with minor stylistic changes throughout. Section 8.18 was formerly "Asbestos safety technician: certification requirements". In (a)4iii: Revised text to specify program that testing laboratories are required to participate.

Amended by R.1991 d.181, effective April 1, 1991.

See: 23 N.J.R. 257(b), 23 N.J.R. 1029(a).

In (h)1, authorization fee increased from \$2,500 to \$3,250. In (h)2, reauthorization fee increased from \$1,250 to \$1,625.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased.

Recodified from 5:23-8.18 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Precautions and procedures during a large asbestos hazard abatement project", recodified as 5:23-8.15.

Administrative Correction.

See: 26 N.J.R. 4760(a).

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (h), substituted "\$4,200" for "\$3,500" in 1 and "\$2,100" for "\$1,750" in 3.

Case Notes

Inability to travel due to weather did not exonerate asbestos safety technician from being held responsible for deficiencies previously left at work site. Department of Community Affairs v. Stewart, 95 N.J.A.R.2d (CAF) 62.

5:23-8.12 Application of asbestos

(a) This section shall apply to the application of asbestos, except as provided in (a)1 below.

1. This section shall not apply to asbestos materials which are applied in solid, non-friable form, such as floor tiles or cement pipe.

(b) The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos application work.

1. No person may cause or allow surface coating by spraying on any building structure, facility, installation or internal or external portion thereof, using asbestos or any friable material containing in excess of 0.25 percent by weight of asbestos. See N.J.A.C. 7:27-17.

2. The direct application of asbestos material during construction or renovation of structures, facilities or installations by means such as troweling by hand shall be prohibited.

3. The only permissible applications of asbestos-containing materials during construction or renovation of structures, facilities or installations shall be those in which the asbestos is securely bound into a solid matrix before the application is performed, such as floor tiles in which asbestos is a minor component.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.11 as new 8.12, changing abatement "job" to "project" throughout with stylistic changes. Section 8.12 was formerly "Asbestos encapsulation and enclosure".

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Recodified from 8.17.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.19 to new 8.20. Section 8.20 was formerly "Appeals".

Recodified from 5:23-8.20 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Precautions and procedures during a small asbestos hazard abatement project", repealed.

5:23-8.13 Pre-project procedures

Before an asbestos abatement project begins, the owner shall have evaluated whether or not the scope of work for a specific project will require that all surfaces in the work area are to be HEPA vacuumed and/or wet-wiped. This is in order to remove any dust which may contain asbestos and might, therefore interfere with the final inspection and final air clearance level needed to reoccupy the building. The surfaces to be cleaned shall include, but not be limited to, all horizontal and vertical surfaces and such inside spaces as room ventilators, storage lockers, and utility and storage closets. The cleaning shall be accomplished by trained employees of the building owner as delineated in this subchapter before the asbestos abatement project begins or it shall be made part of the scope of work of an asbestos abatement project to be completed by the licensed contractor.

New Rule, R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Section 8.3 formerly was "Enforcement; licensing; special technical services".

Recodified from 5:23-8.3 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Asbestos encapsulation and enclosure", recodified as 5:23-8.16.

5:23-8.14 Operations and maintenance activities

Operations and maintenance activity, as defined in N.J.A.C. 5:23-8.2, involves asbestos abatement work that may be performed without application or notice to the enforcing agency. Mechanical, electrical, plumbing or general construction work that involves the incidental disturbance of asbestos-containing material shall also be considered an operations and maintenance activity. Examples include, but are not limited to, corrective action which includes removal, repair, encapsulation and enclosure of asbestos-containing insulation on pipes, beams, walls or ceilings, etc.; disturbance or routine maintenance activities which may involve asbestos-containing material; clean up of asbestos debris from a floor; and maintenance activities that may include the removal of asbestos-containing material, if required in the performance of another maintenance activity not intended as asbestos abatement, or minor repairs to damaged insulation which do not require removal. The stabilization of any amount of asbestos-containing materials used to cover piping, boilers, tanks, structural members, or similar equipment by applying duct tape, re-wettable glass cloth, canvas, cement, or other sealable material to seal exposed areas where asbestos fibers may be released, shall also constitute an operations and maintenance activity. Asbestos hazard abatement projects shall not be broken down into smaller component parts in order to qualify as an operation and maintenance activity.

(b) Specific records of each operations and maintenance activity shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the enforcing agency and for public inspections during normal business hours.

1. The information required shall be:
 - i. Location/name/number of building;
 - ii. Exact locations of the work area within the building;
 - iii. Type of abatement work conducted;
 - iv. Scope of work;
 - v. Type of replacement material used (if applicable);
 - vi. Date;
 - vii. Name(s) and address(es) of personnel; and
 - viii. Location of the disposal site.

(c) A certificate of occupancy or completion is not required for an operations and maintenance activity.

(d) Requirements concerning wetting methods are as follows:

1. Wetting methods shall be used whenever asbestos-containing materials are disturbed.

2. Asbestos materials shall be wetted using amended water applied by means of an airless sprayer to minimize the disturbance of asbestos-containing material. Asbestos-containing materials shall be wetted from the initiation of the maintenance or renovation operation that disturbs asbestos-containing material. The wetting agents shall be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is water-soaked and remains wet until final disposal.

(e) Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.22.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Added text to (a) "Mechanical, electrical, plumbing ... hazard abatement job"; deleted text in (a)1 "although asbestos abatement ... to N.J.A.C. 5:23-2." and added "Although the enclosure ... to N.J.A.C. 5:23-2."

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Deleted text in (a) "This work requires ... job takes place." Added (b) and (c).

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.4 as new 8.5 and changed "abatement job" to "abatement project." Section 8.5 was "Variations".

In (a): Revised language and added text to define work involved in project.

In (b): Added language regarding the wearer of a respirator.

Recodified old (c) in the new (d), with stylistic changes. Added new (c)1-4 and new (e).

Recodified from 5:23-8.5 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Glove bag technique", recodified as 5:23-8.17, "Limited containment removals".

5:23-8.15 Asbestos hazard abatement projects

(a) No asbestos hazard abatement work including preparation shall be performed or continued without having a certified asbestos safety technician at the work area.

(b) Protective clothing, equipment, and general procedures for asbestos abatement shall be subject to the following requirements:

1. Only authorized personnel shall be permitted in the work area. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the work area;