

**CHAPTER 122****CUTTING AND GRINDING OF MASONRY****Authority**

N.J.S.A. 34:1A-3, 34:5-169 and 34:5-182.

**Source and Effective Date**

R.2006 d.362, effective October 2, 2006.  
See: 37 N.J.R. 4871(a), 38 N.J.R. 4229(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 122, Cutting and Grinding of Masonry, expires on October 2, 2013. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Unless otherwise expressly noted all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 34:1-1 et seq. and were filed and became effective prior to September 1, 1969. This chapter was repealed pursuant to authority of N.J.S.A. 34:6A-20 and such repeal was filed and became effective June 7, 1974, as R.1974 d.136. See: 6 N.J.R. 267(a).

Chapter 122, Cutting and Grinding of Masonry, was adopted as new rules by R.2006 d.362, effective October 2, 2006. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS****12:122-1.1 Purpose**

The purpose of this chapter is to protect the health and safety of employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

**12:122-1.2 Scope**

This chapter shall apply to employers and employees as those terms are defined within N.J.A.C. 12:122-1.3.

**12:122-1.3 Definitions**

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

“Commissioner” means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

“Complete respiratory program” means a “respiratory protection program” as that term is defined within 29 CFR §1910.134, incorporated herein by reference, as amended and supplemented.

“Compliance Officer” means the person authorized by the Commissioner of the New Jersey Department of Labor and Workforce Development to conduct safety inspections under this chapter.

“Department” means the New Jersey Department of Labor and Workforce Development.

“Employee” or “worker” means any person suffered or permitted to work by an employer, having a specific regard to any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

“Employer” means any corporation, partnership, individual proprietorship, joint venture, firm, company or other similar legal entity engaged in any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

“Establishment” means a single physical location where business is conducted or where services or operations are performed, such as a regional office, area office, installation or facility.

“Field site” means a physical location where an employer performs services or operations, but does not maintain an office or facility.

“First aid” means any one-time treatment and any follow-up visit for the purpose of observation of minor wounds, scratches, cuts, burns or splinters, which do not ordinarily require medical treatment. Such a one-time treatment and follow-up visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

“Full face respirator” means a negative pressure respirator or a powered air-purifying respirator (PAPR) with a tight fitting full facepiece.

“High efficiency particulate air filter” means a filter that is at least 99.97 percent efficient in removing monodisperse particles of 0.3 micrometers in diameter. The equivalent National Institute for Occupational Safety and Health (NIOSH) 42 CFR §84 particulate filters are the N100, R100, and P100 filters.

“Inspection” means any on-site visit of an employer’s establishment or field site to ensure that employers are in compliance with this chapter.

“Medical treatment” includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

“Negative pressure respirator” means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

“Other than serious” means a hazard, violation or condition which cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate impact on an employee’s safety or health.

“Powered air-purifying respirator” (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

“Serious injury” or “serious physical harm” means any occupational injury or illness which requires treatment beyond first aid.

“Tight-fitting” means a respiratory inlet covering that forms a complete seal with the face.

## SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

### 12:122-2.1 Cutting and grinding of masonry

(a) Employers shall not engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, unless the employer has first determined in a manner consistent with 29 U.S.C. §651 et seq. (the Federal Occupational Safety and Health Act of 1970), that the use of water in the cutting or grinding is not feasible.

(b) Where the employer has determined under (a) above that the use of water in the cutting or grinding is not feasible, the employer may engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, only where the employer meets all of the following requirements:

1. The employer shall use engineering and work practice controls to control the dust, such as a vacuum with a high efficiency particulate air filter, or other dust control systems;

2. Any dry cutting which occurs shall be done in a designated area away from craftworkers, if possible; and

3. The employer shall provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing in order to ensure that the workers are able to wear the respirators.

## SUBCHAPTER 3. INSPECTIONS AND ORDERS TO CEASE

### 12:122-3.1 Right to enter and inspect

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of this chapter has occurred or is occurring and to conduct such investigations as the Compliance Officer shall deem to be necessary.

(b) Employers shall permit the Compliance Officer to inspect within the establishment or field site all pertinent conditions, structures, machines, apparatus, devices, equipment and materials.

(c) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records relating to the requirements in N.J.A.C. 12:122-2.1.

### 12:122-3.2 Orders to cease

(a) If, upon inspection of an establishment or field site, the Commissioner discovers a condition which exists in violation of the provisions of this chapter, he or she shall be authorized to order such violation to cease.

(b) Orders to cease shall:

1. State with specificity the nature of the cited violation(s) of the provisions of this chapter; and

2. Provide a reasonable, specified time within which the required remedial action shall be taken by the person responsible, if applicable.

(c) If the Commissioner’s order is not obeyed, the Commissioner may apply for an injunction in the Superior Court of New Jersey to compel compliance.

(d) Nothing in this chapter shall prevent the Commissioner from prosecuting any violation of the chapter, notwithstanding that the violation is corrected in accordance with the Order.

## SUBCHAPTER 4. PENALTIES AND HEARINGS

**12:122-4.1 Penalties**

(a) Any violations of any of the provisions of this chapter shall be punishable by a monetary penalty of up to \$500.00.

(b) If a violation is of a continuing nature, each day during which the violation continues shall constitute an additional and distinct offense.

(c) Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) The Commissioner may compromise and settle any claim for penalties under this section in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provisions of the chapter by the person cited;
2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the chapter;
3. Whether the violation was willful in nature; and
4. Whether the violation resulted in injury or bodily harm.

**12:122-4.2 Hearings**

(a) No penalty shall be levied pursuant to N.J.A.C. 12:122-4.1 unless the alleged violator is provided with:

1. Notification of the violation;

2. Notification of the amount of the penalty to be imposed; and

3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received by the Commissioner within 21 calendar days following the employer's receipt of the notice of violation.

(c) All hearings shall be conducted 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.

(d) If a hearing is not requested within the 21-day time limit set forth in (b) above, the notice of violation shall become a final order of the Commissioner.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the date upon which the Department receives the request for a formal hearing.

(f) If a settlement is not agreed upon, or no settlement conference is scheduled, a request for a formal hearing shall be transmitted to the Office of Administrative Law.

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification of violation becomes a final decision as the result of no appeal having been filed by the violator.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.