

CHAPTER 23
UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 52:27D-123.

Source and Effective Date

R.1993 d.106, effective February 3, 1993.
See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Uniform Construction Code, expires on February 3, 1998.

Chapter Historical Note

Chapter 23, Uniform Construction Code, was adopted pursuant to N.J.S.A. 52:27D-119 et seq. as R.1976 d.344, d.345, d.346 and d.347, effective January 1, 1977 and codified as Subchapter 1, General Provisions; Subchapter 2, Administration and Enforcement Process; Subchapter 3, Subcodes, and Subchapter 4, Enforcing Agencies: Duties, Powers, Procedures. See: 8 N.J.R. 216(b), 319(a), 370(d), 414(a); 8 N.J.R. 546(a). The Uniform Construction Code superseded N.J.A.C. 5:16 (Chapter 16, Standard Building Code) and N.J.A.C. 5:20 (Chapter 20, Safety Glazing Materials), which were repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). The UCC also superseded N.J.A.C. 5:21 (Chapter 21, Uniform Standards Code for Mobile Homes), which was repealed by R.1982 d.7, effective February 1, 1982. See: 13 N.J.R. 717(a), 14 N.J.R. 142(a). See, also, respective Chapter Historical Notes.

Subchapter 4A, Industrialized/Modular Buildings and Building Components, was adopted as R.1990 d.313, effective June 18, 1990, (operative July 1, 1990). See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Subchapter 5, Licensing of Code Enforcement Officials, was adopted as R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b).

Subchapter 6, Tax Exemption for Solar Facilities, was adopted as R.1978 d.334, effective September 18, 1978. See: 10 N.J.R. 222(b), 10 N.J.R. 418(a). Pursuant to Executive Order No. 66(1978), Subchapter 6 was readopted as R.1980 d.303, effective July 1, 1980. See: 12 N.J.R. 249(c), 12 N.J.R. 452(c).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1983 d.144, effective April 26, 1983. See: 14 N.J.R. 1247(a), 15 N.J.R. 803(c).

Subchapter 7, Barrier Free Subcode, was adopted as R.1986 d.448, effective November 3, 1986. See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a).

Subchapter 8, Asbestos Hazard Abatement Subcode, was adopted as Emergency New Rule R.1985 d.362, effective June 18, 1985 (to expire August 17, 1985). See: 17 N.J.R. 1782(a). The provisions of R.1985 d.362 were readopted as R.1985 d.472, effective August 16, 1985. See: 17 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1988 d.168, effective March 22, 1988. N.J.A.C. 5:23-6.1, 6.2 and 6.3, concerning tax exemption for solar facilities, were not readopted and expired on April 1, 1988. See: 20 N.J.R. 223(a), 20 N.J.R. 893(a).

Subchapter 9, Code Interpretations, was adopted as R.1988 d.195, effective May 2, 1988. See: 20 N.J.R. 224(a), 20 N.J.R. 977(a).

Subchapter 10, Radon Hazard Subcode, was adopted as R.1990 d.226, effective May 7, 1990. See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was adopted as R.1992 d.33, effective January 21, 1992. See: 23 N.J.R. 1730(b), 24 N.J.R. 229(c).

Subchapter 12, Elevator Safety Subcode, was adopted as R.1991 d.325, effective July 1, 1991. See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1993 d.106. See: Source and Effective Date. See, also, section annotations.

Cross References

Child care center physical facility requirements, see N.J.A.C. 10:122-5.1 et seq.

Children's group home physical facility requirements, see N.J.A.C. 10:128-4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124-5.1 et seq.

Residential child care facility maintenance and sanitation requirements, see N.J.A.C. 10:127-4.4.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:23-1.1 Title; division into subchapters
- 5:23-1.2 Authority
- 5:23-1.3 Intent and purpose
- 5:23-1.4 Definitions
- 5:23-1.5 Effective date
- 5:23-1.6 Prior permits; extensions
- 5:23-1.7 Validity

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

- 5:23-2.1 Title; scope; intent
- 5:23-2.2 Matter covered
- 5:23-2.3 Applicability
- 5:23-2.4 Alterations, replacements and damages
- 5:23-2.5 Concerning increase in size
- 5:23-2.6 Change in use group
- 5:23-2.7 Ordinary repairs
- 5:23-2.8 Installation of equipment
- 5:23-2.9 Variations and exceptions
- 5:23-2.10 Applications for variations
- 5:23-2.11 Review of variation applications
- 5:23-2.12 Final decision on variations
- 5:23-2.13 Authority to grant variations
- 5:23-2.14 Construction permits—when required
- 5:23-2.15 Construction permits—application
- 5:23-2.16 Construction permits—procedure
- 5:23-2.17 Demolition or removal of structures
- 5:23-2.17A Minor work
- 5:23-2.18 Inspections
- 5:23-2.18A Utility load management device installation programs
- 5:23-2.19 Special technical services
- 5:23-2.20 Tests and special inspections
- 5:23-2.21 Construction control
- 5:23-2.22 Premanufactured construction
- 5:23-2.23 Certificate requirements
- 5:23-2.24 Conditions of certificate of occupancy
- 5:23-2.25 Establishment of fees
- 5:23-2.26 Plan review fees
- 5:23-2.27 Refunds
- 5:23-2.28 Volume computation
- 5:23-2.29 Entry
- 5:23-2.30 Violation, notice and orders
- 5:23-2.31 Compliance

- 5:23-2.32 Unsafe structures
- 5:23-2.33 Service of notice
- 5:23-2.34 through 5:23-2.37 (Reserved)
- 5:23-2.38 Departmental appeal

SUBCHAPTER 3. SUBCODES

- 5:23-3.1 Title; scope; intent
- 5:23-3.2 Matters covered; exceptions
- 5:23-3.3 Enforcement
- 5:23-3.4 Responsibility
- 5:23-3.5 Posting structures
- 5:23-3.6 Standards; accepted practice
- 5:23-3.7 Municipal approvals of nonconforming materials
- 5:23-3.8 Departmental approval of nonconforming materials
- 5:23-3.8A Products violating the Code
- 5:23-3.9 Interpretations and opinions
- 5:23-3.10 (Reserved)
- 5:23-3.11 Enforcement activities reserved to the Department
- 5:23-3.11A Enforcement activities reserved to other State agencies
- 5:23-3.11B Underground storage tank systems
- 5:23-3.12 Amended rules
- 5:23-3.13 State-sponsored code change proposals
- 5:23-3.14 Building subcode
- 5:23-3.15 Plumbing subcode
- 5:23-3.16 Electrical subcode
- 5:23-3.17 Fire protection subcode
- 5:23-3.18 Energy Subcode
- 5:23-3.19 Manufactured home subcode
- 5:23-3.20 Mechanical subcode
- 5:23-3.20A Indoor air quality subcode
- 5:23-3.21 One and two family dwelling subcode

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

- 5:23-4.1 Title; scope; intent
- 5:23-4.2 Matter covered; exceptions
- 5:23-4.3 Municipal enforcing agencies—establishment
- 5:23-4.3A Enforcing agency classification
- 5:23-4.4 Municipal enforcing agencies—organization
- 5:23-4.5 Municipal enforcing agencies; administration and enforcement
- 5:23-4.5A Selection of private on-site inspection and plan review agencies
- 5:23-4.6 Interlocal enforcing agencies—establishment
- 5:23-4.7 Interlocal enforcing agencies—organization
- 5:23-4.8 Interlocal enforcing agencies—administration and enforcement
- 5:23-4.9 State enforcing agencies—establishment
- 5:23-4.10 State enforcing agencies—organization
- 5:23-4.11 State enforcing agencies—administration and enforcement
- 5:23-4.12 Private on-site inspection and plan review agencies; establishment
- 5:23-4.13 Private on-site inspection and plan review agencies; organization
- 5:23-4.14 Private on-site inspection and plan review agencies; administration and enforcement
- 5:23-4.15 Suspension and revocation
- 5:23-4.16 (Reserved)
- 5:23-4.17 Municipal enforcing agency fees
- 5:23-4.18 Standards for municipal fees
- 5:23-4.19 State of New Jersey training fees
- 5:23-4.20 Departmental fees
- 5:23-4.21 Private enforcing agency authorization and reauthorization fees
- 5:23-4.22 (Reserved)
- 5:23-4.23 Payment of fees
- 5:23-4.24 Plan review; Department of Community Affairs
- 5:23-4.25 (Reserved)
- 5:23-4.26 Certification of building elements
- 5:23-4.27 through 5:23-4.40 (Reserved)

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

- 5:23-4A.1 Purpose
- 5:23-4A.2 Findings; functions of the Commission
- 5:23-4A.3 Scope
- 5:23-4A.4 Definitions
- 5:23-4A.5 Standards
- 5:23-4A.6 Amendments
- 5:23-4A.7 Certification required
- 5:23-4A.8 Product control and identification
- 5:23-4A.9 Compliance assurance documents
- 5:23-4A.10 Uniform Administrative Procedures
- 5:23-4A.11 Appeals
- 5:23-4A.12 Conduct of hearings
- 5:23-4A.13 through 5:23-4A.27 (Reserved)

SUBCHAPTER 4B. MANUFACTURED HOMES AND MANUFACTURED HOME ADD-ON UNITS NOT SUBJECT TO FEDERAL REGULATION

- 5:23-4B.1 Scope
- 5:23-4B.2 Applicability
- 5:23-4B.3 Standards
- 5:23-4B.4 Administration and enforcement
- 5:23-4B.5 Acceptability
- 5:23-4B.6 Approvals of building systems and compliance assurance program
- 5:23-4B.7 Certification
- 5:23-4B.8 Labels; fees
- 5:23-4B.9 Requirements for submission of compliance assurance documents
- 5:23-4B.10 Appeals
- 5:23-4B.11 Conduct of hearings

SUBCHAPTER 4C. ENFORCEMENT OF FEDERAL MANUFACTURED HOME STANDARDS

- 5:23-4C.1 Delegation of authority
- 5:23-4C.2 Relation to Federal law
- 5:23-4C.3 Complaint procedure
- 5:23-4C.4 Hearing and appeal procedures
- 5:23-4C.5 Monitoring inspection fee

SUBCHAPTER 5. LICENSING OF CODE ENFORCEMENT OFFICIALS

- 5:23-5.1 Title; scope; intent
- 5:23-5.2 Unit established; hearings
- 5:23-5.3 Types of licenses
- 5:23-5.4 Licenses required
- 5:23-5.5 General license requirements
- 5:23-5.6 Construction official requirements
- 5:23-5.7 Subcode official requirements
- 5:23-5.8 Building inspector H.H.S. requirements
- 5:23-5.9 Building inspector I.C.S. requirements
- 5:23-5.10 Building inspector R.C.S. requirements
- 5:23-5.11 Electrical inspector H.H.S. requirements
- 5:23-5.12 Electrical inspector I.C.S. requirements
- 5:23-5.13 Fire protection inspector H.H.S. requirements
- 5:23-5.14 Fire protection inspector I.C.S. requirements
- 5:23-5.15 Fire protection inspector R.C.S. requirements
- 5:23-5.16 Plumbing inspector H.H.S. requirements
- 5:23-5.17 Plumbing inspector I.C.S. requirements
- 5:23-5.18 Inplant inspector requirements
- 5:23-5.19 Elevator inspector H.H.S. requirements
- 5:23-5.19A Mechanical inspector requirements
- 5:23-5.20 Standards for educational programs
- 5:23-5.21 Renewal of license
- 5:23-5.22 Fees
- 5:23-5.23 Examination requirements
- 5:23-5.24 Procedure for approving educational programs
- 5:23-5.25 Revocation of licenses and alternative sanctions

SUBCHAPTER 6. TAX EXEMPTIONS

- 5:23-6.1 through 5:23-6.3 (Reserved)
 5:23-6.4 Automatic fire suppression systems
 5:23-6.5 (Reserved)

SUBCHAPTER 7. BARRIER FREE SUBCODE

- 5:23-7.1 Accessibility standards
 5:23-7.2 Recreation
 5:23-7.3 Recreation: definitions
 5:23-7.4 Recreation: exceptions
 5:23-7.5 Recreation: route of travel
 5:23-7.6 Recreation: pools
 5:23-7.7 Recreation: swimming and skating areas
 5:23-7.8 Recreation: boating areas
 5:23-7.9 Recreation: fishing areas
 5:23-7.10 Recreation: court games
 5:23-7.11 Recreation: ice rinks and roller rinks
 5:23-7.12 Recreation: playing fields
 5:23-7.13 Recreation: golf facilities
 5:23-7.14 Recreation: ski lifts, aerial tramways, and conveyors
 5:23-7.15 Recreation: trails
 5:23-7.16 Recreation: camping sites
 5:23-7.17 Recreation: equipment
 5:23-7.18 Recreation: equestrian facilities

SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT SUBCODE

- 5:23-8.1 Title; scope; intent
 5:23-8.2 Definitions
 5:23-8.3 Enforcement; licensing; special technical services
 5:23-8.4 Variations
 5:23-8.5 Construction permit for asbestos abatement
 5:23-8.6 Coordination with other permits
 5:23-8.7 Inspections; violations
 5:23-8.8 Certificate of occupancy; certificate of completion
 5:23-8.9 Fees
 5:23-8.10 Asbestos safety technician
 5:23-8.11 Asbestos safety control monitor
 5:23-8.12 Application of asbestos
 5:23-8.13 Pre-project procedures
 5:23-8.14 Operations and maintenance activities
 5:23-8.15 Asbestos hazard abatement projects
 5:23-8.16 Asbestos encapsulation and enclosure
 5:23-8.17 Limited containment removals
 5:23-8.18 Demolition
 5:23-8.19 Abatement in occupied buildings
 5:23-8.20 Removal of non-friable asbestos-containing material
 5:23-8.21 Air monitoring methodology
 5:23-8.22 Disposal of asbestos waste

SUBCHAPTER 9. CODE INTERPRETATIONS

- 5:23-9.1 Interpretation: Application of the Plumbing Subcode to certain mobile homes
 5:23-9.2 Interpretation: Construction Permit for a single family residence
 5:23-9.3 Interpretation: Ordinary repairs
 5:23-9.4 (Reserved)
 5:23-9.5 Interpretation: Records retention
 5:23-9.6 Interpretation: Fixed central pedestal seating (stools) in casinos
 5:23-9.7 Interpretation: Manufacturing, production and process equipment
 5:23-9.8 Bed and breakfast guest houses, change in use group requirements

SUBCHAPTER 10. RADON HAZARD SUBCODE

- 5:23-10.1 Title; scope; intent
 5:23-10.2 Definitions
 5:23-10.3 Enforcement
 5:23-10.4 Construction techniques

APPENDIX 10-A NEW JERSEY MUNICIPALITIES IN TIER 1**SUBCHAPTER 11. (RESERVED)****SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE**

- 5:23-12.1 Title; scope; intent
 5:23-12.2 Referenced standards
 5:23-12.3 Inspection and test schedule
 5:23-12.4 Registration of elevator devices
 5:23-12.5 Registration fee
 5:23-12.6 Test and inspection fees
 5:23-12.7 Licensing
 5:23-12.8 Alterations, replacements, damages, increases in size, changes in use group, minor work, ordinary repairs
 5:23-12.9 Certificate of compliance requirements
 5:23-12.10 Inspections in seasonal facilities
 5:23-12.11 Notice concerning accidents

SUBCHAPTER 1. GENERAL PROVISIONS**5:23-1.1 Title; division into subchapters**

(a) These regulations shall be known as the "Regulations for the New Jersey Uniform Construction Code" and are referred to herein as "the regulations".

(b) The chapter consists of the following subchapters:

1. "General provisions" which may be cited throughout the regulations as N.J.A.C. 5:23-1 and when referred to in subchapter 1 of this chapter may be cited as this subchapter.

2. "Administration and enforcement; process" which may be cited throughout the regulations as N.J.A.C. 5:23-2 and when referred to in subchapter 2 of this chapter may be cited as this subchapter.

3. "Subcodes" which may be cited throughout the regulations as N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

4. "Enforcing agencies: duties, powers, and procedures" which may be cited throughout the regulations as N.J.A.C. 5:23-4 of this chapter and when referred to in subchapter 4 of this chapter may be cited as this subchapter.

5. "Industrialized/Modular Buildings and Building Components" which may be cited throughout the regulations as N.J.A.C. 5:23-4A and when referred to N.J.A.C. 5:23-4A may be cited as this subchapter.

6. "Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulations" which

may be cited throughout the regulations as N.J.A.C. 5:23-4B and when referred to in subchapter 4B may be cited as this subchapter.

7. "Enforcement of Federal Manufactured Home Standards" which may be cited throughout the regulations as N.J.A.C. 5:23-4C and when referred to in subchapter 4C may be cited as this subchapter.

8. "Licensing of Code Enforcement Officials" which may be cited throughout the regulations as N.J.A.C. 5:23-5 and when referred to in subchapter 5 of this chapter may be cited as this subchapter.

9. "Tax Exemptions" which may be cited throughout the regulations as N.J.A.C. 5:23-6 and when referred to in subchapter 6 of this chapter may be cited as this subchapter.

10. "Barrier Free Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-7 and when referred to in subchapter 7 of this chapter may be cited as this subchapter.

11. "Asbestos Hazard Abatement Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in subchapter 8 of this chapter may be cited as this subchapter.

12. "Code Interpretations" which may be cited throughout the regulations as N.J.A.C. 5:23-9 and when referred to in subchapter 9 of this chapter may be cited as this subchapter.

13. "Radon Hazard Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-10 and when referred to in subchapter 10 of this chapter may be cited as this subchapter.

14. "Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees" which may be cited throughout the rules as N.J.A.C. 5:23-11 and, when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

15. "Elevator Safety Subcode" which may be cited throughout the rules as N.J.A.C. 5:23-12 and when referred to in subchapter 12 of this chapter may be cited as this subchapter.

Amended by R.1978 d.350, eff. October 1, 1978.

See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

(b) substantially amended.

Amended by R.1990 d.226, effective May 7, 1990.

See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Added 9 and 10 to (b).

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

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

Text added at (b)5.

Amended by R.1990 d.562, effective November 19, 1990.

See: 22 N.J.R. 2629(c), 22 N.J.R. 3482(d).

Added reference to N.J.A.C. 7:14B.

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

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

Text on elevators added at (b).

Amended by R.1992 d.183, effective April 20, 1992.

See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).

Reference to Indoor Air Quality Subcode added at (b)12.

Amended by R.1994 d.96, effective February 22, 1994.

See: 26 N.J.R. 1073(a).

Case Notes

Councilperson violated local ethics law; project manager for private construction company. *Bleeker v. Local Finance Board*, 94 N.J.A.R.2d (CAF) 122.

5:23-1.2 Authority

These regulations are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "State Uniform Construction Code Act" (P.L. 1975, c.217, as amended).

5:23-1.3 Intent and purpose

(a) It is the intent and purpose of the regulations:

1. To encourage innovation and economy in construction and to provide requirements for construction and construction materials consistent with nationally recognized standards.

2. To formulate such requirements, to the extent practicable, in terms of performance objectives, so as to make adequate performance for the use intended as the test of acceptability.

3. To permit to the fullest extent feasible the use of modern technical methods, devices and improvements, including premanufactured systems, consistent with reasonable requirements for the health, safety and welfare of occupants or users of buildings and structures.

4. To eliminate restrictive, obsolete, conflicting and unnecessary construction regulations that tend to unnecessarily increase construction costs or retard the use of new materials, products or methods of construction, or provide preferential treatment to types or classes of materials or products or methods of construction.

5. To insure adequate maintenance of buildings and structures throughout the State and to adequately protect the health, safety and welfare of the people.

6. To eliminate unnecessary duplication of effort and fees in the review of construction plans and the inspection of construction.

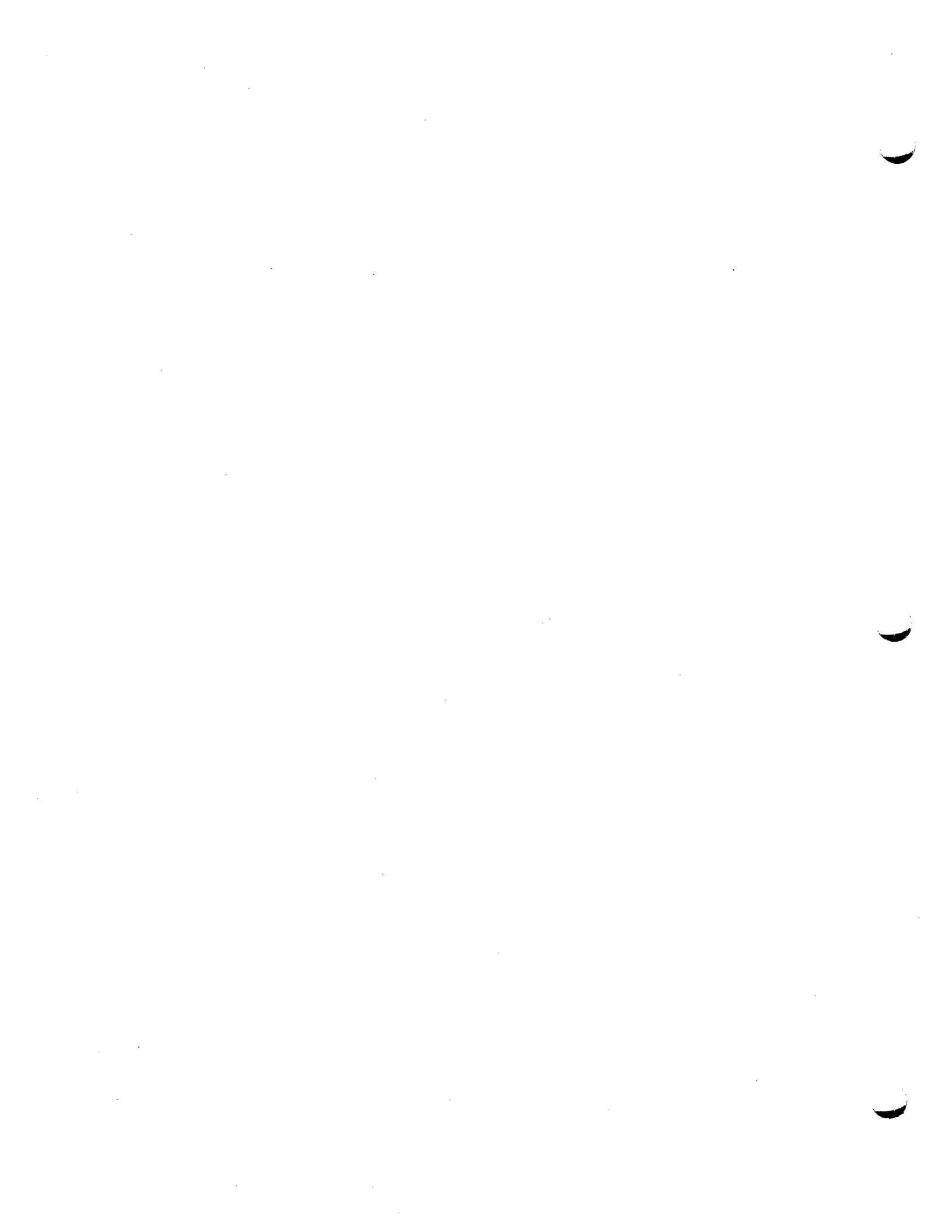
Case Notes

Intent is elimination of construction regulations by local government units. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Uniform Construction Code codified in regulations. *Bureau of Construction Code Enforcement v. Hasbrouck Heights*, 4 N.J.A.R. 282 (1983).

5:23-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:



"Ordinary repair" means restoration or improvement of a routine or usual nature which is done by replacing a part of, or putting together, something that is worn or broken in a building, electrical, plumbing, heating, ventilation or air conditioning system and meeting the definition set forth in N.J.A.C. 5:23-2.7.

"Owner" means the owner or owners in fee of the property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation, directly or indirectly in control of a building, structure or real property and shall include any subdivision thereof of the State.

"Plumbing subcode official" means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the plumbing subcode within the jurisdiction of the enforcing agency.

"Premanufactured system" or "premanufactured construction" means an assembly of materials or products that is intended to comprise all or part of a building or structure and that is assembled off-site by a repetitive process under circumstances intended to insure uniformity of quality and material content. The term shall include, but not be limited to, manufactured homes and industrialized/modular buildings.

"Prior approvals" means the necessary certifications or approvals issued or authorized by any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter and which are conditions precedent to the issuance of a construction permit or a certificate of occupancy or approval, as the case may be, which shall include, but not be limited to, the following:

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer treatment works approvals;
5. Coastal areas facilities review;
6. Compliance of underground storage tank systems with N.J.A.C. 7:14B;

i. An approval granted by either the Department of Environmental Protection and Energy or the construction official by authority of N.J.A.C. 7:14B shall be deemed to be a prior approval;

7. Pinelands review; and
8. Compliance of abandoned wells with N.J.A.C. 7:9-9.

i. Compliance with N.J.A.C. 7:9-9.1 shall be evidenced by a certification issued by a well driller licensed by the Department of Environmental Protection and Energy.

"Private inplant inspection agency", or "evaluation and inspection agency", means a business entity authorized pursuant to N.J.A.C. 5:23-4 or 4A to approve premanufactured construction.

"Private on-site inspection and plan review agencies" means a business entity authorized pursuant to N.J.A.C. 5:23-4 to act in lieu of a subcode official.

"Public school facility" means any building or any part thereof where the plans and specifications are submitted to, and approved by, the State Board of Education pursuant to N.J.S.A. 18A:18-2.

"Small job" means construction work requiring no prior approvals and the total cost of which is under \$5,000. A "small job" may involve more than one trade and may require plan review.

"State sponsored code change proposal" means any proposed amendment or code change adopted by the commissioner in accordance with subsection c. of section 6 of the act as amended for the purpose of presenting such proposed amendment or code change at any of the periodic code change hearings held by the National Model Code adoption agencies, the codes of which have been adopted as subcodes under the Act. For purposes of this definition a State sponsored code change proposal may also oppose any code change under consideration by a model code agency.

"Stop construction order" means the order provided for in N.J.S.A. 52:27D-132 of the act and N.J.A.C. 5:23-2.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided, the word "structure" shall be construed when used herein as though followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning.

"Subcode" means any of the national model codes, parts thereof or other codes as adopted by reference in N.J.A.C. 5:23-3.

As amended, R.1977 d.256, effective August 1, 1977.

See: 9 N.J.R. 164(a), 9 N.J.R. 358(a).

As amended, R.1978 d.162, effective June 1, 1978.

See: 10 N.J.R. 141(a), 10 N.J.R. 225(a).

As amended, R.1981 d.133, effective May 7, 1981.

See: 13 N.J.R. 119(a), 13 N.J.R. 258(c).

"Certificate of continued occupancy" and "prior approvals" recodified.

As amended, R.1982 d.7, effective February 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

"Manufactured home" was "mobile home", and definition substantially amended. Added "or premanufactured construction" to "premanufactured system", and added "The terms . . . homes".

As amended, R.1983 d.611, eff. January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Added definitions of "major work", "minor work", "municipal procedures manual", "ordinary repair" and "small job".

As amended, R.1984 d.120, effective April 16, 1984.

See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

"Certificate of occupancy" added "N.J.A.C. 5:23-1.4 have . . . been found" to definitions.

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

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

Definition for "Facility" added.

Amended by R.1990 d.57, effective February 5, 1990.

See: 21 N.J.R. 3345(b), 22 N.J.R. 350(b).

Reference to compliance with N.J. Underground Storage of Hazardous Substances Act, and deletion of language excluding "public school buildings" from definitions of "building" and "structure".

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

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

Industrialized/modular buildings added to definition of premanufactured system.

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

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

Definitions of certificate of approval, elevator and elevator subcode official added.

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Definitions added for Class I, II and III structures.

Amended by R.1993 d.420, effective September 7, 1993.

See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).

Amended by R.1993 d.580, effective November 15, 1993.

See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).

Administrative Correction.

See: 26 N.J.R. 2779(c).

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.544, effective October 16, 1995.

See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Amended by R.1996 d.190, effective April 15, 1996.

See: 28 N.J.R. 320(a), 28 N.J.R. 1981(a).

Added "construction documents".

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).

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).

Case Notes

Citation to definitions of construction permit and certificate of occupancy. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Citation to mobile home definition in former regulation (similar to present manufactured home definition); mobile homes acceptable form of moderate cost housing. Southern Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel, 161 N.J.Super. 317, 391 A.2d 935 (Law Div.1978) affirmed in part, reversed in part 92 N.J. 158, 456 A.2d 390, on remand 207 N.J.Super 169, 504 A.2d 66.

Applicant for construction permit must provide assurances that necessary prior approvals obtained. Riggins v. Pinelands Commission, 8 N.J.A.R. 441 (1985).

5:23-1.5 Effective date

(a) The provisions of the regulations shall take effect on January 1, 1977. All construction regulations incorporated in any act of the State of New Jersey, or of any municipality presently in effect, or validly promulgated or enacted by any board, department, commission or agency thereof, shall continue in effect until January 1, 1977, and shall thereafter be superseded and of no further force and effect. Any law or regulation addressing areas for which the commissioner shall not have promulgated a subcode may continue in effect until such time as a subcode therefor is adopted.

(b) Exceptions include:

1. This section shall not apply to those aspects of the act which were capable of taking effect on the effective date of the act.

2. This section shall not apply to those parts of N.J.A.C. 5:23-4 which require the adoption of a resolution or other action prior to the effective date. Such section shall take effect upon adoption.

3. This section shall not apply to laws or regulations specifically saved by the act or the regulations.

5:23-1.6 Prior permits; extensions

(a) A building, plumbing or electrical permit issued under valid construction regulations prior to the effective date of the regulations shall remain valid, and the construction of any building or structure may be completed pursuant to and in accordance with said permit. The construction of any building or structure started before the promulgation of the regulations that did not, as of the date of the beginning of the construction, require a construction permit may be completed without a construction permit.

(b) In the case of a project for which a permit has not been issued on the operative date of any code revision, and for which plans are submitted based upon drawings and specifications prepared in conformance to the code in force immediately prior to the operative date of the code revision, the construction official shall, upon request of the applicant, for a period of six months after the operative date of the code revision, issue a permit to construct such project pursuant to the code in force immediately prior to the operative date of the code revision.

As amended, R. 1978 d.350, eff. October 1, 1978.

See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

As amended, R.1984 d.267, eff. June 14, 1984 to expire August 13, 1984.

See: 16 N.J.R. 1812(a).

New (c) added.

Readoption: R.1984 d.382, eff. August 13, 1984, to expire April 1, 1988.

See: 16 N.J.R. 1812(a), 16 N.J.R. 2356(d).

Administrative Correction to (b): Changed "receive" to "received".

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

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

Amended by R.1995 d.544, effective October 16, 1995.

See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

5:23-1.7 Validity

(a) If any provision of the regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of

the regulations which can be given effect, and to this end the provisions of the regulations are severable.

(b) Nothing contained in the act or the regulations shall be deemed to affect, repeal, or invalidate local zoning ordinances or the regulation or licensing of any trade or profession engaged in construction work.



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.

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 of 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; and

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 hazards identified in any report prepared by a lead evaluation firm certified by the Department will be abated.

(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.

(e) Plans, plan review, plan approval:

1. Plans and specifications: The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. Plans submitted shall only be required to show such detail and include such information as shall be reasonably necessary to assure compliance with the requirements of the code and these regulations. When quality of materials is essential for conformity to the regulations, specific information shall be given to establish such quality; and this code shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information.

i. Site diagram: There shall also be filed a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines and the established street grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

ii. Building plans and specifications shall contain: Foundation, floor, roof and structural plans; door, window and finish schedules; sections, details, connections and material designations.

iii. Electrical plans and specifications shall contain: Floor and ceiling plans; lighting, receptacles, motors and equipment; service entry location, line diagram and wire, conduit and breaker sizes.

iv. Plumbing plans and specifications shall contain: Floor plan; fixtures, pipe sizes and other equipment and materials; isometric with pipe sizes, fixture schedule and sewage disposal.

v. Mechanical plans and specifications shall contain: Floor or ceiling plans; equipment, distribution location, size and flow; location of dampers and safeguards; and all materials.

vi. Engineering details and specifications: The construction official and appropriate subcode official may require adequate details of structural, mechanical, plumbing and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the seal and signature of the licensed engineer or registered architect responsible for the design. Plans for buildings shall indicate how required structural and fire-resistance rating will be maintained for penetrations made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(1) Plumbing plans for class III structures may be prepared by persons licensed pursuant to "The Master Plumber Licensing Act", N.J.S.A. 45:14C-1 et seq. Electrical plans for class III structures may be prepared by persons licensed pursuant to "The Electrical Contractors Licensing Act", N.J.S.A. 45:5A-1 et seq.;

(2) Whenever the licensing board pursuant to either of the above Acts shall provide for a seal evidencing that the holder is licensed, such shall be acceptable to the enforcing agency in lieu of affidavit;

(3) Mechanical plans for class III structures may be prepared by mechanical contractors.

vii. Architect's or engineer's seal: The seal and signature of the registered architect or licensed engineer who prepared the plans shall be affixed to each sheet of each copy of the plans submitted and on the first or title sheet of the specifications and any additional supportive information submitted. The construction official shall waive the requirement for sealed plans in the case of a single family home owner who had prepared his own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as his private residence, and to be constructed by himself, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and provided further that said plans are in the opinion of the construction official, and appropriate subcode official, legible and complete for purposes of ensuring compliance with the regulations.

viii. The construction official upon the advice of the appropriate subcode official may waive the requirement for plans when the work is of a minor nature.

ix. Building, electrical, plumbing and mechanical work required to be shown may be shown on a single set of plans or a single drawing so long as the drawings are clear and legible.

2. Examination of plans: All plans submitted and any amendments thereto accompanied by the required documentation and application, and upon payment of the fee established by the enforcing agency, shall be numbered, docketed and examined promptly after their submission for compliance with the provisions of the regulations.

3. Plan review:

i. Department or other State agency review: When a review and release of plans by the Department or other State agency designated by the Department pursuant to N.J.A.C. 5:23-3 is required, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans, specifications and such other supporting information as the Department or other designated reviewing agency may require on forms obtained from the Department or such reviewing agency. The plans, specifications and other supporting information shall conform to the requirements of (e) above.

(1) Release of plans: Plans complying with the provisions of the regulations shall be released by the department and written notice of approval shall be given the applicant promptly and no later than 20 business days after the submission thereof. Plans failing to comply with the provisions of the code shall be rejected and written notice of rejection, stating the ground of rejection, shall be given the applicant promptly and not later than 20 business days after the submission thereof. Whenever plans have been rejected and are thereafter revised and resubmitted to meet stated grounds of rejection, the revised plan shall be approved if they meet the stated grounds of rejection; and written notice of approval or written notice of rejection stating the grounds of rejection shall be given the applicant promptly and not later than seven business days after the resubmission thereof. (Exception: The Department shall issue a plan release for prototype plans for which a "prototype or master plan" has been previously released in the same municipality, within three business days from application.)

(2) Endorsement of released plans: All plans and amendments thereto, when approved by the department, shall be stamped or endorsed "released", followed by a notation of the date of plan release. One set of such released plans shall be retained by the department, two sets of such released plans shall be submitted to the local enforcing agency with the

application for construction permit as herein provided.

(3) Partial filing: When circumstances require, a project may be filed in part (that is, footings, structural, electrical, plumbing, and so forth). Each partial submittal shall include sufficient detail to assure that the proposed portion of work complies with the regulations. A plan "release" for such a portion of work shall be issued without prejudice as to whether a "release" shall be issued for the entire project.

(4) Prototype or master plan filing: Designs repeatedly used at different locations may be designated as "prototype or master plans" and filed as follows: On initial application, one additional complete set of repeated portions of the project, with as many variations as can be shown on the plans, may be submitted along with a request for prototype or master plan filing. Subsequent submittals shall consist of at least a plot plan which is signed and sealed by a registered architect or licensed professional engineer, including utilities, exterior elevations of the specific building, and the prototype or master plan file identification number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted.

(5) Construction permits: Owners and their agents shall not apply to a local enforcing agency for a construction permit for any building or structure for which a department plan review and release is required by N.J.A.C. 5:23-3, unless such review and release has been applied for and received by the applicant as evidenced by presentation of released plans to the local enforcing agency.

ii. Local enforcing agency plan review: Where a Department or other State plan review is not required by the regulations, an applicant for a construction permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.

(1) When the plans submitted with an application for a construction permit or amendment thereto are accompanied by plans which have been released by the department or other designated agency pursuant to the regulations, then further municipal plan review and fee therefor shall not be required. Release of the plans by the department shall not prevent enforcing agency officials from thereafter requiring correction of any errors in said plans or from issuing a stop work order when in violation of the regulations. In such case the enforcing agency shall notify the department;

(2) Where a design is used repeatedly at different locations, the plans attached to the first application for the construction permit may be designated as a "prototype or master plan". These plans may include as many variations as can be shown. Subsequent submittals shall consist of a plot plan which is signed and sealed by a registered architect or professional engineer, including utilities, exterior elevations, and a reference to the prototype plan by application or permit number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted;

iii. Validity of plan release or prototype approval: The released plans or prototype approval (Department or local) shall be valid for the purposes of applying for a construction permit until six months after the operative date of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6(b).

iv. Time limitation of application: An application for a permit for any proposed work shall be deemed to have been abandoned six months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the construction official may grant one or more extensions of time for additional periods not exceeding 90 days each.

v. Amendments to application: Amendments to an application, plan or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; such amendments shall be deemed part of the original application, and shall, if approved, be filed therewith. If the amendment involves a substantial deviation from the original application, a new affidavit of consent shall be required. If a department plan review was required originally, the enforcing agency shall not permit an amendment to an application unless the amendment has been "released" by the department.

vi. Building systems: Structural, electrical and mechanical designs performed and certified by licensed architects or engineers need not be checked in detail by the staff of the enforcing agency, but shall remain as the responsibility of the professional certifying such design.

vii. A schematic or sketch plan, when required pursuant to this subsection, shall not be deemed to be a construction copy of a plan and shall therefore not be required to be signed or sealed by a registered architect or licensed professional engineer.

Amended by R.1985 d.352, effective July 15, 1985.
See: 17 N.J.R. 1031(a), 17 N.J.R. 1758(a).

(b)1i: deleted text "The registration number of the contractor", and added "A current validated . . . contractor and the".
Amended by R.1985 d.479, effective September 16, 1985.
See: 17 N.J.R. 1462(a), 17 N.J.R. 2248(b).

(b)2ii added. (d) text added "All issued permits . . ."
Administrative Correction: Cleaned up typographical errors.
See: 22 N.J.R. 2503(b).

Amended by R.1992 d.244, effective June 15, 1992.
See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Text added at (a)6 on Class I structure.
Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(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.544, effective October 16, 1995.
See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Case Notes

Zoning permit may be required pursuant to Municipal Land Use Law but not Uniform Construction Code Act. *Acqua Development Corp. v. Township of Holmdel*, 287 N.J.Super. 578, 671 A.2d 636 (L.1995).

Compliance with former N.J.A.C. 5:23-2.5 requirements for permit to non-contractor owner to perform repairs. *Winn v. Margate City*, 204 N.J.Super. 114, 497 A.2d 928 (Law Div.1985).

Requirement of architect's or engineer's seal on plans does not broaden scope of engineering practice into architecture; engineer's plan limitations. *State Board of Architects v. North*, 197 N.J.Super. 349, 484 A.2d 1297 (Ch.Div.1984).

Prior-approval rule discussion; zoning matters involved in construction must be resolved before issuance of permits. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

Construction permit application and fee requirements under former N.J.A.C. 5:23-2.5; municipal requirement for payment of property taxes before issuance of permit invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Construction permit applicant must provide assurances that prior approvals obtained. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

5:23-2.16 Construction permits—procedure

(a) Action on application: The construction official or the appropriate subcode official in the case of construction involving only one trade or subcode, shall examine or cause to be examined all applications for permits and amendments thereto, and approve or deny in whole or in part the application, within 20 business days. If the application is denied in whole or in part, the enforcing agency shall set forth the reasons therefor in writing. If an enforcing agency fails to grant, in whole or in part, or deny an application within 20 business days, such failure shall be deemed a denial of the application for purposes of an appeal to the Construction Board of Appeals, unless such period of time has been extended with the consent of the applicant.

1. Exception: The construction official shall issue a permit for prototype plans for which a "prototype or master plan" permit has been previously issued in the same municipality, within three business days from application.

(b) Suspension of permit: Any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if the

authorized work is suspended or abandoned for a period of six months after the time of commencing the work.



- ii. Alteration to construction at top of hoistways (1201.1c) and at bottom of hoistways (1201.1d);
- iii. Alteration to hoistways which affects control of smoke and hot gases (1201.1e);
- iv. Construction and alteration of machine room and machinery spaces (1201.2, 1203.1b);
- v. Installation and alteration of electrical equipment, wiring, pipes and ducts in hoistway and machine rooms (1201.3, 1203.1c);
- vi. Alteration to pits (1201.6, 1203.1f);
- vii. Alteration to bottom and top car and counterweight clearances and runbys (1201.7, 1203.1g);
- viii. Alteration to horizontal car and counterweight clearances (1201.8, 1203.1h);
- ix. Additions, alterations or replacements of hoistway entrances (1201.10, 1203.1j);
- x. Installation or alteration of hoistway door locking devices, access switches, parking devices and unlocking devices (1201.11, 1203.1k);
- xi. Alteration or addition of power operation of hoistway doors (1201.12, 1203.1m);
- xii. Alteration of spring buffers and bumpers (1202.2, 1203.2b);
- xiii. Alteration of counterweights (1202.3; 1203.1d and 1203.2c);
- xiv. Alteration of car frames and platforms (1202.4a, 1203.2d);
- xv. Alteration of car enclosures, car doors, gates, and illumination of cars (1202.5 except installation of new cars, 1203.2e);
- xvi. Use of freight elevators to carry passengers, hydraulic elevators only (1203.2j);
- xvii. Relocation of power unit (1203.3f);
- xviii. Replacement of tanks (1203.6);
- xix. Addition or alteration of top-of-car operating devices (1202.12a, 1203.8a);
- xx. Addition or alteration or car-leveling or truck-zoning devices (1202.12b, 1203.8b);
- xxi. Alteration of anti-creep leveling devices (1203.8c);
- xxii. Change of power supply, hydraulic elevators only (1203.8d);
- xxiii. Addition of rope equalizers (1202.14c, 1203.9c);
- xxiv. Addition of auxiliary rope-fastening devices (1202.14d);

xxv. Alteration of handrails on escalators and moving walks (1207.6, 1208.6);

xxvi. Alteration or addition of lighting and access to interiors and related electrical work (1207.14, 1208.14); and

xxvii. Alteration of entrances or egresses on escalators (1207.15).

(d) Inspection of minor work:

1. Inspections shall be required for minor work and the enforcing agency shall inspect any such work within 30 days of the request for inspection;

2. The construction official shall issue a certificate of approval stating that the work performed under a Minor Work Permit substantially complies with the UCC. The inspection shall be based upon what is visible at the time of said inspection and the certificate of approval shall so indicate.

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.1993 d.580, effective November 15, 1993.

See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).

Amended by R.1993 d.663, effective December 20, 1993.

See: 25 N.J.R. 4546(a), 25 N.J.R. 5927(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.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (d).

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).

See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

N.J.A.C. 5:23-2.17A(c)6xxv through xxvii, as added by R.1995 d.564, operative May 1, 1996.

5:23-2.18 Inspections

(a) Preliminary inspection: Before issuing a permit, the construction official and appropriate subcode official shall where necessary examine or cause to be examined all buildings, structures and sites for which an application has been filed for a construction permit.

(b) Inspections during the progress of work:

1. The construction official and appropriate subcode officials shall carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the approved plans and the requirements of the regulations.

i. Inspection by all subcodes for one and two-family dwellings for which construction must cease until inspection is made shall be limited to four as follows:

(1) The bottom of footing trenches before placement of footings, except that in the case of pile foundations, inspections shall be made in accordance with the requirements of the building subcode;

(2) Foundations and all walls up to grade level prior to back filling;

(3) All structural framing and connections prior to covering with finish or infill material; plumbing underground services, rough piping, water service, sewer, septic services and storm drains; electrical rough wiring, panels and service installations; insulation installations;

(4) Installation of all finished materials, sealings of exterior joints; plumbing piping, trim and fixtures; electrical wiring, devices and fixtures; mechanical systems equipment.

ii. Inspections for all subcodes, of construction other than one and two-family dwellings shall be limited to those required for one and two-family dwellings and the following fire suppression systems; heat producing devices; any inspections required by any subcode of the regulations;

iii. Any additional inspections, as permitted by this chapter and as may be required by the municipality, shall be of the type and nature that construction may continue without interruption;

iv. Special inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional or special inspections to the applicant in writing prior to the issuance of a permit and during construction in the case of unforeseeable circumstances. Where Class I structures incorporate construction techniques covered under the special inspection provisions of the building subcode, such special inspections shall be provided for. The applicant shall provide a list of special inspections required by the building subcode when applying for the permit.

(c) Notice for inspection:

1. The owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the construction official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) Final inspection: Upon completion of the building or structure, and before issuance of the certificate of occupancy required herein, a final inspection shall be made, any violations of the approved plans and permit shall be noted and the holder of the permit shall be notified of any discrepancies by the construction official.

(e) Inspections records: The enforcing agency shall make a written record of all inspections, including any discrepancies or violations noted and shall maintain those reports as a public record which shall be available for public inspection during normal business hours.

(f) Department inspections: At the request of an enforcing agency, the Department may assist the enforcing agency in the inspection of any construction, provided that the enforcing agency has submitted the plans and specifications for such construction to the Department.

(g) The construction official shall serve as an agent of the Bureau of Housing Inspection of the Department of Community Affairs for the purpose of inspecting newly constructed and altered hotels and multiple dwellings in order to enforce the provisions of the regulations for the maintenance of hotels and multiple dwellings (N.J.A.C. 5:10). Responsibility for inspection may be delegated to the appropriate subcode official(s).

Amended by R.1981 d.182, effective June 4, 1981.

See: 13 N.J.R. 187(b), 13 N.J.R. 333(b).

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Class I inspections added to (b)iv.

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).

5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b) A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Documented charges for legal services required in connection with construction code enforcement litigation;

vii. Fees for the annual audit of the dedicated fund by an independent auditor; and

viii. Subject to the limitations set forth in (c)3 below, indirect, overhead, and other expenses of the municipality in support of the enforcing agency, including:

- (1) Legislative and Executive expenses;
- (2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;
- (3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;
- (4) Insurance except for group insurance premiums included under employer fringe benefits;
- (5) General building maintenance expenses;
- (6) Finance, including bookkeeping, purchasing, and auditing;
- (7) Office space expenses, including rent or interest and debt service on municipal capital facilities; and
- (8) Such other expenses as may be properly allocable to construction code enforcement.

3. Indirect and overhead expenses charged to the construction code fee revenues shall not exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to construction code fee revenues in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge for indirect and overhead expenses in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.

4. This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the construction code fee revenues generated from the fee schedule established pursuant to (b)1 above are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance.

(d) Interlocal enforcement: When two or more municipalities or a county and one or more municipalities enter into an agreement to administer and enforce this chapter pursuant to N.J.A.C. 5:23-4.4(a)2 and the Interlocal Service Act (N.J.S.A. 40:8A-1 et seq.), there shall be one uniform fee schedule which shall be applied by all parties to the agreement. Said fee shall be collected by the interlocal enforcing agency performing the administration and enforcement of the regulations. No additional fee shall be required to be paid or be paid by an applicant to any municipality or county for any Uniform Construction Code enforcement service. The enforcing agency shall maintain financial records showing for each municipality the amounts of money collected and expended in the enforcement of this chapter.

Amended by R.1982 d.401, effective November 15, 1982.
See: 14 N.J.R. 495(a), 14 N.J.R. 1300(a).

Added (d). Prior to recodification of N.J.A.C. 5:23, this section was codified at 5:23-4.8.

Amended by R.1982 d.402, effective November 15, 1982.
See: 14 N.J.R. 943(a), 14 N.J.R. 1300(b).

Added to (b)2 that copy of report . . . must be filed every two years.
Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (a): added "certificates of continued occupancy, certificate of approval" and deleted "moving of building permit . . .".

In (a)1: added language regarding rounding of dollar amounts in fees.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1990 d.115, effective February 5, 1990 (operative March 1, 1990).

See: 21 N.J.R. 3348(a), 22 N.J.R. 352(a).

Requirements added at (c) for the establishment of a mechanism (dedication by rider) to ensure construction fees are used for no other purpose than to fund annual costs for the operation of enforcing agencies.

Amended by R.1990 d.489, effective October 1, 1990.

See: 22 N.J.R. 1871(a), 22 N.J.R. 3147(a).

Amended to state that appropriation of municipal construction code fees may be done by rider or by estimates in advance, in accordance with the Local Budget Law, N.J.S.A. 40A:4-1 et seq.

Amended by R.1992 d.148, effective April 6, 1992.

See: 24 N.J.R. 169(a), 24 N.J.R. 1399(a).

Construction official may report based on the municipality's fiscal year.

Amended by R.1996 d.544, effective December 2, 1996 (operative February 1, 1997).

See: 28 N.J.R. 3996(a), 28 N.J.R. 5071(a).

Case Notes

Fee schedules must be calculated to reasonably cover municipal code enforcement costs. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.18 Standards for municipal fees

(a) General:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of submission of an application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued; provided however, that the municipality may provide by ordinance that the plan review fee be paid at the time of granting the permit. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee computed in accordance with (c) below herein plus any applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee;

4. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purposes of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Annual permit fees shall be non-refundable.

5. Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode and a list of at least one, but not more than three, individuals to be trained per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee and list to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey." The Department shall register these individuals and notify them of the courses being offered.

(b) Plan review fees:

1. Plan review fees shall be computed as a percentage of the fee to be charged for the construction permit. This percentage shall, to the extent possible, approximate the actual costs incurred in plan review activities, but in any case shall be not less than five percent nor more than 25 percent of the amount that would be charged for the construction permit. For projects which do not require plan review for all subcodes, the fee shall be the appropriate percentage of the subcode fee which is applicable.

2. N.J.A.C. 5:23-2.26 requires the designation of 20 percent of the construction permit fee as the plan review fee for the purpose of providing for plan review by the department or waiver of plan review.

3. If a municipality has not established a plan review fee by ordinance, 20 percent of the construction permit fee shall be designated as the plan review fee for prototype plans, in accordance with N.J.A.C. 5:23-2.26.

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building or in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1. Value or cost: Fees for new construction or alterations shall be as follows:

i. Fees for renovations, alterations, reroofing, repairs, and site construction associated with pre-engineered systems of commercial farm buildings, pre-manufactured construction, and the external utility connections for premanufactured construction, shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost.

ii. Fees for renovations, alterations, and repairs shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost.

iii. Fees for additions shall be computed on the same basis as for new construction for the added portion;

iv. Fees for combination renovations and additions shall be computed as the sum of the fees for the addition and alteration computed separately in accordance with (b) and (c) above;

v. The unit rates may vary for different occupancy groups or structures of different sizes within the same occupancy group, but this shall be clearly indicated in the ordinance and schedule;

vi. Temporary structures and all structures for which volume cannot be computed, such as swimming pools and open structural towers, shall be charged a flat rate;

vii. Fees for minor construction work shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost or fraction thereof.

2. Plumbing fixtures and stacks: Fees shall be based upon the number of plumbing fixtures, devices, plumbing stacks and utility service connections to be installed. Utility service connections include sewer connections and water service connections. The fee shall be a unit rate per fixture, stack, and utility service connection. The unit rate may vary for different types of fixtures and utility service pipes, but this shall be clearly indicated in the ordinance and schedule. There shall be no inspection fee charged for gas service entrances.

3. Electrical fixtures and devices: Fees shall be based upon the number of electrical fixtures and devices to be installed. The fee shall be a unit rate per fixture and

device. The unit rate may vary for different types of fixtures, but this shall be clearly indicated in the ordinance and schedule.

4. Fees shall be based upon the number of sprinkler heads, standpipes, and detectors (smoke and heat) and shall be reasonable unit charges. Fees may also be charged for the inspection of premanufactured fire suppression systems, for gas and oil fired appliances not connected to the plumbing system, for kitchen exhaust systems and for incinerators and crematoriums. The municipal ordinance shall clearly set forth what fees are to be charged for what devices.

5. The municipality shall set a flat fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.



(d) Demolition permit fees: Permit fees for demolition of a building or structure shall be a flat fee. This fee may vary according to type of structure or whether there has been a condemnation, but this shall be clearly indicated in the ordinance and schedule.

(e) Sign permit fees: The fee for a permit to construct a sign shall be either based upon the square foot area of the surface of the sign, computed on one side only for double-faced signs, or a flat fee per sign.

(f) Certificate fees:

1. The fee for a certificate of occupancy for new construction shall be computed as a percentage of the fee to be charged for the construction permit. This percentage shall be an amount sufficient to cover the actual costs for processing the certificate of occupancy. The municipality may, in the alternative, establish a flat fee for the certificate of occupancy.

2. The municipality shall establish a flat fee for certificate of continued occupancy, for certificate of occupancy granted pursuant to a change of use, for multiple certificates of occupancy (as for a shopping center), and similar conditions.

3. There shall be no fee charged for a certificate of approval issued pursuant to N.J.A.C. 5:23-2.23(j).

4. There shall be no fee for a certificate of compliance.

(g) Elevator, backflow preventer and cross connection fees are as follows:

1. The fee for a permit to install an elevator device shall be a flat fee. The fee may vary for different types of inspections, tests and elevator devices.

2. The fees for inspections and witnessing of tests for an elevator, escalator, moving walk, dumbwaiter or other elevator device shall be flat fees. These fees may vary for different required inspections and tests, but any variation shall be set forth in the ordinance and the schedule.

3. The categories of municipal elevator fees shall be identical to the categories of elevator fees listed at N.J.A.C. 5:23-12.6(a) and (b).

4. For cross-connections and backflow preventers that are subject to testing and require reinspection, the fee shall be a flat fee.

(h) No special fee shall be established for any class or type of work which is undertaken as a part of work authorized by a construction permit, except elevator and sign permits as herein provided. Other special fees may be established for work regulated by the code but not undertaken as a part of the new construction project. Such special fees shall be flat fees.

(i) Whenever a permit is received based on an approved prototype plan, the permit fee shall be reduced by the amount of the plan review fee.

(j) Rules concerning the appeal of fees are:

1. Whenever any person shall believe that the fees established by a municipality, pursuant to this subsection, fail to meet the standards of this section for establishing fees, that person shall be entitled to petition the commissioner for a review of the fee schedule in question.

i. Any such petition shall state the name, place of residence and the manner in which the fee schedule affects the petitioner. It shall further state the manner in which the petitioner believes the fees established to be inconsistent with the standards established herein.

ii. If, upon investigation, the commissioner determines that there is reason to believe that the fees in question do not meet the standards established herein, then the commissioner shall set a time and the place for a hearing. The purpose of the hearing shall be to determine the facts.

iii. No such hearing shall be called except upon 30 days notice to the municipality and the petitioner. The municipality shall be required to furnish such information concerning construction volume, construction activity, and local enforcing agency costs as the commissioner may require in order that a determination may be made.

iv. As soon as practical after the conclusion of such a hearing, the commissioner shall make a finding and determination as to whether the fee schedule in question, as a whole or in any of its parts, conforms or fails to conform to the standards established in this section.

2. In addition to any other actions that he may take upon determining that the fees established by a municipality fail to meet the standards of this section, the commissioner may order the repayment of the excess amount of such fees to the persons who have paid them.

(k) Fees to be charged by municipalities where private on-site inspection and plan review agencies carry out sub-code official responsibilities shall not exceed the amounts to be paid to those private agencies for those services, pursuant to the contract between the private agency and the municipality, by more than 15 percent.

Amended by R.1984 d.260, effective July 2, 1984.

See: 16 N.J.R. 3(a), 16 N.J.R. 1714(c).

Section substantially amended.

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

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

Old (a)4 deleted and new text substituted.

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

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

Added text to (a)4 "annual permit-fees shall be non-refundable" and (a)5 "Prior to the issuance of the annual permit" and "Bureau of Construction Code Enforcement."

Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

Minor technical changes made throughout section.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989 (operative January 1, 1990 for 4.18(c)-(e)).

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted with change.

Added sections (c)4; (k)1iv and v.

Deleted sections (e), "Removal permit fees"; (l)1ii, "Fire subcode"; and (l)4, "Elevator fees . . .", with renumbering and recodification.

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

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

Uniform flat fees for elevators to be set forth in ordinance and schedule.

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 (a)5.

Amended by R.1992 d.313, effective August 3, 1992.

See: 24 N.J.R. 1846(a), 24 N.J.R. 2712(b).

No inspection fee for gas service entrances.

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

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

Added (c)5.

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

Amended by R.1993 d.665, effective December 20, 1993.

See: 25 N.J.R. 4548(a), 25 N.J.R. 5928(a).

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

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.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).

In (a)5 added individuals to be trained and registered.

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (f) and (g).

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).

Case Notes

Fee standards violation. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the Act, an enforcing agency, including the Department when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fee shall be accounted for and forwarded to the Bureau of Regulatory Affairs in the manner herein provided.

(b) Amount: This fee shall be in the amount of \$0.0016 per cubic foot volume of new buildings and additions. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The fee for all other construction, except pre-engineered systems of commercial farm building, shall be \$0.80 per \$1,000 of value of construction. No fee shall be collected for pre-engineered systems of commercial farm building.

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840B State Training Fee Report in accordance with N.J.A.C. 5:23-4.5(e). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey."

Amended by R.1982 d.220, effective July 19, 1982.

See: 14 N.J.R. 456(a), 14 N.J.R. 755(b).

In (c)3i deleted "state fiscal" and "third and fourth quarter" and added "quarters of the calendar" year. In (c)3ii deleted reporting on an annual basis and added quarterly report. Also added iii and (1). Prior to recodification of N.J.A.C. 5:23, this section was codified at 5:23-4.8(c).

Amended by R.1983 d.611, effective January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

In (c), deleted old 1.-3. and added new 1.

Emergency adoption, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (b): changed "will" to "shall" and changed "\$0.0006" to "\$0.0014" per cubic foot.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1990 d.61, effective February 5, 1990.

See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

At (c)1, monthly reporting and fee submissions changed to quarterly. Amended by R.1991 d.181, effective April 1, 1991, operative July 1, 1991.

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

In (b) increased fee amount from \$0.0014 to \$0.0016 per cubic foot.

Amended by R.1992 d.47, effective February 3, 1992.

See: 23 N.J.R. 3440(a), 24 N.J.R. 405(a).

Fees to be paid to Regulatory Affairs.

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

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

Fee amount amended at (b).

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).

Administrative Correction.

See: 28 N.J.R. 1981(b).

5:23-4.20 Departmental fees

(a) General:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee.

(D) Area 4, Subcodes: Housing code provisions including occupancy loads, minimum utilities and facilities. Building subcode provisions including structural requirements, durability and weatherability requirements, and light, air and ventilation requirements. Electrical subcode provisions including minimum service and appliances and basic circuits. Fire prevention code provisions including special permits required, storage and handling of goods and materials, maintenance of exit facilities and maintenance of fire protection equipment. Fire Protection subcode provisions including height and area requirements, fire resistance, flame spread and combustibility requirements; and fire alarm, detection and suppression systems. Plumbing subcode provisions including sanitary waste disposal, water supply, venting and required facilities.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.6.

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 was "Facility fire protection supervisor requirements" which was repealed and 5.21 was recodified.

Administrative Correction to (a), (b)2 and (b)5.

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

Amended by R.1991 d.308, effective June 17, 1991.

See: 23 N.J.R. 1085(a), 23 N.J.R. 1923(a).

Midterm and final exams required at (b); RCS program increased to 60 contact hours; BOCA Building, Mechanical, Plumbing, Energy Conservation, Barrier-Free and CABO codes required in all courses, fire protection inspector subject requirements specified in greater detail.

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

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

Added elevator inspector standards at (d)11.

5:23-5.21 Renewal of license

(a) The Department may issue the appropriate license following submission of an application, payment of the required non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical Services that the applicant meets the requirements for renewal of the license established herein.

(b) Every three years, any license already issued shall be renewed upon submission of an application, payment of the required non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical Services that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the license previously issued for a term of three years; provided, however, that it may renew any such license for a shorter period of time if so requested by the licensee. The renewal process shall begin 90 days prior to the expiration dates, which shall be July 31 or January 31.

(c) The Department shall issue, upon application, a duplicate license wallet card of the appropriate type and specialty, upon a finding that the license has been issued,

and that the applicant is entitled to such license wallet card to replace one that has been lost, destroyed, or mutilated. Payment of a fee of \$10.00 shall be required.

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type(s) of license(s) held, and not upon employment positions held. Continuing Education Units (CEU's) will be approved by the Bureau of Technical Services. One CEU equals 10 contact hours. CEU's will be awarded for technical and administrative licenses.

i. Inspector license only—1.5 CEU (technical);

ii. Inspector and subcode official licenses—2.0 CEU's (1.5 technical and 0.5 administrative);

iii. Inspector, subcode official and construction official licenses—2.5 CEU's (1.5 technical and 1.0 administrative).

2. If an individual adds an inspector license in a new subcode area to an existing license, there will be no additional continuing education requirement for the new licenses during that licensure period.

3. If an individual adds administrative licenses to an existing license, there will be no additional continuing education requirement for the new administrative license during that licensing period.

4. To maintain a mechanical inspector's license, 1.5 CEU (technical) shall be completed, as required by this section, in addition to any other CEU requirements for other licenses held.

5. The Department may determine that attendance at specific seminar(s) is mandatory either for individual inspectors or at least one representative of each municipality.

i. Regarding mandatory municipal seminars, at least one municipal code enforcement employee must attend the seminar. The construction official shall be responsible for compliance.

ii. Regarding mandatory inspector seminars, the department may determine that either all active code officials or all licensed code officials must attend a specific seminar. Compliance shall be a requirement for license renewal.

iii. If the Department establishes mandatory seminar(s), the seminar(s) will be offered in sufficient numbers and locations so as to facilitate compliance.

iv. For those code officials who do not complete the mandatory seminar(s), the Department shall offer either a special seminar or video seminar so the code official may be in compliance. The Department shall charge a fee of \$50.00 per person to attend any video seminar or special seminar.

6. CEU credit for a given course shall be allowed with respect to all licenses held by a licensee to which the course may be applicable.

(e) Lapsed license renewal requirements are as follows:

1. Where the holder of a license has allowed the license to lapse by failing to renew the license as provided for in (b) above, a new application and license shall be required. If such application is made within three years of the license having lapsed, then application may be made in the same manner as a renewal application.

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of \$65.00 per year or fraction thereof.

3. Additionally, the licensee must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.

4. Where a license has lapsed for a period exceeding three years, a new application shall be required in accordance with N.J.A.C. 5:23-5.5, and the applicant must meet all current licensure requirements.

(f) After revocation of a license upon any of the grounds set forth in these rules, the Licensing Unit may not renew or reinstate such license; however, a person may file a new application for a license with the Department.

(g) The Department shall not issue a new license to an applicant whose license was previously revoked unless and until the following conditions are met:

1. At least three years shall have passed since the effective date of the revocation of the previous license;

2. If the applicant was convicted of a crime related in any way to code enforcement, the Department shall have determined in light of the factors set forth in N.J.S.A. 2A:168A-2, that the applicant has been fully rehabilitated and that licensing the applicant would not be detrimental to the public welfare;

3. The applicant shall have made full restitution to any person who sustained a loss as a result of the act or omission for which the previous license was revoked; and

4. All conditions imposed by the order of revocation shall have been complied with.

Amended by R.1982 d.8, effective February 1, 1982.

See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

(b): Deleted "prior to July 31 in the second year" and added "The renewal . . . January 31".

(c): Deleted "equal to . . . license" and substituted "as may be . . . Commissioner" therefor.

(d): Subsection was "reserved"; test added through (d)1iii.

(e): Added "in accordance with N.J.A.C. 5:23-5.5".

Amended by R.1985 d.352, effective July 15, 1985.

See: 17 N.J.R. 1031(a), 17 N.J.R. 1758(a).

Expiration date changed from "45 days" to "90 days".

(e) substantially amended.

Amended by R.1985 d.528, effective October 21, 1985.

See: 17 N.J.R. 1705(a), 17 N.J.R. 2535(b).

Deleted text in (f) "When it can . . . a new license."; (g) added.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.7.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Added (d)2 and recodified from 5.22.

Administrative Correction to (d), (d)1i and (f).

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

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

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

In (e)2, fee increased from \$30.00 to \$40.00.

Amended by R.1992 d.272, effective July 6, 1992.

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

Fee non-refundable; renewal process begins 90 days before expiration.

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.

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)4.

Amended by R.1996 d.53, effective February 5, 1996.

See: 27 N.J.R. 4056(a), 28 N.J.R. 815(b).

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

Denial of relicensure upheld for formerly licensed electrical subcode official who pled guilty to disorderly persons offense (based upon former licensee's misconduct while performing public responsibilities authorized by license). *Bevacqua v. Renna*, 213 N.J.Super. 554, 517 A.2d 1215 (App.Div.1986).

Examination of educational standards at former N.J.A.C. 5:23-5.6. *Twp. of Burlington v. Middle Department Inspection Agency, Inc.*, 175 N.J.Super. 624, 421 A.2d 616 (Law Div.1980).

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a non-refundable fee as specified herein.

1. A non-refundable application fee of \$65.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Mechanical Inspector license.

ii. Application for any one given technical license specialty plus the related Subcode Official license, if both are applied for at the same time.

iii. Application for any one given technical license specialty plus the related Subcode Official license, as well as the Construction Official license, if all three are applied for at the same time.

2. A non-refundable application fee of \$35.00 shall be charged for each administrative license applied for separately from a technical license.

3. Persons rejected for one or more licenses, and who subsequently reapply, are subject to the fee schedule as defined in (a)1i, ii and iii above.

4. Renewal fee: The three year renewal application fee shall be \$65.00.

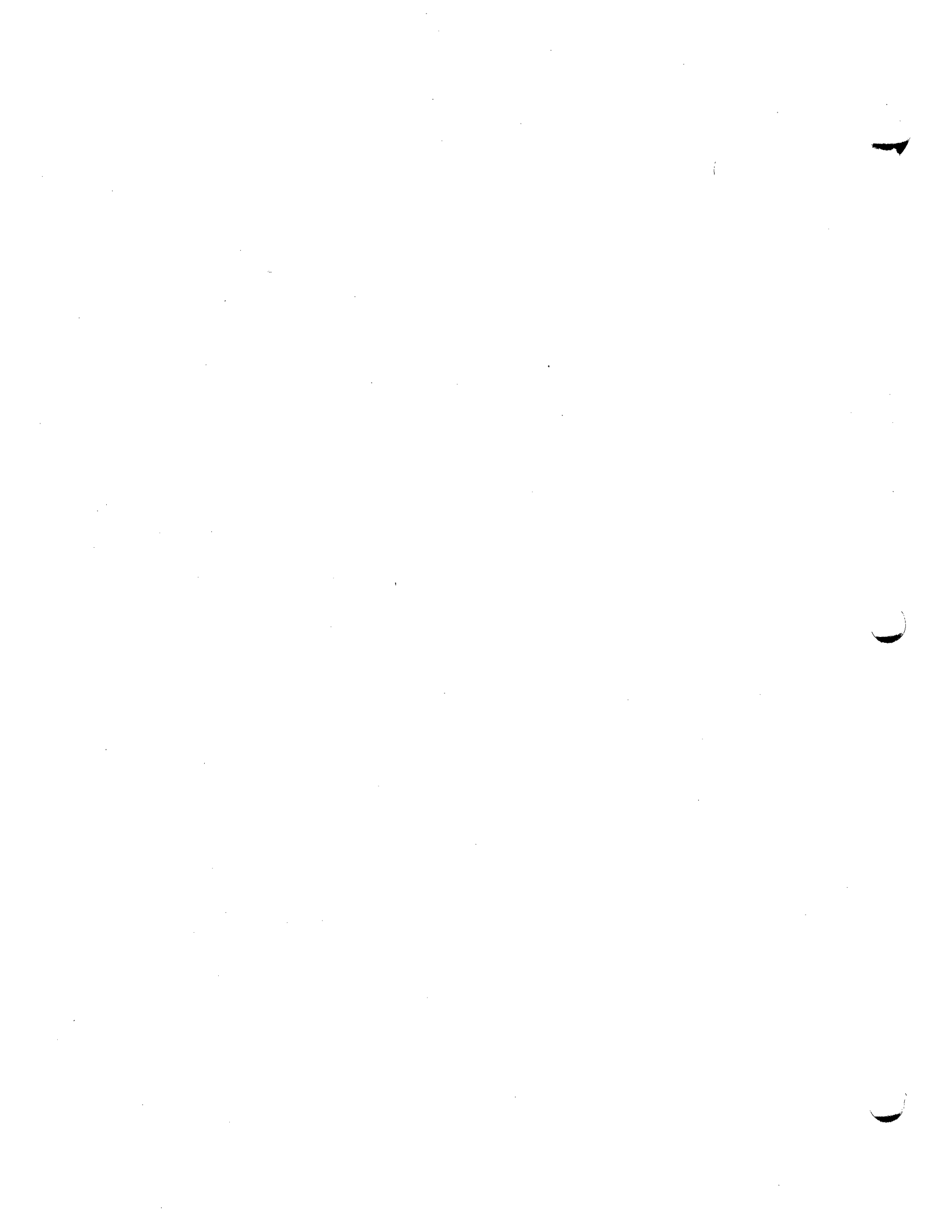


SUBCHAPTER 6. TAX EXEMPTIONS

5:23-6.1 (Reserved)

Amended by R.1984 d.25, effective February 6, 1984.
See: 15 N.J.R. 1977(a), 16 N.J.R. 238(c).

Amended by R.1984 d.121, effective April 16, 1984.
See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).
Amended by R.1987 d.387, effective October 5, 1987.
See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).
"Solar energy systems; administrative requirements" expired April 1,
1988 pursuant to Executive Order No. 66(1978).
See: 20 N.J.R. 893(a).



5:23-6.2 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Technical standards for solar energy systems; general provisions" expired April 1, 1988 pursuant to Executive Order No. 66(1978).
See: 20 N.J.R. 893(a).

5:23-6.3 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Eligibility criteria for solar energy systems" expired April 1, 1988 pursuant to Executive Order No. 66(1978).
See: 20 N.J.R. 893(a).

5:23-6.4 Automatic fire suppression systems

(a) Applications for tax exemption pursuant to P.L. 1983, c.309 shall be made on a form prepared by the Department of Treasury, Division of Taxation, and made available to the public at the office of the enforcing agency.

(b) Construction official's responsibilities:

1. The construction official shall have responsibility for determining the eligibility of any proposed automatic fire suppression systems.

2. The construction official shall consult with the appropriate subcode officials in determining conformity with the building and fire protection subcodes and their referenced standards, as well as, where applicable, the most recently published editions of NFPA 13D, NFPA 20, NFPA 22 and NFPA 24. A system shall only be eligible for tax exemption if it conforms to such of these standards as are applicable to that type of automatic fire suppression system and appurtenant installations.

i. A system shall not be deemed ineligible because it is in a new building or because it only provides coverage to part of a building.

3. The construction official shall, in addition, review the cost estimates provided by the applicant.

4. The construction official may require documentation in the form of signed contracts, contractor estimates and the like if he deems it necessary.

5. The construction official shall grant or deny certification of the system prior to issuance of the construction permit and shall notify the applicant of his decision at that time.

6. The construction official shall forward a copy of the approved application for exemption to the municipal assessor for his action upon issuance of the certificate of occupancy or certification of completion.

(c) The enforcing agency, after giving written notice to the owner, may revoke such certification whenever any of the following appears:

1. The exemption was obtained by fraud or misrepresentation;

2. The claimant for tax exemption has failed substantially to proceed with the construction, reconstruction, installation or acquisition of an automatic fire suppression system;

3. The mechanical system to which the certificate relates has ceased to be used for the primary purpose of providing automatic fire suppression and is being used for a different primary purpose;

4. The claimant for tax exemption hereunder has so departed from the equipment, design and construction previously certified by the enforcing agency that, in the opinion of said enforcing agency, the automatic fire suppression system is not suitable and reasonably adequate for the purpose of providing automatic fire suppression.

(d) The construction official shall notify the assessor in writing of the revocation of the certification.

(e) Appeals may be made regarding the decision of the construction official to the Construction Board of Appeals, in accordance with N.J.A.C. 5:23-2.34.

New Rule, R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

This section replaces 5:23-6.2, Construction Official's Responsibilities, which was recodified as N.J.A.C. 5:23-6.1(b).
Recodified from 5:23-6.2 by R.1987 d.387, effective October 5, 1987.
See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

5:23-6.5 (Reserved)

Recodified as 5:23-6.1(e) by R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

SUBCHAPTER 7. BARRIER FREE SUBCODE**Subchapter Historical Note**

Subchapter 7, Barrier Free Subcode, sections 7.1 through 7.99 were repealed by R.1995 d.144 and existing sections 7.100 through 7.116 were recodified as sections 7.2 through 7.18, effective March 20, 1995 (operative July 1, 1995). See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Law Review and Journal Commentaries

Disability Law: Public Accommodations and the ADA. David J. Popiel, 170 N.J.Law. 16 (Mag.) (July 1995).

Disability Law: Housing Discrimination and the Disabled. David P. Lazarus, Susan DiMaria, 170 N.J.Law. 20 (Mag.) (July 1995).

5:23-7.1 Accessibility standards

(a) Chapter 11 of the building subcode, entitled "Accessibility," is adopted with the modifications set forth in this subchapter.

1. Copies of the building subcode, which is the BOCA National Building Code/1993, including all subsequent revisions and amendments thereto, may be obtained from

the sponsor at: BOCA, International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

2. Copies of CABO/ANSI A117.1, referenced in the BOCA National Building Code, may be obtained from the secretariat at: Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.

(b) The following sections of chapter 11 of the building subcode are modified as follows:

1. Section 1103.1, Exception 3 is modified to read as follows: "Buildings of Use Group R-2, R-3 or R-4 with three or fewer dwelling units are not required to comply with the provisions of this Chapter. For purposes of applying this Chapter, dwelling units within a single structure separated by fire walls do not constitute separate buildings.

3.1. Multistory dwelling units in buildings without elevators are not required to comply with the provisions of this Chapter.

3.2. Accessory structures for individual exempt dwelling units are not required to comply with the provisions of this Chapter.

3.3 Facilities and their associated sites available to the general public or available for the common use of the building's residents are required to comply with the provisions of this Chapter.

3.4 When any dwelling unit, regardless of whether it is exempt from the provisions of this Chapter, includes a B use or an M use, the portion of the dwelling unit used exclusively for the B use or M use and that portion used both for the B use or M use and for residential purposes shall comply with all applicable provisions of this subchapter. This shall include the sidewalk, if any, the door or entryway and hallways, and those portions of the dwelling unit, interior or exterior, available to or used by customers or clients, including toilet facilities."

2. In Section 1104.2, Exception 2, is modified to read as follows: "Buildings of less than 10,000 square feet total gross enclosed floor area and less than three stories in height shall not be required to have elevators unless they house the offices of health care providers (Use Group B), passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or are owned and occupied by public entities. Additionally, floors with less than 3,000 square feet are not required to be served by an elevator unless they contain the offices of health care providers (Use Group B) or are within passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or buildings owned and occupied by public entities."

3. In Section 1104.2, add the following exceptions:

"3. In buildings of Use Group R-2, R-3 or R-4 elevators are required to provide an accessible route of travel with the following exceptions:

3.1 Buildings which are less than four stories and which have four or fewer dwelling units per floor;

3.2 Buildings less than three stories.

3.3 Floors that contain less than 3,000 square feet and are at other than the entry level."

4. Section 1105.1 is modified to read as follows: "Where parking is provided at sites required to be accessible or adaptable, accessible parking spaces complying with CABO/ANSI A117.1 listed in Chapter 35 shall be provided in compliance with Table 1105.1 except as required by Sections 1105.2 and 1105.3." At Table 1105.1, delete the title and text of "Note a."

5. In Section 1107.2.3, Table 1107.2.3 is modified to provide that, in assembly spaces with a capacity of over 500 seats, the number of required wheelchair spaces shall be "6 plus 1 for each 100 over 500."

6. Section 1107.3.3 is modified to read as follows: "Buildings or portions thereof of Use Group I-3 shall have at least one accessible inmate confinement area or room per institution, and at least one accessible inmate toilet and bathing facility per institution. All public or common areas and employee areas, including toilet or bathing facilities, shall be accessible."

7. Section 1107.4.1 is modified to read as follows: "In occupancies in Use Group R-1 containing six or more guestrooms, accessible guestrooms shall be provided in accordance with the following table:

Number of Rooms	Accessible Rooms
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of Total
1001 and up	20 plus 1 for each 100 over 1000

Add the following note at the end of the Table: "Note: Owner-occupied residences with 1-5 lodgers are Use Group R-3 and are exempt."

In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms."

8. The main paragraph of Section 1107.4.2 is modified to read as follows: "Unless exempted under Section 1103.1, as modified, all dwelling units in buildings served by elevators and all ground floor units in buildings without elevators shall be made adaptable in accordance with CABO/ANSI A117.1 listed in Chapter 35. For purposes of applying this requirement, the ground floor shall mean the first floor of a building containing dwelling units, regardless of whether that floor is at grade."

9. Section 1107.4.2, Exceptions are modified to read as follows:

“1. In buildings without elevators, multistory dwelling units are not required to comply with the provisions of this Chapter. In multistory dwelling units in buildings with elevators, all rooms or spaces on the entry level must be accessible or adaptable and an adaptable bathroom or powder room must be provided on the entry level; however, an interior accessible route to the other levels of living space is not required.

2. Recreational facilities must be accessible in accordance with N.J.A.C. 5:23-7.2 through 7.18.”

10. The main paragraph of Section 1107.4.3 is modified to read as follows: “In buildings of Use Group R-2 and R-3 not otherwise exempted from the provisions of this Chapter by Section 1103.1, as modified, at least one accessible route shall connect accessible building or facility entrances with all accessible and adaptable dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible or adaptable dwelling unit.”

11. Delete the title and text of the Exception to Section 1107.4.3.

12. In Section 1108.3, modify the Exception as follows:

“Exceptions

1. Elevators within a dwelling unit.

2. Platform lifts may be part of an accessible route when necessary to provide:

2.1 a line of sight while complying with dispersal requirements in A use buildings;

2.2 access to a performing area;

2.3 access to incidental occupiable spaces, such as, but not limited to, projection booths and equipment control rooms, that are not open to the general public and that have not more than 5 occupants.”

13. In Section 1108.7, add the following additional subsections:

“1108.7.4 Telephones: When public use telephones are provided, one telephone per floor or one telephone in each bank of public telephones shall comply with CABO/ANSI A117.1, Section 4.29. Each accessible public telephone and 25 percent of other public telephones in each bank shall be equipped with volume control that complies with CABO/ANSI A117.1, Section 4.29.5. At each accessible telephone, either a forward or a parallel approach shall be provided that complies with CABO/ANSI A117.1, Section 4.2.4.

1108.7.5 Automatic Teller Machines (ATM’s): At each ATM, clear floor space shall be provided for either a parallel or forward approach pursuant to CABO/ANSI A117.1, Section 4.2.4. If only a forward approach is provided, all operating controls shall comply with the

reach ranges in CABO/ANSI A117.1, Section 4.2.5. If only a parallel approach is provided, reach ranges shall be provided as follows: Where the reach depth to the controls is 10” or less, the maximum height for the controls shall be 54”. For each increase in reach depth of 1”, the maximum height for the controls shall be reduced by ½”. The reach depth shall not exceed 24” with a corresponding maximum height of 46”. If both a parallel and a forward approach are provided, the reach ranges shall comply with CABO/ANSI A117.1, Section 4.2.5 or with the parallel reach range requirements described above.”

14. Section 1108.7.3 is modified to read as follows:

“Where check-out aisles are provided, accessible check-out aisles shall be installed in accordance with Table 1108.7.3. Where checkout aisles of different types are provided (express lanes, for example), at least one of each type shall be accessible. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible.”

15. Section 1109.2, number 1, is modified to read as follows:

“1. Accessible parking spaces required by Section 1105.1. Each accessible parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices displaying the international symbol of accessibility. Beneath the R7-8 sign, each accessible parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3.c., containing the following language:

“PENALTY
 \$100 FIRST OFFENSE
 SUBSEQUENT OFFENSES
 \$100 MINIMUM AND/OR
 UP TO 90 DAYS
 COMMUNITY SERVICE
 TOW-AWAY ZONE”

The bottom of the R7-8 sign shall be mounted approximately 60 inches above the parking lot surface.”

16. Section 1109.2, number 4, is modified to read as follows:

“4. Accessible toilet and bathing units.”

17. Section 1110.4 is modified to read as follows: “These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy, unless technically infeasible. If the historic character of the building is adversely affected, the application of Section 3406.0 shall be permitted. At a minimum, at least one accessible route from an accessible parking space, public transportation stop or passenger loading zone to an accessible entrance shall be provided; at least one accessible entrance shall be provided; an

accessible route from the accessible entrance to all publicly-used spaces on the level of the accessible entrance shall be provided; when toilet facilities are provided, at least one accessible toilet facility shall be provided.”

(c) The provisions of this Chapter shall not apply to a change of use of a building of less than 10,000 square feet total gross enclosed floor area where there is no attendant construction or renovation work being performed.

(d) When alteration or renovation work is performed on a building, the following shall apply:

1. No alteration work shall decrease the accessibility of the building;
2. No alteration shall be required to provide greater accessibility than is required by the standards for new construction;
3. If compliance with the new construction standards in (b) above is technically infeasible, accessibility shall be provided to the maximum extent feasible.
4. Accessibility shall be included as part of alteration work to the extent that the cost of providing accessible building features, such as, but not limited to, an accessible building entrance, an accessible route to the altered area, accessible restrooms, accessible telephones, or accessible drinking fountains is not disproportionate to the cost of the overall alteration work. A cost is considered disproportionate if it exceeds 20 percent of the cost of the alteration work.

(e) Variations and exceptions are as follows:

1. Where it can be demonstrated that one or more of the provisions of this subchapter are technically infeasible, variations or exceptions to those specific provisions may be granted if:

- i. The spirit and intent of the law are observed;
 - ii. Public welfare and safety are assured; and
 - iii. Equivalent facilitation and protection for people with disabilities are secured.
2. In no case shall a complete waiver of these requirements be granted.
3. Procedures for granting variations and exceptions shall be in accordance with N.J.A.C. 5:23-2.9 through 2.13.

(f) Enforcement responsibility shall be divided among subcode officials as follows:

- i. Plan review with regard to compliance with BOCA, Chapter 11, Section 1108; CABO/ANSI A117.1, Section 4.17.2; Section 4.19; Section 4.20; and Section 4.15 shall be the joint responsibility of the building and plumbing subcode officials.

- ii. Plan review with regard to compliance with CABO/ANSI A117.1, Section 4.25 shall be the responsibility of the plumbing, fire protection and electrical subcode officials.

- iii. Plan review and inspection with regard to compliance with CABO/ANSI A117.1, Section 4.15.2; Section 4.15.3; Section 4.17.3; Section 4.17.4; Section 4.19.2; Section 4.19.4; Section 4.20.2; Section 4.20.4; Section 4.21.5; Section 4.22.5; Section 4.22.6; Section 4.33.3.2.2; Section 4.33.3.4.4; Section 4.33.4.3; Section 4.33.4.4.1; Section 4.44.4.4.3; Section 4.33.4.5.1; and Section 4.33.4.5.2 shall be the responsibility of the plumbing subcode official.

- iv. Inspection with regard to compliance with CABO/ANSI A117.1, Section 4.17.2 and BOCA, Chapter 11, Section 1108.4 shall be the responsibility of the building subcode official.

- v. Inspection with regard to compliance with BOCA, Chapter 11, Section 1108, as modified by vi below, shall be the responsibility of the plumbing subcode official.

- vi. Inspection of all controls and operating mechanisms referred to in CABO/ANSI A117.1, Section 4.25 regulated by the electrical, fire protection or plumbing subcodes shall be the responsibility of the corresponding subcode official. Controls of all other mechanisms shall be inspected by the building subcode official.

- vii. Enforcement of the remaining sections of this subchapter shall be the responsibility of the building subcode official.

New Rule, R.1995 d.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Case Notes

Department has duty to promulgate regulations prescribing kinds, types and quality of public facilities for physically handicapped. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

Uniform Construction Code Act requires Commissioner to adopt State Uniform Construction Code. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

City could pursue its claim against debtor alleging violation of certificate of occupancy without impediment from automatic stay and city's dispute with debtor did not need to be resolved in bankruptcy forum. *Matter of 560 Ocean Club, L.P., Bkrcty.D.N.J.1991*, 133 B.R. 310.

5:23-7.2 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.3 through 18. All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.

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 \$1,750.

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).

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;

2. The protective clothing and equipment requirements set forth in this section shall be used to prevent the contamination by persons engaged in asbestos abatement projects of areas and buildings accessible to or used by the public;

3. All persons entering the work area shall wear protective clothing. All clothing worn during removal operations shall be disposed of as contaminated waste. The requirement that clothing be disposed of as contaminated waste shall not include rubber boots, respirators, eye protection, hard hats, and other protective clothing, which can be easily cleaned.

4. Polyethylene bags shall be six mil thick and of sufficient size for their intended use;

5. All tape, spray-on adhesives, glove bags, glue, and other materials used in the abatement process shall be of sufficiently high quality to serve their intended purpose;

6. The contractor shall have available sufficient inventory of protective clothing, respirators, filter cartridges, polyethylene sheeting, duck tape, spray-on adhesives, and air filters. Sufficient personal protective equipment shall be available for usage by authorized personnel;

7. The contractor shall have available shower stall(s) and sufficient plumbing for these showers including hot and cold running water and sufficient hose length and drain systems or an acceptable alternate such as a portable decontamination trailer with showers. Waste shower water shall be added to asbestos-contaminated waste material before disposal in a permitted asbestos waste landfill or it shall be solidified using an approved polymer to prevent leaks or accidental spills within a facility or during transport for disposal to a permitted asbestos waste landfill or it shall be filtered using a five S filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or as allowed by permit;

8. The contractor shall have available adequate ladders and/or scaffolds and sufficient temporary lighting equipped with ground fault circuit interruptors for the asbestos safety technician and all others who may inspect the work;

9. The contractor shall have available HEPA filter equipped air filtering equipment capable of filtering asbestos fibers to 0.3 S at 99.97 percent efficiency and of sufficient quantity and capacity to cause a complete air change or total air filtration within the work area at least once every 15 minutes. Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area. If the situation warrants, the specifications for the abatement project may require additional air changes per hour. The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.03 inches w.c. for unoccupied buildings and greater than or equal to 0.05 inches w.c. for occupied buildings.

i. Pressure differential shall be monitored by digital manometers with continuous printout or other approved low pressure monitoring devices. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

ii. One or more separate pressure monitoring systems shall be installed by the asbestos safety control monitor firm near the entrance(s) to the work area and between the work area and any interior spaces from which make-up air is drawn.

iii. In unoccupied buildings, if the pressure differential drops below 0.01 inches w.c., the asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss and the contractor shall institute corrective action as indicated.

iv. In occupied buildings, the procedures set forth in N.J.A.C. 5:23-8.19 shall be followed.

10. Air shall flow into the work area through all openings, including the decontamination chamber and waste exit ports, any areas in the work area where air leakage may occur, and other controlled makeup air inlets. Air shall exhaust through the air pressure differential filtration unit by means of flexible or solid duct leading outside the building. The air-filtering equipment should be positioned at a maximum distance from the decontamination chamber to maximize filtration of airborne fibers. Sufficient air shall be exhausted by an approved HEPA equipped vacuum truck or HEPA equipped air filtration units when necessary to provide air pressure differential. Air filtration units shall be in operation at all times;

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

(c) Decontamination procedures are as follows:

1. The contractor shall provide an adequate decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer. Each airlock shall be clearly identified and separated from the other by polyethylene crossover sheet doors designed to minimize fiber and air transfer as people pass between areas. A minimum of two layers of polyethylene sheeting shall be required for floors, walls, and the ceiling for on-site constructed decontamination units. Polyethylene crossover sheet doors shall have at least three layers of polyethylene sheeting and be weighted so as to fall into place when people pass through the area. Decontamination chamber doors shall be of sufficient height and width to enable replacement of equipment that may fail and to safely stretch or carry an injured worker from the site without destruction of the chamber or unnecessary risk to the integrity of the work area. Such doors must be at least four feet wide, and the distance between sets of doors must be at least four feet.

i. As an alternative to the use of polyethylene cross-over sheet doors, any other suitable method to accomplish this end shall be acceptable, if it is approved by the asbestos safety control monitor. Alternative doors shall provide for adequate exiting in accordance with the building subcode of the Uniform Construction Code.

2. The decontamination areas shall consist of the following:

i. Clean room: In this room persons remove and leave all street clothes and put on clean disposable coveralls. Appropriate NIOSH approved respiratory protection equipment is also picked up in this area. No asbestos contaminated items are permitted in this room.

ii. Shower room: This is a separate room used for transit by cleanly dressed people entering the work area from the clean room and for showering by them after they have undressed in the equipment room. This is a contaminated area.

iii. Equipment room: Work equipment, footwear, and all other contaminated work clothing shall be stored here. This is also a change and transit room for people. All areas between the shower room and work area shall be considered part of the equipment room. This is a contaminated area.

3. In order to prevent contamination of the environment, the contractor shall be responsible for controlling access at the work area and shall maintain a daily log of personnel entering the work area. A list of names of workers shall be posted with their start and stop times for each day. In addition, the contractor shall ensure that all persons who enter the work area shall observe the following work area entry and exit procedures:

i. Person enters clean room and removes street clothing, puts on protective clothing and a respirator, and passes through shower room into equipment room.

ii. Any additional required clothing and equipment previously deposited in the equipment room is put on.

iii. Person proceeds to work area.

iv. Before leaving the work area, the person shall remove all gross contamination and debris from the coveralls using a vacuum with a high efficiency particulate air (HEPA) filter. In practice, this is usually carried out by one person assisting another.

v. The person then proceeds to equipment room and removes all clothing except approved respirators. Extra clothing may be stored in contaminated end of the unit. Disposable coveralls are placed in a bag for disposal with other material.

vi. The person then proceeds directly into the shower room. Respirators shall be taken off last to prevent inhalation of fibers during removal of contaminated clothing, and shall not be removed until they have been washed free of dust.

vii. After showering, the person moves to the clean room and dresses in street clothing prior to exiting.

viii. Respirators are picked up, washed thoroughly, and disinfected as required, wrapped and stored in the clean room.

4. The contractor shall ensure that filters in cartridge type respirators used during the preparation and abatement phase of the project are removed, wetted, and discarded as contaminated waste. All new filters shall be in place in the respirator prior to reuse. For powered air purifying respirators or supplied air respirators, the manufacturer's instructions shall be followed about the proper decontamination sequence.

5. There shall be no smoking, eating, or drinking in any contaminated areas (shower room, equipment room, and work area). Respirators shall be worn in all contaminated areas.

6. Nondisposable footwear shall remain inside the contaminated area until completion of the activity, and shall be thoroughly cleaned at that time.

(d) Preliminary preparations in the work area shall be conducted as follows:

1. The contractor shall provide and post in clearly visible locations, appropriate caution and/or danger signs indicating that asbestos work is being conducted and that unprotected persons should not enter;

2. Employees of the contractor permitted pursuant to N.J.A.C. 8:60 and N.J.A.C. 12:120 or persons employed by the building owner who have successfully completed a maintenance/custodial or worker training course approved by the New Jersey Department of Health shall clean with wet cloths and/or with HEPA vacuums as appropriate all objects that can be removed from the work area without disrupting the asbestos-containing material. Objects shall include, but not be limited to, furniture, equipment, drapes, and curtains. The cloths used for cleaning shall be disposed of as asbestos contaminated waste. If the room and objects within it are shown to be uncontaminated by asbestos, then other employees of the building owner or contractor may remove such objects;

3. The contractor shall install or build a decontamination facility in accordance with this section;

4. The contractor shall arrange for shutting down and sealing off all electrical, heating, cooling, and ventilating or other air handling systems. However, if approved by the asbestos safety control monitor, the lighting and the receptacles in the work area may be used if these are properly protected by ground fault circuit interruptors and can be adequately cleaned following abatement;

5. The contractor shall establish written emergency procedures to be posted within each work area. These procedures shall include plans for medical emergencies, fire evacuation, temporary loss of electrical power or water and procedures for repair and clean-up following temporary breach of containment barriers.

(e) Isolation and barrier construction in the work area shall be conducted as follows:

1. Before removing any asbestos from the work area, the contractor shall ensure that the outer perimeters of the work area have been securely sealed off from the rest of the building;

2. All vertical and horizontal surfaces except those of asbestos containing materials shall be sealed with water-tight polyethylene sheeting except as provided in (e)3 below;

3. The only permissible exception to total enclosure shall be:

i. An entrance airlock with showers and a decontamination chamber;

ii. A debris removal airlock to permit cleaning and removing asbestos waste;

iii. Staircases; and

iv. Controlled makeup air inlets into the work area.

4. Polyethylene sheeting shall be used to isolate contaminated from uncontaminated areas. This polyethylene sheeting shall be replaced or repaired immediately if torn or damaged. One layer of polyethylene sheeting shall be required for walls and two layers of polyethylene sheeting shall be used to seal open space between work areas and non-contaminated areas and for all floors. In buildings required by the Uniform Construction Code to be of noncombustible construction, all materials used to construct separation barriers must meet the Uniform Construction Code, building subcode requirements for that building and all plastics used must be flame resistant.

(f) Initial activity in the work area shall be conducted in the following order:

1. Remove filters from all heating, ventilating, and air conditioning systems. Wet the filters and place them in polyethylene bags, double bagged with visible labels, for disposal as asbestos-containing waste. Squeeze all excess air out of the bag before sealing to prevent puncture during disposal. Secure bags by twisting, taping, folding over, and sealing them with duct tape.

2. The contractor shall wet clean and/or HEPA vacuum all non-removable non-asbestos items such as radiators and suspended light fixtures in the work area, including built-in equipment; and shall cover with two layers of polyethylene sheeting taped securely in place;

3. The contractor shall detach and wet clean removable electrical, heating, and ventilating equipment and other items which may be connected to the asbestos surfaces. These items shall be removed from the work area and returned and reattached to their proper place when the work area has been decontaminated and final air testing has provided satisfactory results;

4. The contractor shall seal all floor, wall, and ceiling penetrations with suitable material such as expanding foam insulation before covering the surfaces with polyethylene sheeting. The contractor then shall seal all openings between the work area and uncontaminated areas including but not limited to, windows, doorways, elevator openings, skylights, corridor entrances, floor and sink drains, air ducts, grills, grates and diffusers with critical barriers consisting of two layers of polyethylene sheeting taped securely in place or stapled or fastened by spray-on adhesives, glue beads, or horizontal wood battens or the equivalent. Floor drains shall be sealed individually and then covered as all other floor surfaces with two layers of polyethylene sheeting. Separation barriers may be constructed to support the critical barriers. Separation barriers shall not block any required means of egress;

5. For floor covering two layers of polyethylene sheeting shall be used. The first layer of floor sheeting shall extend up the wall at least 12 inches. The second layer shall be extended up walls at least 24 inches. Sheeting shall be sized so as to minimize the number of seams necessary. No seams shall be located at the joints between walls and floors;

6. Wall sheeting shall consist of one layer of polyethylene sheeting. It shall be installed to minimize joints and shall overlap floor sheeting by at least 18 inches. No seams shall be located at the corners. Wall coverings shall be taped first to the upper most edge of the wall and shall hang straight down;

7. When a strippable coating is used in place of polyethylene sheeting, it must be manufactured for the specific application required for walls, floors, or windows.

i. When dry, the strippable coating must have a class A rating as a building material and must meet the following requirements when tested in accordance with ASTM E-84: flame spread no greater than 20, fuel contributed 0, and smoke developed no more than 110.

ii. The strippable coating shall be applied uniformly in such a manner as to achieve a minimum uniform final thickness of six mil for each layer required pursuant to this subchapter.

iii. Manufacturer's specifications shall be followed for the method of application and for the protection of the applicators and building occupants.

iv. Use of the product shall be authorized in advance by the asbestos safety control monitor firm. The material shall be delivered to the project site in unopened, factory-labeled containers.

8. As all existing ventilating systems in work area are to be sealed throughout the removal operation, an alternative system shall be utilized. Install approved HEPA equipped air filtration units with filters in place. HEPA equipped air filtration units shall be of sufficient number and capacity to ensure that total air volume is exchanged at least once every 15 minutes and an acceptable pressure differential is established and maintained. These units shall be rated by the manufacturer as to their actual working air capacity and field tested pursuant to N.J.A.C. 5:23-8.10(d)4.

(g) Sequence of asbestos removal activities shall be as follows:

1. The asbestos-containing material shall be sprayed with water containing an additive to enhance penetration (amended water) or removal encapsulant. All wetting agents shall be tested on a small area before use to ensure effectiveness. A fine low-pressure spray of this solution shall be applied to prevent fiber disturbance preceding removal. The removal encapsulant or amended water shall be sprayed on as many times and as often as necessary to ensure that the asbestos material is adequately wetted throughout (especially that asbestos nearest the substrate) to prevent dust emission.

2. As a method of organizing the asbestos removal work, workers shall begin working on the areas nearest to the decontamination unit and work towards the HEPA equipped air filtration units. If this is not feasible, the asbestos safety control monitor firm shall approve an alternative to this requirement.

3. The wet material from each section shall be packed and sealed into labeled six mil polyethylene bags and double bagged with visible labels or placed in labeled, leak-proof containers, prior to starting the next section. Water-soaked fallen material shall be picked up while wet.

4. Contaminated material containing sharp edged items shall be cut to manageable size while adequately wet, and then placed in suitable leak-tight and puncture-proof containers or wrapped individually in two separate polyethylene sheets and double bagged.

5. Bags and drums shall be marked with the label prescribed by 40 CFR Part 61, Subpart M of the US EPA, 29 CFR 1926 of OSHA, and 49 CFR—Parts 100-199 of the US DOT Hazardous Waste Hauling regulations. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area.

6. After completion of this removal phase (stripping), all surfaces from which asbestos has been removed shall be scrubbed using nylon or bristle brushes and wet sponged or cleaned by an equivalent method to remove visible asbestos-containing material. During this work, the surfaces being cleaned shall be kept wet using amended water or a removal encapsulant. All disposable equipment shall be packaged for disposal. Containers shall be washed with amended water or a removal encapsulant and shall have all exterior particulate matter removed prior to removal from the contaminated area.

7. All accessory equipment shall be moved to the equipment room and decontaminated for removal.

8. All free water (in contaminated areas) shall be retrieved and added to asbestos-contaminated waste and/or placed in plastic lined leak-tight drums and/or solidified with an acceptable polymer or it shall be filtered using a five S filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or as allowed by permit.

9. Final clean-up of the work area may commence.

(h) Final clean-up of the work area shall be conducted as follows:

1. The contractor shall first clean all surfaces in the work area using a fine spray or mist of amended water or removal encapsulant applied to all surfaces followed by the wet-wiping procedure using disposable cloths. These cloths shall be disposed of or rinsed thoroughly on a frequency sufficient to eliminate visible accumulation of debris. The contractor shall allow all surfaces to dry before re-entering the work area and proceeding to (h)2 below.

i. The contractor shall notify the asbestos safety technician in writing that a pre-sealant inspection is requested.

2. After completion of cleaning all surfaces in the work area and upon receiving a satisfactory pre-sealant inspection, the contractor shall spray coat all dried exposed surfaces with a sealant. The color of this coat shall be separate and distinct from the underlying substrate. The surfaces to be coated shall include surfaces from which asbestos-containing materials have been removed (such as ceilings) and polyethylene which has been used to cover walls, floors and non-removable fixtures and equipment.

3. The polyethylene sheeting used to protect floors, walls, fixtures and equipment shall be carefully removed and rolled up, with the contaminated portion on the inside, and packaged for disposal. Tape and any other debris shall also be disposed of in sealed polyethylene bags labeled as asbestos-contaminated waste.

4. Wet clean with amended water or a removal encapsulant all walls, floors, woodwork, ceilings, electric light fixtures and other surfaces. Allow all surfaces to dry and repeat procedure. Cloths or sponges used in the cleaning operation shall be disposed of as contaminated waste.

5. The polyethylene sheeting used to maintain critical barriers between work areas and clean areas such as those in doorways, windows and air vents shall be sprayed with encapsulant, but not removed until air monitoring is completed and satisfactory results have been obtained.

6. After completion of the cleaning operations the contractor shall:

- i. Notify the asbestos safety technician that a clean-up inspection can be performed to ensure all visible asbestos has been removed and the area is dust free;
- ii. Request final air clearance monitoring of the work area.

7. After the work area is found to be in compliance with the acceptance criteria, the following tasks shall be performed by the contractor:

- i. All critical barriers shall be removed and bagged in polyethylene bags for disposal;
- ii. The inside of windows shall be washed;
- iii. Any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired and refinished to match existing material;

8. Notice for a final inspection shall be made by the owner or contractor to the asbestos safety control monitor.

9. Upon receiving a satisfactory final inspection, application for a Certificate of Completion may be made.

(i) Special precautions shall be implemented, where appropriate, including, but not limited to, the following examples:

1. Asbestos abatement projects involving ceiling tile and T-grid components, elevators, carpet, contaminated soil and projects in tunnels, crawl spaces, plumbing access panels, and/or involving live electrical panels or live steam lines are likely to present unique conditions that will require special precautions in addition to the procedures described in this section. In instances where special precautions need to be instituted, they shall be described in plans and specifications approved by the asbestos safety control monitor firm.

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 8.10 to new 8.11, changing abatement "job" to "project" throughout with stylistic changes. Section 8.11 formerly was "Precautions and Procedures during a small hazard abatement job".

In (g): deleted old 7 regarding air monitoring results and recodified old 8 through 10 as new 7 through 9 with no change in text.

Recodified from 5:23-8.11 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, "Disposal of asbestos waste", recodified as 5:23-8.22.

Case Notes

Revocation of asbestos safety technician's license; allowing job to go forward without asbestos safety control monitoring firm representative. *Rossnagel v. Bureau of Code Services*, 95 N.J.A.R.2d (CAF) 11.

5:23-8.16 Asbestos encapsulation and enclosure

(a) Encapsulation constitutes spraying friable asbestos-containing material with a liquid sealant (not including paint) that helps bind the asbestos together with other material components to adhere it firmly to the building structure.

1. 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 encapsulation work.

- i. Encapsulation shall not be performed where:

- (1) Asbestos-containing material is friable, damaged, or deteriorating;

- (2) Effective long-term inspection of the encapsulated site cannot be assured;

- (3) The source of asbestos is highly accessible to building occupants and damage to material is possible;

- (4) The asbestos-containing material does not adhere well to the substrate;

- (5) There is existing or potential water damage to asbestos containing material;

- (6) The asbestos-containing material is more than one inch thick; and is used to cover ceilings, walls, beams, or other structural members;

- (7) The asbestos-containing material is subject to high vibration.

- ii. Encapsulation may be performed when:

- (1) Damage to the material is improbable;

- (2) The asbestos-containing material is granular or cementitious;

- (3) The encapsulating material is known to bond asbestos to the subsurface and asbestos-containing material and also retains its bonding integrity;

- (4) Asbestos-containing material has been removed and loose fibers remain which should be bonded.

iii. If encapsulation is used as a method of asbestos abatement the following maintenance procedures shall be employed:

(1) A periodic monitoring and maintenance program consisting of inspection at least annually to check for damage to all encapsulated surfaces;

(2) Maintenance of records by the building owner, on the locations and condition of the encapsulated material;

(3) The removal of encapsulated asbestos when conditions change, making encapsulation no longer an appropriate method of asbestos abatement.

iv. Sealants considered for use in encapsulation shall first be tested to ensure that the sealant is adequate for its intended use. A section of the asbestos-containing material shall be evaluated following this initial test application of the sealant to quantitatively determine the sealant's effectiveness in terms of penetrating and hardening the asbestos-containing material, its toxicity, its flammability, its tolerance to disturbance or abuse, its solubility (dissolvability) in water, its effects on the acoustical properties of the asbestos-containing material, and its tolerance to top-covering paints. The United States Environmental Protection Agency, Office of Toxic Substances, has developed guidelines for the use of encapsulants on asbestos-containing materials which discuss advantages and disadvantages of encapsulation. The American Society of Testing and Materials (ASTM) Committee E06.21.06E on Encapsulation of Building Materials has developed a guidance document to assist in the selection of an encapsulant once a decision to encapsulate has been made. When a choice of an encapsulant has been made, written justification of this choice (based on the characteristics of the encapsulant, the asbestos-containing material to be encapsulated, and the substrate surface underneath the asbestos-containing material) shall be included in the job specifications, and a copy of this justification shall be available for review at the job site.

v. Before encapsulation is performed, all loose and hanging asbestos-containing material shall be removed while damp, and disposed of in accordance with this subchapter.

vi. Filler material used to repair damaged and missing areas of asbestos-containing material shall contain no asbestos, shall adhere well to the substrate and shall provide an adequate base for the encapsulating agent.

vii. Encapsulated asbestos containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the material that asbestos is present.

viii. Where encapsulants are sprayed on asbestos-containing materials:

(1) Low pressure airless spray shall be used. The airless spray gun shall have an appropriately sized tip which shall be tested by briefly spraying the encapsulant onto a surface from approximately 12 inches away. An appropriately sized tip will spray the encapsulant in a fan approximately eight inches wide; it will also distribute the encapsulant uniformly within the fan, giving even coverage.

(2) A suitable quantity of HEPA filtration units shall be used during the encapsulation process which shall have sufficient capacity to cause one complete air exchange every 30 minutes.

(3) At least three coats of the encapsulant shall be applied to the surface of the asbestos-containing material. Each coat shall be applied in a two-step procedure. The first step is to apply a light mist coat to moisten and seal any loose fibers and keep them from breaking away from the surface. This mist coat should be applied in three or four quick passes with the gun held 18 to 24 inches from the surface. After an area of 16 to 20 square feet has been given the mist coat, a heavier coating is applied, using 8 or 10 passes with the gun held 10 and 12 inches from the material. The gun should be kept in constant motion to create a smooth and even coat. This two-step application shall be considered one coat of encapsulant. Each subsequent coat shall be applied at a 90 degree angle to the direction of the preceding coat application, to ensure complete coverage of the asbestos-containing material. When questions rise regarding drying time, curing time, dilution, or use under different weather conditions, the manufacturer's recommendations and instructions shall be consulted.

(4) All other preparation, decontamination, and work requirements and procedures used in encapsulation projects shall be the same as those used in removal projects.

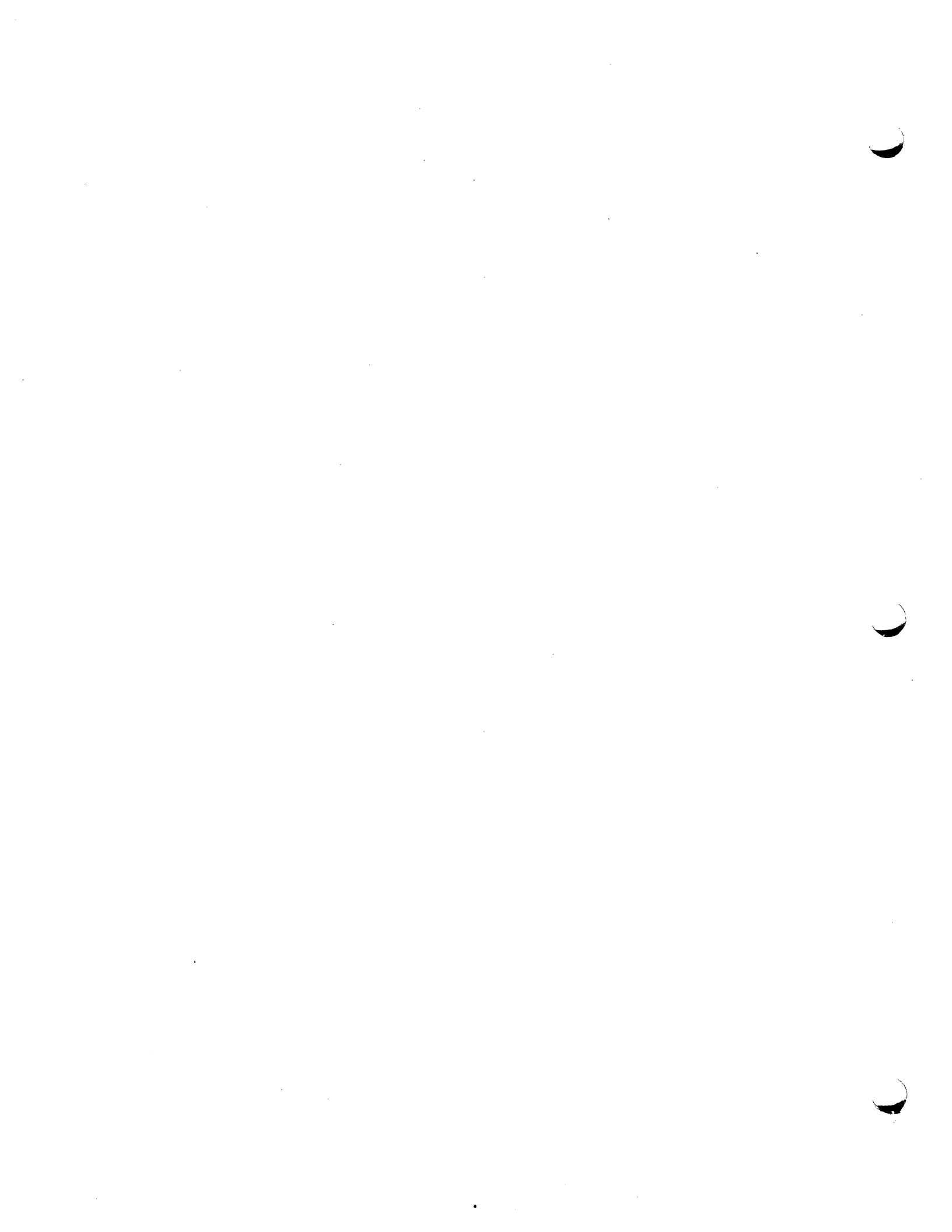
ix. Sealants used in the encapsulation shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

(b) Enclosure constitutes construction of a permanent (that is, for the life of the building), air-tight, impact-resistant, solid structure of new construction materials which must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent these materials from casual contact during future maintenance operations. The enclosure shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

1. 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 enclosure work. The following procedures shall be adhered to:

i. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in

the area shall be moved to ensure that the enclosure will not have to be reopened later for routine or emergency maintenance. If for any reason, lights or other equipment cannot be moved, removal of the asbestos-containing materials rather than enclosure shall be the appropriate control method to use;



15. Wet the donut-shaped pieces of wettable cloth over the exposed ends of insulation remaining on the pipe.

16. Remove the wetting agent wand from the wetting agent sleeve and attach the small nozzle from the HEPA-filtered vacuum. Turn on the vacuum only briefly to collapse the bag.

17. Remove the vacuum nozzle and twist the wetting agent sleeve closed and seal with duct tape.

18. Remove all the tools and draw them out into one of the arm sleeves, twist the sleeve tightly, and seal with tape, and cut the sleeve away from the bag, cutting through the tape. In this manner, the contaminated tools may be placed directly into the next glovebag without being cleaned. Alternatively, the sleeve with the tools in it can be placed in a bucket of water, opened underwater and dried without releasing asbestos into the air. This water shall be handled as asbestos-contaminated waste. Rags and scrub brushes cannot be cleaned in this manner and should be discarded with the asbestos-contaminated waste. No more than one use of a glovebag shall be permitted.

19. With removed insulation in the bottom of the bag, twist the bag several times and tape it to keep the material in the bottom during removal of the glovebag from the pipe.

20. Slip a six mil disposal bag over the glovebag (still attached to the pipe). Remove the tape and open the top of the glovebag and fold it down into the disposal bag.

21. All surfaces in the work area should be cleaned using disposable cloths wetted with wetting agent. These cloths shall be disposed of or rinsed thoroughly to eliminate visible accumulation of debris. Then, when these surfaces have been allowed to dry, all surfaces shall be cleaned again using a HEPA filtered vacuum. If no mini-enclosure was built, then the entire room shall be cleaned.

22. Place any contaminated articles or debris into the bag with the waste.

23. Twist the top of the bag closed, fold this over, and seal with duct tape. Label the bag with labels prescribed by 40 CFR Part 61, Subpart M of the USEPA, 29 CFR 1926 of OSHA and 49 CFR—Parts 100–199 of the US DOT Hazardous Waste Hauling regulations.

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

25. Air sampling shall be conducted after completion of glovebag projects pursuant to N.J.A.C. 5:23-8.21 to determine if undetected leakage occurred. Once the area has been found to be safe for re-entry by unprotected personnel, the barriers may be removed.

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.1989 d.342, effective July 3, 1989.

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

Recodified old 8.13 as new 8.14. Section 8.14 was formerly "Disposal of asbestos waste."

In (b)1: changed "are required to" perform to "shall" perform and changed "and" assist to "or" assist.

In (d)1: added text to specify removal procedures.

In (d)5: added text regarding the handling of the glove bag.

In (d)24: changed "8.14" to "8.15".

Recodified from 5:23-8.14 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, "Coordination with other permits", recodified as 5:23-8.6.

5:23-8.18 Demolition

(a) In buildings undergoing partial demolition and in buildings to be reoccupied by persons other than workers wearing appropriate NIOSH-approved respiratory protection, all friable asbestos or asbestos-containing material that will become friable during demolition must be properly removed.

(b) The removal of asbestos shall require a construction permit in accordance with N.J.A.C. 5:23-8.5. Additionally, a demolition permit must be obtained pursuant to N.J.A.C. 5:23-2.

(c) Asbestos abatement shall be done in accordance with all applicable provisions of this subchapter.

(d) Air monitoring samples during the removal phase and final air samples after removal shall be required for an asbestos abatement project.

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).

(e) substantially amended and results of .02 fibers change to .020.

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 8.21 as new 8.22.

In (a): added "Friable" to describe asbestos.

In (a)1i.: added text to specify accreditation requirements for asbestos hazard assessors.

Deleted old (c)1ii(1)-(4) regarding plans and specifications, added new (1) and recodified (5) and (6) as new (2) and (3), with no change in text.

Changed throughout "administrative authority having jurisdiction" to "asbestos safety control monitor".

In (e)1: changed "0.2 fibers/cc" from "0.20" and added "by phase contrast microscopy (PCM)".

Recodified from 5:23-8.22 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 safety control monitor", recodified as 5:23-8.11.

5:23-8.19 Abatement in occupied buildings

(a) The requirements of this section are intended to prevent contamination and exposure of building occupants to asbestos fibers.

(b) The building owner shall notify building occupants in writing 20 business days prior to the commencement of an asbestos abatement project. The building owner shall outline in writing any procedures and/or precautions that are

deemed necessary in order to protect the health, safety and welfare of the occupants. This notification shall include, but not be limited to: relocation plans, if any; entrances and exits that may temporarily be blocked and alternate routes to be used; the name and telephone number of the owner's representative for the occupant to call in case of an emergency or to answer any questions with regard to the project. This notification shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency.

1. This notification shall be posted seven days prior to the preparation of the work area, in visible locations, for the benefit of the affected occupants of the work place, and in areas immediately adjacent to the asbestos abatement project. It shall be the owner's responsibility to ensure that these postings are maintained throughout the project.

2. When circumstances require immediate removal of asbestos-containing material, notification shall be provided to the building occupants as soon as possible.

3. Nothing in this section shall be interpreted as prohibiting the building owner from providing additional notification.

4. The asbestos safety control monitor firm shall notify the Department in writing 10 days prior to the commencement of an abatement project in an occupied building.

(c) A building or structure or part thereof may be occupied during an asbestos abatement project when all of the following conditions are met:

1. Isolation conditions include a requirement that the work area be physically separated from occupied areas by separation barriers of rigid construction consisting of nominal two inch by four inch studs spaced 16 inches on center and covered with a minimum of one-half inch plywood or comparable metal framing and ½ inch gypsum board covering. All seams shall be caulked to render the barrier air tight before two layers of polyethylene sheeting are applied on both sides. The polyethylene sheeting shall overlap at the seams. All penetrations around conduits, pipes, ducts or other openings between the work area and adjacent spaces shall be sealed, using materials determined to be suitable in accordance with the applicable subcode. In buildings required by the Uniform Construction Code to be of noncombustible construction, all materials used to construct separation barriers shall meet the Uniform Construction Code, building subcode requirements for that building and all plastics used shall be flame resistant. A separate means of egress for abatement personnel, materials and equipment shall be maintained. Adequate fire evacuation routes shall exist for all building occupants at all times.

i. Whenever the building in which this work area is located exceeds four stories in height and when stair, elevator or similar shafts lie within or adjacent to the separation barriers or the work area, then special seals shall be installed. Such seals shall be constructed in the same manner as the separation barriers and shall create a space not less than three inches in depth in front of the entire access area which space is sealed on both sides and positively pressurized with HEPA filtered air so that the pressure in the sealed space is .05 inches w.c. greater than that in the work area or the shaft.

ii. All HVAC systems located in the work area shall be shut down. If HVAC equipment is located in the work area and must be operated to service other areas of the building, then the HVAC equipment shall be isolated from the remainder of the work area by an enclosure constructed in a manner similar to the separation barriers and the space between the equipment and the seal shall be positively pressurized with HEPA filtered air to at least .05 inches w.c. greater than the work area.

iii. Where return air ductwork which must be kept operating is located within the work area, then it shall be isolated from the work area by an enclosure forming an annular space around the duct which is positively pressurized with HEPA filtered air to at least .02 inches w.c. greater than the work area. The enclosure shall be constructed in a manner similar to that required for separation barriers.

iv. All electrical systems in the work area shall be shut down. Their use may be approved by the asbestos safety control monitor if they are properly protected by ground fault circuit interruptors, they are cleanable, and provided that such other precautions as may be necessary are taken to ensure the safety of all who are in the work area.

2. Engineering controls shall be implemented as follows:

i. The asbestos safety technician shall verify exhaust capacity through appropriate field measurement and record these results in writing. The verification of exhaust flow rate via use of devices for monitoring pressure drop across filters on air filtration devices shall not be a substitute for appropriate field measurement. All exhaust from the work area shall be directed to the exterior of the building. If exhaust to the exterior of the building is not feasible, exhaust from the work area shall be directed into a second set of in-line air filtration devices, which, then, shall be permitted to be discharged into designated spaces approved by the asbestos safety control monitor.

5:23-12.8 Alterations, replacements, damages, increases in size, changes in use group, minor work, ordinary repairs

(a) In complying with this chapter, calculations concerning alterations, replacements, damages, increases in size and changes in use group, in N.J.A.C. 5:23-2, shall be performed using data for entire structures. The alteration provisions applicable to the whole structure and/or calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

(b) For purposes of this subchapter, alteration of an elevator device means any change to equipment other than minor work and ordinary repair, as defined in N.J.A.C. 5:23-2.17A and 5:23-9.3. When work that includes the alteration of an elevator device has a total cost of less than 50 percent of the physical value of the building, the alteration of the elevator device shall comply only with the applicable requirements of Part XII (Alterations, Repairs, Replacements and Maintenance) of the most recent edition of ASME A17.1 referenced in the building subcode.

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).
See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

5:23-12.9 Certificate of compliance requirements

(a) A device shall be granted a certificate of compliance by the construction official for the time period specified based upon N.J.A.C. 5:23-12.3. No device shall be operated unless a valid certificate of compliance has been issued except for the initial period after work under a permit has been completed as per (f) below. Any violation shall be corrected before a new certificate of compliance may be issued.

(b) A temporary certificate of compliance may be issued by the construction official for a device in order to keep the device in operation on which work, as a result of violations, is being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days, even if the device is inspected on an annual basis.

(c) The elevator subcode official shall provide written notice to the construction official whenever a temporary certificate of compliance or certificate of compliance is granted by the construction official.

(d) No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1992 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12.4, except elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. Elevator devices wholly within R-2 residences, not accessible to the general public shall also be exempt.

(e) No certificate of compliance or temporary certificate of compliance shall be issued for any elevator device, as required by this section, which has been approved to operate during the initial period, after a permit, in accordance with (f) below if the device has not been registered pursuant to this subchapter by its first routine inspection, even if a certificate of occupancy, temporary certificate of occupancy or certificate of approval has been issued.

(f) Except as otherwise provided in (e) above, a new device or an existing device which has had work done under a permit shall be issued a certificate of compliance upon the first cyclical inspection based on the following:

1. A device has been approved following the inspection and witnessing of an acceptance test, as required by N.J.A.C. 5:23-12.2, by the application of an Inspection Sticker Approval for Elevator and a recommendation by the elevator subcode official on an Elevator Subcode Technical Section form for a certificate of occupancy or approval, as the case may be.

i. The date of the approval shall begin the cycle of inspections and tests for new devices in a new building and for new devices in an existing building which did not have elevator devices previously.

ii. The date of the approval of an existing device in an existing building shall not change the device's existing cycle of inspections and tests. The cycle shall remain consistent with the inspection cycle in the building, except the device shall not be subject to the five year test before it is due as long as the acceptance test performed under the permit was a full five year test.

2. A device has been approved following the inspection process, as required for minor work by N.J.A.C. 5:23-2.17A(d)2 and 12.2, by the application of an Inspection Sticker Approval for Elevator and a recommendation by the elevator subcode official on an Elevator Subcode Technical Section form for a certificate of approval.

i. The device may operate under the approval given under the permit until the next cyclical inspection, as determined by the inspection cycle of the building, and then shall be subject to a routine or periodic inspection the same as all other elevator devices in the building.

New Rule, R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).

See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

5:23-12.10 Inspections in seasonal facilities

(a) For purposes of this subchapter, a "seasonal facility" is defined as a building that is open, and available for use by members of the public, employees or maintenance personnel or any occupants, for a period of not more than 184

consecutive days and is then closed and not available for such use for at least 181 consecutive days.

(b) Elevator devices in seasonal facilities shall be subject only to the applicable periodic inspections and tests (one, three and five year). Such inspections and tests shall be performed prior to the building being used by employees, maintenance personnel, members of the public or occupants. A certificate of compliance or temporary certificate of compliance shall be granted only for the time period during which the device is allowed to operate in the seasonal facility.

1. The fees for performing such inspections and witnessing tests shall be in accordance with such provisions of N.J.A.C. 5:23-12.6 as may be applicable.

(c) An owner of a building with one or more elevator devices may obtain classification of the building as a "seasonal facility" from the local enforcing agency. A request for such classification shall contain the information in (d) below and shall be signed by the owner.

(d) An application for classification of a building as a seasonal facility shall include the following information:

1. The owner's name and address, the building address, the registration number, the device identification number(s), and the date of the last inspection;

2. That the total number of consecutive calendar days per year when the building is in use by the public, employees, maintenance personnel or occupants does not exceed 184 days and that the building is then closed for such use for at least 181 consecutive calendar days;

3. That the elevator devices in the building are not accessible to members of the public, employees, maintenance personnel or building occupants during the time in which the building is closed; and

4. That the disconnects located in elevator device machine rooms and machinery spaces are, during the time in which the building is closed, in the "off" position and locked; and that the access to the keys is secured.

(e) The seasonal facility classification shall become invalid when the conditions of the classification are no longer met. The owner shall immediately notify the enforcing agency of any change in the conditions upon which the approval of classification as a seasonal facility was based.

1. Classification of a building as a seasonal facility shall not be renewed if the classification became invalid as a result of a violation of any conditions of the approval of the classification.

(f) During the period of time in which any device in seasonal facility is in operation, it shall be subject to all applicable code requirements in the same manner as any other device subject to this subchapter.

New Rule, 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).

5:23-12.11 Notice concerning accidents

(a) The construction official shall notify the Department about those accidents involving elevator devices (reported to the enforcing agency as required by the building subcode) that involve either death or personal injury requiring medical treatment by a physician other than first aid or damage to the elevator device that was either a result or cause of the accident and which affects the future safe operation of the device. For purposes of this section, "first aid" means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters or contusions, or a diagnostic procedure, including examination and x-rays, which does not indicate any need for further medical treatment. First aid may be performed by licensed medical personnel or by other persons.

1. The construction official shall notify the Elevator Safety Unit about any accident within five working days after the accident is reported to the enforcing agency, except that accidents involving devices under the Department's jurisdiction shall be reported as soon as possible, but not later than the end of the next business day after an accident is reported to the construction official.

2. Within five working days after an accident involving a device not under the Department's jurisdiction is reported to the enforcing agency, a copy of the Accident/Incident Report form and all attachments, as indicated in the form, shall be forwarded to the Elevator Safety Unit by the construction official.

3. When a special inspection is performed by a person other than the Elevator Safety Unit subcode official, a copy of the Inspection Report shall be forwarded to the Elevator Safety Unit within five working days after the date of the special inspection.

New Rule, R.1997 d.64, effective February 18, 1997 (operative May 19, 1997).

See: 28 N.J.R. 4695(a), 29 N.J.R. 550(a).