

submission to the enforcing agency of an acceptable supervision and management plan. This plan shall include the institution of quality controls to ensure that the pattern of violations does not continue and the identification of qualified personnel to implement the plan. If the plan is not submitted within five business days of the issue date of the stop construction order, the order shall take effect.

3. 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.

4. 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 law.

(e) Penalties may be levied by an enforcing agency as follows:

1. Up to \$1,000 per violation for failure or refusal to comply with any lawful order, unless the failure or refusal to comply is done with the knowledge that it will endanger the life or safety of any person, in which case the penalty shall be up to \$2,000 per violation;

2. Up to \$2,000 per violation for failure to obtain a required permit prior to commencing construction or for allowing a building to be occupied without a certificate of occupancy;

3. Up to \$2,000 per violation for failure to comply with a stop construction order;

4. Up to \$2,000 per violation for willfully making a false or misleading written statement, or willfully omitting any required information or statement in any application or request for approval;

5. Up to \$500.00 per violation for any violation not covered under (e)1 through 4 above;

6. For purposes of this subsection, in an occupied building, a code violation involving fire safety, structural soundness or the malfunctioning of mechanical equipment that would pose a life safety hazard shall be deemed to endanger the life or safety of a person. In an unoccupied building, a code violation of a requirement intended to pro-

tect members of the public who are walking by the property shall be deemed to endanger the life or safety of a person.

Amended by R.2004 d.365, effective October 4, 2004.
See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (b), inserted "of 1999" following "Penalty Enforcement Law", amended the N.J.S.A. reference in (6), and substituted "and of the Superior Court" for "in addition to the courts specified by N.J.S.A. 2A:58-2"; added (e).

Amended by R.2007 d.46, effective February 5, 2007.

See: 38 N.J.R. 872(a), 39 N.J.R. 370(b).

Rewrote (d).

Amended by R.2007 d.124, effective May 7, 2007.

See: 38 N.J.R. 3708(a), 39 N.J.R. 1669(a).

In the introductory paragraph of (b), substituted a colon for a semicolon at the end; and in (b)5, deleted ", whenever he shall not have done so in the original notice and orders" following "pay a penalty".

Administrative correction.

See: 40 N.J.R. 113(a).

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.

Initial Decision (2006 N.J. AGEN LEXIS 428) adopted, which continued a stop work order on a home site construction project because: (1) removal of the table-type shoring and bracing for the adjoining building violated the construction permit conditions, and (2) the absence of documentation by an engineer or approval by an engineer of the changes to the shoring also violated the permit. *Office of Local Code Enforcement, Dep't of Community Affairs v. Brassel*, OAL Dkt. No. CAF 02684-06, 2006 N.J. AGEN LEXIS 512, Final Decision (June 16, 2006).

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.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

2. This subsection shall not apply to:

i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange;

ii. Any such business or employment outside the State;

iii. Any business or employment which is not subject to the regulations.

3. An on-site inspection agency may employ municipal subcode officials and inspectors on a part-time basis. This employment, however, shall be subject to the following conditions:

i. The on-site inspection agency can only employ municipal subcode officials and inspectors. A municipal construction official shall not be employed by an agency in any capacity.

ii. The written approval of the construction official supervising a municipal subcode official or inspector shall be obtained by the on-site inspection agency prior to hiring such municipal subcode official or inspector.

iii. An on-site inspection agency that hires a municipal subcode official or inspector shall thereupon waive the right to bid or contract in the employed subcode official or inspector municipality or municipalities.

iv. No person employed by, or associated with, an on-site inspection agency as an employee, proprietor, officer, director, partner or manager shall be permitted to retain such employment or association if he or she accepts employment with a municipality as a subcode official or inspector enforcing a subcode that was the subject of a contract or proposed contract for which the on-site agency was an unsuccessful bidder at any time during the previous 24-month period.

v. If an agency employee terminates employment with the agency and accepts employment in a municipality which was under contract with the agency, the agency shall waive the right to contract with that municipality for a period of two years.

(g) The amount charged to a municipality by a private agency for work subject to a minimum fee under N.J.A.C. 5:23-4.20(c)2 or for certificates of occupancy, certificates of approval and certificates of continued occupancy shall be the percentage set forth in a contract entered into in accordance with N.J.S.A. 52:27D-124.3, times the amount of the minimum fee or fee for a certificate of occupancy or certificate of approval, times the amount determined in accordance with this subsection.

1. In the case of work requiring inspections by four subcode officials or their designees, the allocation of the fee revenue shall be as follows:

i. Building subcode: 40 percent;

ii. Fire protection subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

2. In the case of work requiring inspections by fewer than four subcode officials or their designees, the allocation shall be among or between the subcodes involved in the proportions set forth in (g)1 above. (Thus, for example, in work involving only the building and plumbing subcodes, two-thirds of the fee (40/60) would be allocated to the building subcode and one-third of the fee (20/60) to the plumbing subcode.)

(h) Where plan review is performed more than one month before the construction permit is issued, or where a project does not go forward after a private on-site agency has performed plan review, then the municipality shall pay to the private agency 20 percent of the amount that would otherwise be due, which amount shall be determined by multiplying the relevant fee set forth in N.J.A.C. 5:23-4.20 by the percentage set forth in the contract between the municipality and the private agency entered into in accordance with N.J.S.A. 52:27D-124.3.

(i) Private on-site agencies shall bill for their services at least once monthly. Each bill shall specify the billing period and the amount currently due, amounts already paid, and any remaining balances, identified by permit number and totaled for the billing period.

(j) The private agency shall be paid for work performed even if the municipality receives no inspection fee for such work.

(k) Private enforcing agencies shall charge no fees other than the fees set forth in N.J.A.C. 5:23-4.20 multiplied by the percentage set forth in the contract between the private agency and the municipality. Private enforcing agencies shall furnish no services other than subcode enforcement services to municipalities and shall not receive any payments from municipalities for any other goods or services whatsoever.

Amended by R.1983 d.642, effective January 17, 1984.
See: 15 N.J.R. 1406(a), 16 N.J.R. 129(a).

Use of municipal subcode officials and inspectors further delineated.

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Text of (b), on private inplant inspection agencies, deleted.

Amended by R.1992 d.243, effective July 6, 1992.

See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Conflict of interest provisions added.

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

Amended by R.1996 d.273, effective June 17, 1996 (operative October 1, 1996).

See: 28 N.J.R. 1586(c), 28 N.J.R. 3120(a).

Amended by R.2006 d.128, effective April 3, 2006.

See: 37 N.J.R. 4106(a), 38 N.J.R. 1573(a).

In introductory paragraphs (g) and (h), replaced "N.J.A.C. 5:23-4.5A" with new statute citation.

Case Notes

In wrongful discharge claim brought by former employee for termination in violation of Family Leave Act, trial judge did not abuse his discretion in barring testimony from former employee's proffered expert on applicable conflict-of-interest regulations, even though former employer alleged that such testimony could have established that former employee's outside business activities violated Code regulation that prohibited an employee of an on-site inspection agency from engaging in any remunerated construction or alteration services within the State. *DePalma v. Bldg. Insp. Underwriters*, 350 N.J.Super. 195, 794 A.2d 848.

5:23-4.15 Suspension and revocation

(a) General:

1. In addition to any other remedies provided by the regulations, the Department may suspend or revoke its authorization of any private on-site agency 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 the regulations, or that a change of facts or circumstances make it unlikely that the inspection agency can continue to discharge its responsibilities under the regulations in a satisfactory manner, or that the inspection agency has violated the regulations.

2. During the period of suspension the affected agency shall not be authorized to discharge any of its responsibilities under the regulations unless otherwise specified in the notice of suspension or order of the department.

(b) Notice:

1. The department shall notify such agency of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the department to all manufacturers or municipalities with implementing contracts with the affected inspection agency.

2. The suspension shall be effective on the date the affected inspection agency receives the notice of suspension or on any later date that may be designated in the notice of suspension.

(c) Revocation without suspension:

1. The Department may revoke its approval of any inspection agency without previously suspending its authorization. In such event, the Department shall send a written notice to the affected inspection agency of its intention to consider revocation of its authorization, stating the grounds therefor, and establishing a time and a place for a hearing on the question. The notice shall be sent to

the affected inspection agency and to all manufacturers or municipalities having contracts with the affected inspection agency.

2. No such agency shall reapply for approval as an on-site agency until the expiration of one year from the date of the order of revocation.

(d) Termination of contract: Upon the suspension or revocation of approval of any inspection agency, any municipality or any manufacturer with an implementing contract with the inspection agency shall have the right to terminate its contract with such inspection agency and be free of all obligations thereon and to enter with such inspection agency and be free of all obligations thereon and to enter into an implementing contract with any other inspection agency.

(e) In the case of the suspension or revocation of any on-site inspection agency, the department shall, upon the request of any municipality with an implementing contract with the suspended or revoked inspection agency, consult with such municipality to establish a temporary arrangement by which the municipality can continue to enforce the regulations until the suspension or revocation is lifted or an implementing contract entered into with another on-site inspection agency. For these purposes, the department may, at its discretion, discharge some or all of the responsibilities of an on-site inspection agency. The department may also approve any other temporary arrangement which the department determines would best promote the purposes of the act and these regulations under the circumstances.

(f) The department shall provide any person aggrieved by any action of the department pursuant to this section with a hearing in accordance with the applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

Amended by R.1982 d.436, effective December 20, 1982.

See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added cases to be heard by the OAL with final decision by the Commissioner.

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Text on inplant inspection agencies and temporary arrangements deleted.

Notice of Petition to amend section.

See: 27 N.J.R. 3232(a).

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

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

5:23-4.16 (Reserved)

Repealed by R.1987 d.374, effective September 21, 1987.

See: 19 N.J.R. 1024(a), 19 N.J.R. 1720(b).

Section was "Fire limits".

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke or suspend a license, and/or assess a civil penalty in accordance with N.J.A.C. 5:23-2.31, if the Department determines that the person involved, at any time during the preceding 10-year period:

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, or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2, shall constitute grounds for revocation 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.

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).
Amended by R.2004 d.365, effective October 4, 2004.
See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (a), substituted "in accordance with N.J.A.C. 5:23-2.31" for "of not more than \$500.00" in the introductory paragraph.

Amended by R.2004 d.366, effective October 4, 2004.
See: 36 N.J.R. 2606(a), 36 N.J.R. 4442(a).

In (d)2, deleted the second sentence.
Amended by R.2008 d.273, effective September 15, 2008.
See: 40 N.J.R. 2630(a), 40 N.J.R. 5195(c).

In (c), inserted "or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2," and deleted "or suspension" following "revocation".
Amended by R.2008 d.332, effective November 3, 2008.

See: 40 N.J.R. 4270(a), 40 N.J.R. 6439(a).

In the introductory paragraph of (a), inserted "or suspend" and "at any time during the preceding 10-year period", and deleted "suspend a license for not more than 60 days," following "a license,".

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 764) adopted, which affirmed denial of a building inspector license because the applicant made false and misleading statements on the application; the applicant answered criminal history questions in the negative although the applicant had a criminal history and was on probation. Bureau of Code Services v. Guerriero, OAL Dkt. No. CAF 09580-07, 2008 N.J. AGEN LEXIS 38, Final Decision (January 3, 2008).

Code official's issuance of permits to a builder during the same period of time in which the official was providing compensated architectural services to the builder violated not only N.J.A.C. 5:23-5.25(a)5, but also N.J.A.C. 5:23-4.5(j)2. Easse v. Dep't of Community Affairs, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

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.