

“HEPA vacuum needle gun” means a needle gun that removes paint by the force of metal needles rapidly pounding against the painted surface attached to a vacuum where all exhaust air is passed through a HEPA filter.

“Inspector/risk assessor” means a person certified by the New Jersey Department of Health as such.

“Lead abatement” means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

“Lead abatement clearance certificate” means the certificate issued by the construction official pursuant to N.J.A.C. 5:23-2.23(m) at the end of a lead abatement project.

“Lead evaluation” means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards found and recommendations for abatement.

“Lead screening” means an abbreviated lead-based paint hazard evaluation which may be appropriate for buildings constructed before 1978 that are in good condition.

“Lead-based paint” means paint or other surface coating material that contains lead equal to or greater than 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight.

“Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces that would result in adverse human health effects.

“ μg ” means micrograms of lead per.

“N.J.A.C.” means the New Jersey Administrative Code.

“N.L.L.A.P.” means the U.S. Environmental Protection Agency National Lead Laboratory Accreditation Program.

“Owner” means building owner or his agent. In the case of evaluation and testing services, “owner” shall include the client of the evaluation firm if other than the owner.

“Patch test” means a field test procedure in which a small area of the existing lead-based paint film is prepared and the encapsulant product is applied or installed and cured in the manner intended for the large-scale job and then tested to determine adhesion and surface integrity.

“Plastic sheeting” means a minimum of six mil thick polyethylene (plastic) sheeting unless the text specifies otherwise.

“Superstructure” means a large steel or other industrial structure, such as a bridge or water tower, which contains no habitable space. It is synonymous with “industrial steel structure.”

“Surface” means an area such as an interior or exterior wall, ceiling, floor, door, door frame, window sill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

“UCC” means the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

“Window” means the entire window system, including the sash, the stop and parting beads, and the window jambs.

“Window well” means the window trough. It is also synonymous with window stool, defined in ASTM Standards E1605-94 as flat, horizontal molding fitted over the sill, on the window interior, between jambs, that comes in contact with the bottom rail of the (lower) operating sash and the window sill.

“XRF” means x-ray fluorescence, a radiological method of in-place testing for the presence of lead-based paint on surfaces.

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

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

Added “Commercial building” and “Superstructure”.

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

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

Inserted “Child occupied facility” and “Clearance technician”.

5:17-1.3 Resource materials

Additional information on evaluating and abating lead hazards may be obtained from the following sources: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; The National Center for Lead-Safe Housing, 10227 Wincopin Circle, Suite 205, Columbia, Maryland 21044, (410) 992-0712; The National Institute of Building Sciences, 1201 L Street, NW, Suite 400, Washington, DC 20005-4024, (202) 289-7800; and the Steel Structures Painting Council, The Crane Building, 40 24th Street, 6th Floor, Pittsburgh, Pennsylvania 15222.

SUBCHAPTER 2. CONTRACTOR CERTIFICATION

5:17-2.1 Certification required

(a) Effective January 1, 1996, no individual, partnership, corporation or other business entity shall engage in either the business of lead evaluation or the business of lead abatement, unless certified by the Department in accordance with section 15 of P.L. 1993, c.288 (N.J.S.A. 52:27D-428) and these rules.

1. For lead abatement jobs performed on superstructures where public bidding procedures are applicable, projects with an advertisement date that precedes September 24, 1997 may proceed without a certified lead abatement contractor.

(b) Any individual, corporation, partnership or other business entity seeking certification in accordance with these rules shall either be certified or shall employ individuals certified by the Department of Health in accordance with section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) (see N.J.A.C. 8:62) and shall designate a person, certified as a lead abatement supervisor by the Department of Health, at each job site to be responsible for ensuring compliance with the requirements of P.L. 1993, c.288 and of these rules.

(c) Contractor certification shall not be required for the following individuals or activities:

1. An owner undertaking work on his or her own premises using his or her own employees, provided that those employees are certified by the Department of Health;

2. A homeowner performing lead abatement work himself or herself on a dwelling unit that he or she owns and occupies as a primary place of residence;

3. Any business firm engaging in painting, woodwork-ing, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, provided that the firm does not hold itself out as certified by the Department or otherwise represent that it has specialized competency to perform lead evaluation or abatement work; or

4. A person with proof that he or she has completed a State-approved or HUD-sponsored training class to be a "clearance technician," when that person is taking a dust wipe sample in the work area following renovation, remodeling, repair or maintenance work; provided, however, that the activities that may be performed without evaluation contractor certification shall be limited to performing dust wipe sampling in the work area and providing a report with the results of the dust wipe analysis. A clearance technician is not qualified to perform evaluation, and is not qualified to perform clearance after a lead abatement, unless the clearance technician is employed by a certified evaluation contractor.

(d) A corporation, partnership or other business entity may be denied certification if any stockholder, director, officer, partner or other person having an economic interest in the organization shall have violated any of the provisions of these rules or been denied certification for cause. This provision shall also apply to any business organization having a parent or subsidiary relationship to any such business organization.

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

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

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

Added (a)1.

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

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

In (c), added 4.

5:17-2.2 Conflict of interest

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

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

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

(b) Any relationship between the individuals or business firm performing lead evaluation services and the individuals or business firm performing lead abatement services at a job site shall be disclosed to the owner in writing.

(c) Except as otherwise provided in paragraph (a)2 above, nothing contained in this section shall be deemed to prevent a business firm from offering both evaluation and abatement services provided that the disclosure required in (b) above is made for any job where that firm performs both evaluation and abatement.

5:17-2.3 Application for certification

(a) Every application for certification as either a lead evaluation contractor or a lead abatement contractor, or both, shall be made on the appropriate form prescribed by the Commissioner and shall be accompanied by a nonreturnable fee of \$1,500. In the case of firms seeking certification to perform both evaluation and abatement work, two fees shall be paid. The certification may be issued in, and the application fee paid in, six month increments. Certification for one six month period carries a fee of \$375.00.

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

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

1. The full name and address of the business. In the case of a corporation, the name entered on the application shall be the same as that registered with the Secretary of State. In all cases, the address entered on the application shall be the street number, street name, municipality, the post office serving the property, if different from the municipality, and the zip code, of the location of the primary office of the applicant's business organization. In no case shall the address be only the address of an agent or only a post office box. It shall, in all cases, be the address at which the proprietor, or the designated representative of the business organization who is certified by the Department of Health in accordance with section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) and is responsible for compliance with P.L. 1993, c.288 can usually be found;



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

3. The business organization's telephone number;

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

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

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

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

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

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

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

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

(c) Each applicant for certification shall disclose in the application any relationship with any other business organization engaged in lead evaluation and/or lead abatement or

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

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

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

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

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

Added (a)1.

5:17-2.4 Issuance of certification

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

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

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

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

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

(d) A certification may be renewed for additional two year periods. Applications for renewal shall be made upon forms provided by the Commissioner, shall be accompanied by a fee of \$1,500 and shall be subject to the same conditions as an original application.

1. Applications for recertification may be made during the 90 day period before the certification expiration date or the 90 day period after the certification expiration date; except that if a business firm applies after the certification expiration date, the firm shall not perform

any services for which certification is required until the certification is renewed. If a certification has expired for more than 90 days, the business firm shall be required to obtain a new certification.

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

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

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

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

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

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

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

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

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

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

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

(c) Denial of, suspension of, imposition of conditions upon, revocation of, or refusal to renew a certification shall not limit the Department from pursuing against the applicant or certificate holder any other lawful remedy available to the Department.

(d) A business firm whose certification has been revoked shall be ineligible to apply for certification for three years from the date of revocation. This ineligibility shall extend to any other business firm having any proprietor, officer, director, general partner, or shareholder or limited partner with at least a 10 percent interest in common with the business firm whose certification was revoked.

(e) Pursuant to Section 24 of P.L. 1993, c.288, the Department of Community Affairs will delegate to the Department of Labor, through a Memorandum of Understanding to be entered into between the Departments, enforcement authority over business firms performing lead hazard abatement in buildings or structures that do not contain dwelling units. Interfering with the Department of Labor in the exercise of its enforcement authority under this agreement or failing to comply with any order issued by the Department of Labor under this agreement shall be deemed to be grounds for denial, suspension, imposition of conditions upon or revocation of certification as described in (a) above.

5:17-2.6 Civil penalties

(a) No person shall, either knowingly or purposely:

1. Obstruct, hinder, delay or interfere by force or otherwise with the Department in the exercise of any power or the discharge of any function or duty pursuant to the provisions of sections 14 through 24 of P.L. 1993, c.288;

2. Prepare, utter or render any false statement, report, document, plan or specification permitted or required pursuant to sections 14 through 24 of P.L. 1993, c.288; or

3. Refuse or fail to comply with a ruling, action, order or notice of the Commissioner pursuant to sections 14 through 24 of P.L. 1993, c.288.

(b) Any person who shall violate any provision of (a) above shall be subject to a civil penalty not exceeding \$1,000 for the first offense and not exceeding \$5,000 for each subsequent offense. If the violation is of a continuing nature, each day that it continues shall constitute an additional and separate violation.