

(e) Local health departments or other public agencies performing lead evaluations shall not be required to obtain contractor certification to perform evaluations within their jurisdictions.

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (a)1.

Amended by R.2001 d.328, effective September 17, 2001.

See: 33 N.J.R. 1807(a), 33 N.J.R. 3307(a).

In (c), added 4.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 1022) adopted, which concluded that denial of respondent's application for certification as a lead abatement contractor was justified because respondent had not provided proof of the insurance coverage required by N.J.A.C. 5:17-2.3(b)9. Dep't of Community Affairs, Bureau of Code Services v. Easterling, d/b/a Miss Fix-It, OAL Dkt. No. CAF 10175-06, Final Decision (January 8, 2007).

5:17-2.2 Conflict of interest

(a) No business firm shall be certified to offer lead evaluation or lead abatement services if any person who is a proprietor, general partner, officer, director, employee, or shareholder or limited partner in the firm is employed as an official or inspector by any agency, public or private, enforcing the State Uniform Construction Code Act or, except as otherwise provided in paragraph(a)2 below, is employed by any public health department or agency in the State of New Jersey.

1. This section shall not apply to the ownership of stock or other investment instrument in any corporation listed on any national stock exchange.

2. Any other provision of this subsection to the contrary notwithstanding, a business firm may be certified to offer lead evaluation services only, despite the fact that a person who is a proprietor, general partner, officer, director, employee, or shareholder or limited partner in the firm is employed by a public health department or agency in the State of New Jersey. In any such case, the business firm shall not engage in the business of lead evaluation within the area of jurisdiction of the public health department or agency by which any such person is employed and shall not have any relationship to any individual or business firm performing lead abatement services.

(b) There shall be no relationship between the individuals or business firms performing lead abatement services other than clearance testing at a job site and the individuals or business firms performing clearance testing at the same job site.

(c) Except as otherwise provided in (a)2 and (b) above, nothing contained in this section shall be deemed to prevent a business firm from offering both evaluation and abatement services, or from offering all abatement services, including clearance testing.

(d) For evaluation services rendered for the purpose of complying with the requirements of N.J.A.C. 5:10, of any other applicable maintenance code or of another State or local law, there shall be no personal, professional or economic relationship between the individual(s) or business firm performing the lead evaluation services and the property owner other than the contract to perform lead evaluation services.

Amended by R.2005 d.144, effective May 16, 2005.

See: 36 N.J.R. 2106(a), 37 N.J.R. 1754(c).

Added (d).

Amended by R.2008 d.287, effective October 6, 2008.

See: 40 N.J.R. 1421(a), 40 N.J.R. 5575(a).

Rewrote (b); and in (c), substituted "(a)2 and (b)" for "paragraph (a)2" and "or from offering all abatement services, including clearance testing" for "provided that the disclosure required in (b) above is made for any job where that firm performs both evaluation and abatement".

5:17-2.3 Application for certification

(a) Every application for certification as either a lead evaluation contractor or a lead abatement contractor, or both, shall be made on the appropriate form prescribed by the Commissioner and shall be accompanied by a nonreturnable fee of \$1,800. In the case of firms seeking certification to perform both evaluation and abatement work, two fees shall be paid.

1. Business firms applying to perform abatement on both buildings and superstructures may submit one application for both. Certified business firms wishing to add steel structures to their certification may do so by submitting such documentation as may be required by the Department, including a listing of the New Jersey Department of Health and Senior Services certified workers and supervisors in the superstructures disciplines, information concerning their training and refresher training, their ability to use different types of equipment, experience of the firm and of its workers and supervisors in the field of lead abatement, and information concerning any activities that might create a conflict of interest, as defined in N.J.A.C. 5:17-2.2. No separate application or application fee shall be required to add superstructures to a contractor's certification for lead evaluation or abatement.

(b) Every application for certification shall include the following:

1. The full name and address of the business. In the case of a corporation, the name entered on the application shall be the same as that registered with the Secretary of State. In all cases, the address entered on the application shall be the street number, street name, municipality, the post office serving the property, if different from the municipality, and the zip code, of the location of the primary office of the applicant's business organization. In no case shall the address be only the address of an agent or only a post office box. It shall, in all cases, be the address at which the proprietor, or the designated representative of the business organization who is certified by the Department of Health in accordance with section 3 of P.L. 1993,

c.288 (N.J.S.A. 26:2Q-3) and is responsible for compliance with P.L. 1993, c.288 can usually be found;

2. The name and address of an agent upon whom service upon the business organization may be made within the State of New Jersey. The agent shall be either an individual who is a resident of the State of New Jersey or a corporation maintaining an office within the State of New Jersey;

3. The business organization's telephone number;

4. The business organization's Federal Taxpayer Identification Number and New Jersey Unemployment Insurance Number, if any;

5. The name, address and home telephone number, and date of birth of each person having at least a 10 percent ownership interest in the business organization;

6. Information concerning the experience of the applicant, and of the person certified by the Department of Health and designated as being responsible for compliance with P.L. 1993, c.288, in the State of New Jersey, including the number of years in the lead evaluation and/or lead abatement business and the municipalities in which such business has been carried on during the three years immediately preceding the date of application;

7. A list of the employees who will be involved in performing evaluation or abatement tasks, together with their New Jersey Department of Health Certification Number and the discipline(s) in which they are certified;

8. Any criminal convictions against the business or against any person having an interest in the business and the disposition thereof; and

9. Proof of insurance as follows: a minimum of \$1 million in commercial general liability coverage written on an occurrence basis without a sunset clause or provision by an entity admitted or otherwise approved to write policies in New Jersey by the New Jersey Department of Insurance and with an "A" or better rating from A.M. Best. Insurance coverage meeting this requirement shall be in effect during the entire time that a contractor remains certified and cannot be allowed to lapse.

i. For purposes of submitting the application for certification, a copy of the policy cover sheet showing the contractor name, the policy number, the effective dates, the amount of coverage and the name of the entity issuing the policy shall be accepted as proof of insurance.

ii. Existing insurance policies written by entities that have at least a "C plus" rating from A.M. Best shall be accepted as meeting this requirement; provided that, upon expiration of that policy or upon renewal of the contractor's certification, whichever occurs first, the contractor shall obtain insurance that meets the requirements in (b)9 above.

(c) Each applicant for certification shall disclose in the application any relationship with any other business organization engaged in lead evaluation and/or lead abatement or in the supply of goods, services or materials for lead evaluation or abatement or in any other work for which a permit is required pursuant to the Uniform Construction Code, N.J.A.C. 5:23, and shall further disclose all interests of any officer, partner, director, shareholder or employee in any other business organization engaged in lead evaluation and/or lead abatement or in the supply of goods, services or materials for lead evaluation or abatement or in any other work for which a permit is required pursuant to the Uniform Construction Code, N.J.A.C. 5:23.

Amended by R.1996 d.543, effective December 2, 1996.

See: 28 N.J.R. 3995(a), 28 N.J.R. 5069(a).

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (a)1.

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 "\$1,800" for "\$1,500" and deleted the third and fourth sentences in the introductory paragraph.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 1022) adopted, which concluded that denial of respondent's application for certification as a lead abatement contractor was justified because respondent had not provided proof of the insurance coverage required by N.J.A.C. 5:17-2.3(b)9. Dep't of Community Affairs, Bureau of Code Services v. Easterling, d/b/a Miss Fix-It, OAL Dkt. No. CAF 10175-06, Final Decision (January 8, 2007).

5:17-2.4 Issuance of certification

(a) Upon receipt of a completed application, the Department shall either issue the certification or deny it in accordance with these rules within 30 days.

(b) The certification shall remain valid, unless suspended or revoked in accordance with these rules, for a two year period ending with the expiration date indicated thereon. If the business is transferred to another legal entity, the contractor certification issued by the Department shall not be transferable.

1. The Department shall be notified in writing when any employee who is certified by the Department of Health and is designated as having responsibility for ensuring compliance with P.L. 1993, c.288 ceases to be associated with the business organization. In any such case, the certification shall expire and become invalid unless another person certified by the Department of Health is substituted and the Department of Community Affairs is so notified in writing within 10 days of the change.

2. Any other change in the information submitted to the Department with the application for certification shall be reported to the Department in writing within 30 days of the change.

(c) The certification shall specify whether the holder is certified as a lead evaluation contractor, a lead abatement contractor, or both.

(d) A certification may be renewed for additional two-year periods. Applications for renewal shall be made upon forms provided by the Commissioner, shall be accompanied by a fee of \$1,800 and shall be subject to the same conditions as an original application.

1. Applications for recertification may be made during the 90 day period before the certification expiration date or the 90 day period after the certification expiration date; except that if a business firm applies after the certification expiration date, the firm shall not perform any services for which certification is required until the certification is renewed. If a certification has expired for more than 90 days, the business firm shall be required to obtain a new certification.

(e) A copy of the certification shall be conspicuously displayed for public review in the office of a firm engaged in the business of abating lead-based paint hazards or conducting lead evaluations. Additionally, the certification number shall be displayed on all business vehicles and at all lead abatement or evaluation jobs in progress.

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

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

In (d), substituted "\$1,800" for "\$1,500" in the introductory paragraph.

5:17-2.5 Denial, suspension, imposition of conditions upon or revocation of certification

(a) A certification may be denied, suspended, limited or revoked, depending on the nature and severity of the offense, if the certification holder or applicant, or an officer, partner, director, shareholder or employee of the certification holder or applicant, has at any time:

1. Willfully made a misstatement or omission of material fact in an application for certification or renewal of certification, or in providing other information required by the Department or by a local enforcing agency enforcing the State Uniform Construction Code;

2. Misrepresented qualifications for certification, or fraudulently obtained certification;

3. Willfully committed fraud in the business of lead evaluation or lead abatement or in any other business involving work subject to the Uniform Construction Code, N.J.A.C. 5:23;

4. Engaged in practices during lead abatement work contrary to safe procedures established therefor, or otherwise practiced lead evaluation or lead abatement in a grossly negligent manner;

5. Engaged in the business of lead evaluation and/or lead abatement without having certification from the Department to do so, or employed persons to perform lead evaluation or lead abatement work who were not then certified pursuant to section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) to perform such work;

6. Failed to comply with applicable permit and/or certificate requirements, or otherwise violated, or abetted another to violate, or hindered or delayed the Department in the enforcement of, the State Uniform Construction Code Act, as supplemented by sections 14 through 24 of P.L. 1993, c.288, including these rules adopted pursuant thereto; or

7. Refused to make a certification available when directed to do so by the Department, or otherwise violated, or abetted another to violate, any order of the Commissioner issued pursuant to the State Uniform Construction Code Act, as supplemented by sections 14 through 24 of P.L. 1993, c.288.

(b) Whenever the Department shall find cause to deny an application for certification, or to suspend or revoke a certification, it shall notify the applicant or certification holder of the reasons therefor, in writing, and shall provide an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, when a request for a hearing is filed within 15 days of the date of notice.