

Amended by R.2004 d.467, effective December 20, 2004.  
See: 36 N.J.R. 2122(a), 36 N.J.R. 5709(b).

In (b), substituted "Ordinary" for "Such" preceding "maintenance" in the introductory paragraph and rewrote 6iii; in (c), rewrote 3iii.

#### Case Notes

Municipal order under zoning ordinance to remove sleeping trailers and disconnect utilities used by a refinery repair crew proper exercise of police power; action not preempted by Occupational Safety and Health Act. *Twp. of Greenwich v. Mobil Oil Corp.*, 504 F.Supp. 1275 (D.N.J. 1981).

#### 5:23-2.8 Installation of equipment

(a) When the installation, extension or alteration of mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or other equipment is specifically controlled by the provisions of this chapter, it shall be unlawful to use such equipment until a certificate of occupancy or certificate of approval, as the case may be, has been issued therefor by the construction official having jurisdiction. Use of elevator devices shall be subject to N.J.A.C. 5:23-12.9.

(b) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

Amended by R.1991 d.509, effective October 7, 1991.  
See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Stylistic changes.

Amended by R.1996 d.323, effective July 15, 1996, (operative January 1, 1997).

See: 28 N.J.R. 2112(a), 28 N.J.R. 3549(a).

Amended by R.2003 d.384, effective October 6, 2003.

See: 35 N.J.R. 2422(a), 35 N.J.R. 4712(a).

Designated the existing paragraph as (a) and added (b).

#### 5:23-2.9 Variations and exceptions

(a) No variations or exceptions from the requirements of any subcode of these regulations may be made, except upon the following findings:

1. That strict compliance with any specific subcode provision, if required, would result in practical difficulty to such owner; and
2. That the exception, if granted, will not jeopardize the health, safety and welfare of intended occupants and the public generally.

(b) Except as may be otherwise specified in this chapter, no variations shall be granted from any of the requirements of N.J.A.C. 5:23-2, 4 or 5.

Amended by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Added (b).

#### 5:23-2.10 Applications for variations

(a) An application for a variation pursuant to this section shall be filed in writing with the construction official and shall state specifically:

1. A statement of the requirements of the subcode from which a variation is sought;
2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties;
3. A statement of the nature and extent of such practical difficulties; and
4. A statement of feasible alternatives to the requirements of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally.

Administrative Correction to (a): Changed "set" to "state".

See: 22 N.J.R. 2503(b).

#### 5:23-2.11 Review of variation applications

Within 20 business days next succeeding the receipt by the construction official of the application, it shall be denied or granted by written order stating the reasons therefor. The application shall be deemed denied for purposes of appeal if no decision is forthcoming within such 20-day period. Records of all applications for variation, and actions taken thereon shall be available for public inspection at the enforcing agency during normal business hours.

#### 5:23-2.12 Final decision on variations

The appropriate subcode official(s) shall make the final determination with respect to matters within their jurisdiction. The construction official shall notify the applicant of that determination. Whenever an application for a variation shall result in contradictory or inconsistent determinations by different subcode officials having jurisdiction pursuant to N.J.A.C. 5:23-3, the construction official shall rule as to which subcode official's determination shall be final, and shall notify the applicant of that ruling. Whenever the construction official shall be certified in a particular subcode, he may modify the determination of the subcode official.

**5:23-2.13 Authority to grant variations**

The enforcing agency with plan review responsibility shall have the sole authority to grant variations.

**5:23-2.14 Construction permits—when required**

(a) It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof, or to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter, or to undertake a project involving lead abatement in accordance with N.J.A.C. 5:17, without first filing an application with the construction official, or the appropriate subcode official where the construction involves only one subcode, in writing and obtaining the required permit therefor.

1. Exception: No permit shall be required for ordinary maintenance as defined in N.J.A.C. 5:23-1.4 and 2.7.

(b) The following are exceptions from (a) above:

1. Ordinary maintenance as defined in N.J.A.C. 5:23-2.7 shall not require a permit or notice to the enforcing agency;

2. Minor work as defined by N.J.A.C. 5:23-2.17A shall require a permit. However, work may proceed, upon notice to the enforcing agency, before the permit is issued;

3. Emergency work not involving lead abatement, except that a permit shall be applied for or notice given as soon thereafter as is practicable, but not later than 72 hours thereafter.

4. Permit requirements for tents and membraned structures shall be in accordance with N.J.A.C. 5:23-3.14(b)20ii. A temporary greenhouse meeting the criteria of N.J.A.C. 5:23-3.14(b)20ii(4) shall not require a permit except as otherwise provided in N.J.A.C. 5:23-3.14(b)20ii(5).

5. Gas utility company shall not be required to obtain a permit or give notice to the enforcing agency for replacement of interior gas utility company-owned metering (meter and related appurtenances) by exterior gas utility company owned-metering if the work is performed by qualified employees of the gas utility company.

6. A permit shall not be required for a sign that meets all of the following conditions; provided, however, that the construction official shall have authority to require the removal of any sign that creates an unsafe condition or otherwise to require correction of any such condition:

i. It is supported by uprights or braces in or upon the ground surface;

ii. It is not served by an electrical circuit directly connected to the sign;

iii. It is not greater than 25 square feet in surface area (one side); and

iv. It is not more than six feet above the ground (mounted height).

7. Lead abatement work performed on a steel structure or other superstructure or in a commercial building.

8. A permit shall not be required for garden-type utility sheds and similar structures that are 100 square feet or less in area, 10 feet or less in height, and accessory to buildings of Group R-2, R-3, R-4, or R-5. Such garden-type utility sheds and similar structures are required to comply with the requirements at N.J.A.C. 5:23-9.9.

9. A permit shall not be required for fences six feet or less in height. This exception does not apply to barriers surrounding public or private swimming pools.

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1. Identification of the facility and the buildings covered by the application for the annual permit.

2. Identification of the location within the facility where the annual permit records will be maintained.

3. A listing of the names, titles and trade specialties of the facility's full-time maintenance staff.

4. The name of the person responsible for the maintenance logs, job assignments and quality control.

5. A statement from the management of the facility attesting that the maintenance staff performing work under the annual permit are under the direct supervision of a qualified individual, as set forth under N.J.A.C. 5:23-2.14(e)1, or are individually qualified in their respective trades.

i. Evidence of qualification shall be journeyman status, civil service status, trade experience, trade school certification, college degree, State licensure pursuant to law or other appropriate evidence of competence.

ii. No person employed on the maintenance staff of a facility shall be deemed to be qualified to engage in lead abatement unless he or she has been certified by the New Jersey Department of Health pursuant to section 3 of P.L. 1993, c.288 (N.J.S.A. 26:20-3) (see N.J.A.C. 8:62).

6. A statement from the management explaining their procedures for providing training at Department seminars on construction codes on a regular basis for at least one, but not more than three, individuals per subcode.

7. A statement from the management explaining the procedures of the applicant to ensure proper quality control of the work performed under the annual permit.

8. Receipt of the required annual permit fee and training registration fee.

(d) The Construction Official, upon review of the application may issue or deny an annual construction permit in whole or in part. The construction permit (Form F-170C) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.

(e) Conditions of the annual permit are as follows:

1. The "annual permit" may be issued for building/fire protection, electrical, mechanical or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge as evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification for which the annual permit is sought.

i. An approved copy of the annual permit application shall be kept at a facility's maintenance office within the municipality having jurisdiction for review by the Construction Official and appropriate subcode official. The Construction Official shall be notified of the location of the facilities maintenance office.

2. The life of the annual construction permit shall be limited to one year;

3. The facility shall maintain a construction log of all work performed. The construction log shall contain the date, a brief description and estimated or actual cost of the project. This log shall be subject to a quarterly inspection by the construction official or his authorized representative. Any business record showing when and where work was done and the extent of such work shall be deemed to be a construction log. Applications for the renewal of the "annual permit" shall be filed with the Construction Official at least 60 days prior to the expiration of the current annual permit. The facility application shall make current the information previously submitted to the Construction Official. The application for renewal shall be accompanied by the established fee.

4. The annual permit covers all work subject to this chapter done by the facility's full-time maintenance staff, but shall not include work performed by outside contract even if the contractor is hired by the facility and is working under direct supervision of the facility's maintenance staff. Work performed by outside contract shall be subject to applicable UCC regulations and State Licensure Law.

5. A permanent work log, approved by the construction official, of all work done under the "annual permit" must be maintained at a facilities maintenance office on site or must be available at the time of the inspection upon 24 hours notice of such inspection. The log must contain the date, a brief description of the work, photographs for any work which was not inspected prior to closing as set forth in (e)8 below, and the name of the person supervising the work. The log shall be retained for three years.

6. Architectural or engineering drawings, as required by law for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7. The appropriate subcode official, at least two (2) times a year, shall perform inspections of the facility for which an annual permit has been issued. The maximum time between inspections shall be a six month period.

8. Work that is normally inspected prior to closing shall be ordered to be reopened by the facility upon written notice from the Construction Official or appropriate subcode official if he has reason to believe that a violation is present. A photograph shall be taken of any work intended to be enclosed without inspection.

9. Any work that is done under the supervision of the facilities maintenance staff and under a regular construction permit shall be entered into the annual permit log. The construction permit number shall be listed as a part of the entry.

10. Training for annual permits shall be provided at the seminars for code officials.

i. The facility shall provide a list of at least one, but not more than three, individuals per subcode who are required to complete five hours of continuing education per year.

ii. The Department shall maintain the training records for each annual permit. The annual permit shall not be renewed unless the facility completes the training for each issued subcode.

iii. The Department shall notify the construction official who issued the permit if the training has not been completed.

11. Any changes to the annual construction permit application shall be forwarded to the Construction Official within 30 days of the change.

12. The following work is not permitted under an annual permit:

i. Any work done on a facility that would result in a change of use of a building or part of a building;

ii. New buildings and additions regardless of size;

iii. Renovation, alteration or reconstruction work completed between inspection periods in an area in excess of 5,000 square feet per building;

iv. Any work done on a facility that would result in an increase to the area of a building;

v. The installation or alteration of a sprinkler system;

vi. Any work that affects the required means of egress;

vii. Any modification work, other than routine maintenance, that affects life safety systems, such as, but not limited to:

- (1) Emergency lighting systems;
- (2) Smoke and heat detection systems;
- (3) Stand-by generator systems;
- (4) Emergency smoke evacuation systems.

viii. Any work which would disturb asbestos and require a permit to perform.

(f) Construction requirements for commercial farm buildings shall be as set forth in N.J.A.C. 5:23-3.2(d).

As amended, R.1981 d.462, eff. December 7, 1981.  
See: 13 N.J.R. 390(a), 13 N.J.R. 885(d).

(c)1i: added "under the control and supervision of a person"; (c)1iii: added "any business construction log."

Amended by R.1985 d.351 effective July 15, 1985.

See: 17 N.J.R. 1029(a), 17 N.J.R. 1756(b).

Section substantially amended.

Amended by R.1986 d.213, effective June 16, 1986.

See: 17 N.J.R. 2490(a), 18 N.J.R. 1266(a).

Subsection (e) substantially amended.

Administrative Correction: "facility's" changed from "facilities" throughout.

See: 22 N.J.R. 2503(b).

Amended by R.1990 d.558, effective November 19, 1990.

See: 22 N.J.R. 1969(b), 22 N.J.R. 3483(a).

Conditional exemption for hoopouses or polyhouses added.

Amended by R.1991 d.60, effective February 19, 1991.

See: 22 N.J.R. 3609(a), 23 N.J.R. 405(b).

Gas utilities exempt from permit and notice requirements.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Mechanical work added to (e)1.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (d).

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).

Rewrote (c)6 and (e)10.

Amended by R.1996 d.297, effective July 1, 1996 (operative October 1, 1996).

See: 28 N.J.R. 1586(b), 28 N.J.R. 3301(a).

In (b) added exception for signs.

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 (b)7.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Rewrote (a); added (a)1 stating exception; amended (e)4 and (e)12iii. Administrative change.

See: 31 N.J.R. 135(b).

Amended by R.1999 d.424, effective December 6, 1999.

See: 31 N.J.R. 2428(a), 31 N.J.R. 4001(c).

In (a)1 and (b)1, substituted references to ordinary maintenance for references to ordinary repairs.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b), added 8 and 9.

Administrative correction.

See: 34 N.J.R. 2965(a).

Amended by R.2003 d.187, effective May 5, 2003.

See: 34 N.J.R. 4248(a), 35 N.J.R. 1939(c).

In (b), rewrote 4.

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (b)8, substituted "that" for "which" preceding "are 100 square feet or less in area", substituted "Group R-2, R-3, R-4 or R-5" for "Use Groups R-2, R-3 or R-4", and inserted "the requirements at" preceding "N.J.A.C. 5:23-9.9".

### 5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted on the standard Construction Permit Application form prescribed by the Commissioner at N.J.A.C. 5:23-4.5(b)2 and shall be accompanied by the required fee, as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following:

1. The name and address of the owner: Where the owner is not a resident of the State, he shall designate a resident as agent for the purpose of service of any notices or orders which may be necessary. Such address shall not be limited to a post office box, but shall specify a physical location where such owner or agent may be found during normal business hours. Where the owner is a corporation, partnership or other business entity, the application shall indicate the names and addresses of the officers, or other responsible persons upon whom service may be made;

2. The street address and lot and block number of the property upon which the building or structure is proposed to be erected;

3. A description of the proposed work, including the use group classification, proposed construction type, lot ground coverage in square feet, total floor area in square feet, total building or structure volume in cubic feet, the total number of plumbing fixtures, the total number of electrical fixtures, outlets and major appliances, a description of the type of heating system, the source of water supply, the mode of sanitary waste disposal and a listing of any special, unusual or hazardous facilities proposed for inclusion in the building or structure;

4. The estimated cost of the work for which a permit is sought, including but not limited to building construction, on-site construction, and all integral equipment, built-in furnishings and finishes. Where any material or labor proposed for installation in the building or structure is furnished or provided at no cost, its normal or usual cost shall be included in the estimated cost;

5. A statement that all required State, county and local prior approvals have been given, including such certification as the construction official may require;

6. For Class I structures, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode;

7. If the work involves lead abatement, the applicant shall provide the following:

i. A copy of the scope of work which shall describe precisely the location and extent of the work;

ii. A sketch plan showing the locations where abatement work is to be performed and showing emergency egress routes for any occupants to be in the building during abatement;

iii. A record of all materials to be used for all phases of the job, including encapsulants, enclosures, containment materials and replacement components, as appropriate;

iv. A copy of the lead evaluation report, if any has been done, prepared by a business firm certified by the Department pursuant to N.J.A.C. 5:17 to do lead evaluation; and

v. The degree to which any lead hazard identified in any report prepared by a lead evaluation firm certified by the Department will be abated; and

8. If the work involves reconstruction, an identification of the work area, except where plans are filed with the application, in which case the work area shall be delineated on the plans.

(b) In addition, the following information shall be required on any application for a construction permit when such information is available, but not later than the commencement of work.

1. The names and addresses of all contractors engaged or planned for engagement by the owner in the execution of the work.

i. A current validated State builder registration card shall be shown by the contractor and the registration number of the contractor shall be recorded on the permit, pursuant to the New Home Warranty and Builder's Registration Act (N.J.S.A. 46:3B-1 et seq.), if the project is a one or two family dwelling, condominium or cooperative, unless it is to be built in whole or in part by an owner, in which case an affidavit shall be filed by the owner on a form prescribed by the Department of Community Affairs, in which he acknowledges that work done by him, or by a subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act and states that he will disclose this information to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy.

2. The name and license number of the contractor or subcontractor for plumbing and for electrical work where such work is proposed.

i. Plumbing and electrical work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single family homeowner on his own dwelling.

ii. The seal and signature of the licensed plumbing and electrical contractor shall be affixed to the corresponding subcode application form.

3. The name and address of the responsible person who will be in charge of the work and who is responsible to the owner for ensuring that all work is installed and completed in conformity with the regulations. The person may be the design architect or engineer, the contractor or a third party acceptable to the construction official.

4. If the work involves lead abatement, one of the following shall be supplied:

i. The name and Department certification number issued pursuant to N.J.A.C. 5:17 of any business firm undertaking the lead abatement; or

ii. If the work is to be done by employees of the owner of the property, the name and New Jersey Department of Health certification number issued pursuant to N.J.A.C. 8:62 of each such employee; or

iii. If the work is to be done on an owner-occupied single family dwelling, a certification by the owner stating that he or she owns and occupies the property as a principal place of residence, will be performing the abatement work, and has received the written information for homeowners prepared by the Department explaining the danger of improper lead abatement, procedures for conducting safe lead abatement, and the availability of certified lead abatement contractors or of any available training for homeowners.

5. In the event of any change of contractor or person in charge of work under (b)1, 2, 3 and 4 above, such change shall be filed as an amendment to the application.

(c) A separate application and permit shall be required for each building.

(d) Application for a permit shall be made by the owner, or his agent, a licensed engineer, architect or plumbing, electrical or other contractor employed in connection with the proposed work. If the application is by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner in fee, and that the applicant is authorized to make such application. All issued permits shall remain the property of the owner even if the application was made by a contractor or authorized agent.