

In (i), deleted inspections of sprinkler systems, hazardous uses and places of assembly.

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

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

Potentially hazardous equipment approvals time-limited at (i); elevator requirements added at (j).

Amended by R.1992 d.147, effective April 6, 1992.

See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.

Amended by R.1993 d.421, effective September 7, 1993.

See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

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.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

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 (j).

Law Review and Journal Commentaries

Arbitration—Condominiums—Consumer Fraud Act. Steven P. Bann, 137 N.J.L.J. No. 2, 65 (1994).

Attorneys fees—Condominiums—Damages—DCA—PREDFDA. 132 N.J.L.J. No. 9, 45 (1992).

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

Condominium vendor committed unconscionable practice within scope of Consumer Fraud Act. *Cybul v. Atrium Palace Syndicate*, 272 N.J.Super. 330, 639 A.2d 1146 (A.D.1994), certification denied 137 N.J. 311, 645 A.2d 140.

Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate*, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).

Purchasers were entitled to return of deposit for failure of vendors to timely perform. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Not substantially complete condominium unit could not be occupied. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D. 1991), certification denied 126 N.J. 338, 598 A.2d 895.

Certificates of occupancy cannot bar occupancy. *Department of Community Affairs, Div. of Housing and Department v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Developer's failure to timely issue temporary certificate of occupancy (TCO) required refund of purchasers' deposits. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 244 N.J.Super. 329, 582 A.2d 821 (A.D.1990), certification denied 126 N.J. 317, 598 A.2d 878.

Building does not qualify for property tax exemption if certificate of occupancy issued after assessment date; use of building for exempt purposes prior to issuance of certificate irrelevant to exemption issue (citing former N.J.A.C. 5:23-2.7). *Grace & Peace Fellowship Church, Inc. v. Cranford Twp.*, 4 N.J.Tax 391 (Tax Ct.1982).

5:23-2.24 Conditions of certificate of occupancy

(a) Certificate of occupancy shall be conditioned upon the following:

1. That the completed project meets the conditions of the construction permit, the approved drawings including all amendments, and all prior approvals;
2. That all required fees have been paid in full;
3. That all necessary inspections have been completed and that the completed project meets the requirements of the regulations;
4. That all violations have been corrected and that any assessed penalties have been paid;
5. That all protective devices and equipment required to be installed by the regulations will continue to be operational as required by the regulations.

(b) No certificate of occupancy shall be issued for any new home, built by a builder, as such terms are defined in N.J.A.C. 5:25-1.3, except after filing by the builder with the construction official of proof that the new home has been enrolled in either the State New Home Warranty Security Plan or a private plan approved by the Department of Community Affairs. If the new home is enrolled in the State New Home Warranty Security Plan, proof shall be in the form of a validated copy of the Certificate of Participation, required pursuant to N.J.A.C. 5:25-5.5, and proof of payment of the warranty premium.

(c) No certificate of occupancy shall be issued for any new home built by an owner or in which any design, construction, plumbing or electrical work has been done by the owner unless the owner shall file with the construction official an affidavit in which he certifies that all work has been done in conformity with applicable law, acknowledges that work done by him or by any subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act (N.J.S.A. 46:3B-1 et seq.) and states that he will disclose this to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy. The affidavit shall be filed on a form prescribed by the Department of Community Affairs.

(d) No certificate of occupancy shall be issued for any building used or intended to be used as a rooming house or a boarding house, as such terms are defined in section 3 of the Rooming and Boarding House Act of 1979 (P.L. 1979, c.496; N.J.S.A. 55:13B-1 et seq.), except after filing by the owner with the construction official of a photocopy of a license to own a rooming or boarding house issued to the owner by the Department of Community Affairs.

(e) No certificate of occupancy shall be issued for a hotel or multiple dwelling, as defined in the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.), except after filing by the owner with the construction official of a photocopy of

a certificate of registration issued by the Bureau of Housing Inspection of the Department of Community Affairs.

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless all of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.

(g) No certificate of occupancy shall be required in the case of minor work as provided for by N.J.A.C. 5:23-2.17A.

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Text added at (f).

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).

Case Notes

Citation to former N.J.A.C. 5:23-2.7; municipal requirement for payment of property taxes before permit issuance 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).

5:23-2.25 Establishment of fees

The municipality in accordance with this chapter shall by ordinance establish enforcing agency fees for the following activities: plan review; construction permit; certificate of occupancy; elevator device inspections and tests and certificate of compliance; certificate of approval; demolition permit; moving of buildings permit; lead abatement clearance certificate; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

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

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

Elevator activities added.

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

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

Administrative correction.

See: 29 N.J.R. 2267(a).

Case Notes

Citation to former N.J.A.C. 5:23-4.8 fee standards; municipal requirement for payment of property taxes before permit issuance 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).

5:23-2.26 Plan review fees

Twenty percent of the construction permit fee shall be deemed to be the plan review fee. When a department plan review fee has been collected pursuant to the regulations or when a plan review is waived, then the enforcing agency construction permit fee shall be reduced by 20 percent from the amount otherwise specified in the municipal enforcing agency fee schedule.

5:23-2.27 Refunds

In the case of discontinuance of a building project, the volume of the work actually completed shall be computed. Any excess for the uncompleted work shall be returned to the permit holder; except that all penalties that may have been imposed on the permit holder under the requirements of the regulations shall first be collected. Plan review fees are not refundable.

5:23-2.28 Volume computation

(a) General: For the determination of the permit fees, the volume of the structure shall be computed as provided in this section.

(b) Structures with basements: The volume of the structure shall include all enclosed dormers, porches, penthouses and other enclosed portions of the structure extending from the basement or cellar floor to the mean height of a pitched roof, or the average height of the top of the roof beams of a flat roof.

(c) Structures without basements: For structures without basements or cellars, the volume shall be based on the height measured to a level located one-fifth the distance from the first floor level to the bottom of the footings, but not to exceed 2½ feet below the first floor level.

(d) Open sheds: For open sheds and structures of a similar character, the volume shall be measured within the perimeter of the roof for a height from the grade line to the mean roof level.

(e) No fee shall be required for premanufactured construction, assembly or components transported to a construction site. A fee shall be required for work performed at the site, including, but not limited to, foundation systems, structural installations and external utility connections.

(f) No fee shall be required for commercial farm buildings, or portions of, constructed of pre-engineered systems specified in N.J.A.C. 5:23-3.2(d)3. A fee shall be required, unless exempted, for commercial farm building work performed at the site.

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

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

(e) added.

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).

5:23-2.29 Entry

(a) The owner of any premises upon which a building or structure is to be constructed shall be deemed to have consented to inspection, by the enforcing agency, of the entire premises and of any and all construction being performed on it until a certificate of occupancy has been issued.

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 μ 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 μ 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 μ 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

Asbestos safety rules violated when asbestos-containing materials removed without wetting down. Contamination Control Engineering, Inc. v. Community Affairs Department, 96 N.J.A.R.2d (CAF) 25.

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;