

(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 or certificate of approval shall be issued for any building or project that includes a vapor delivery liquefied petroleum gas installation that is greater than 250 gallons, but not more than 2,000 gallons, except after filing by the owner with the construction official of a photocopy of a notice of LP gas installation filed, pursuant to N.J.A.C. 5:18-6.4(a), with the New Jersey Department of Community Affairs, Division of Codes and Standards, Bureau of Code Services, PO Box 816, Trenton, New Jersey 08625-0816.

(h) 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).

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

Added new (g); recodified former (g) as (h).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote (a)1.

Amended by R.2003 d.200, effective May 19, 2003.

See: 35 N.J.R. 7(a), 35 N.J.R. 2187(a).

In (g), amended the N.J.A.C. reference and substituted "Bureau of Code Services" for "Bureau of Boiler and Pressure Compliance".
Administrative correction.

See: 35 N.J.R. 3608(a).

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 establish by ordinance enforcing agency fees for the following activities: plan review; construction permits; certificate of occupancy; elevator device inspections and tests; demolition permit; moving of building permit; lead abatement clearance certificate; annual electrical inspection of swimming pools, spas and hot tubs; 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).

Administrative correction.

See: 29 N.J.R. 3721(a).

Deleted reference to certificate of compliance and certificate of approval.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Inserted a reference to annual electrical inspection of swimming pools, spas and hot tubs in the first sentence.

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 (Reserved)

Repealed by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Section was "Plan Review Fees".

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).

Ch. 18	Soil and Foundations	Building	Building
Ch. 19	Concrete	Building	Building
Ch. 20	Aluminum	Building	Building
Ch. 21	Masonry		
	2101-2110	Building	Building
	2111-2113	Building/Fire	Building
Ch. 22	Steel	Building	Building
Ch. 23	Wood	Building	Building
Ch. 24	Glass and Glazing	Building	Building
Ch. 25	Gypsum Board and Plaster	Building	Building
Ch. 26	Plastic		
	2601-2602	Building	Building
	2603	Building/Fire	Building
	2604	Building	Building
	2605-2607	Building/Fire	Building
	2608-2611	Building	Building
Ch. 28	Mechanical Systems	Building	Building
Ch. 30	Elevators and Conveying Systems		
	3001.1-3001.2	Building/Elevator	Elevator
	3001.3	Building/Fire/Elevator	Elevator
	3001.4	Building/Elevator	Elevator
	3002.1	Building/Fire/Elevator	Building
	3002.2	Building/Fire/Elevator	Elevator
	3002.3	Building/Elevator	Elevator
	3002.4	Building/Fire/Elevator	Elevator
	3002.5-3002.7	Building/Fire/Elevator	Elevator
	3003.1	Building/Electrical/Elevator	Elevator
	3003.2	Building/Fire/Elevator	Elevator
	3004.1-3004.4	Building/Fire/Elevator	Building
	3004.5	Building/Elevator	Elevator
	3005.1-3005.2	Building/Fire/Elevator	Elevator
	3005.2.1	Building/Fire/Elevator	Building
	3005.3-3005.4	Building/Fire	Building
	3006.1-3006.4	Building/Fire/Elevator	Building
	3006.5	Fire/Electrical/Elevator	Elevator
	3006.6	Building/Elevator	Elevator
Ch. 31	Special Construction		
	3101-3103.4	Building	Building
	3104.1-3104.11	Building/Fire	Building
	3105-3109.4	Building	Building
Ch. 32	Encroachments into the Public-Right-of-Way	Building	Building
Ch. 33	Safeguards during Construction		
	3301-3308	Building	Building
	3309	Building/Fire	Fire
	3310	Building	Building
	3311-3312	Building/Fire	Fire

2. Plumbing Subcode:

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
Ch. 1	Definitions	Plumbing	Plumbing
Ch. 2	General Regulations	Plumbing	Plumbing

Ch. 3	Materials	Plumbing	Plumbing
Ch. 4	Joints and Connections	Plumbing	Plumbing
Ch. 5	Traps, Cleanouts and Backwater Valves	Plumbing	Plumbing
Ch. 6	Interceptors	Plumbing	Plumbing
Ch. 7	Plumbing Fixtures, Fixture Fittings and Plumbing Appliances	Plumbing	Plumbing
Ch. 8	Hangers and Supports	Plumbing	Plumbing
Ch. 9	Indirect Waste Piping and Special Wastes	Plumbing	Plumbing
Ch. 10	Water Supply and Distribution	Plumbing	Plumbing
Ch. 11	Sanitary Drainage Systems	Plumbing	Plumbing
Ch. 12	Vents and Venting	Plumbing	Plumbing
Ch. 13	Storm Water Drainage	Plumbing	Plumbing
Ch. 14	Special Requirements for Health Care Facilities	Plumbing	Plumbing
Ch. 15	Tests and Maintenance	Plumbing	Plumbing
Ch. 16	Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewage Systems Are Not Available.	Plumbing	Plumbing
Ch. 17	Potable Water Supply Systems	Plumbing	Plumbing
Ch. 18	Mobile Home & Travel Trailer Park Plumbing Standards	Plumbing	Plumbing
Ap. B	Sizing the Building Water Supply System	Plumbing	Plumbing
Ap. C	Conversions: Customary Units to Metric	Plumbing	Plumbing
Ap. D	Determining the Minimum Number of Required Plumbing Fixtures	Plumbing	Plumbing
Ap. E	Special Design Plumbing Systems	Plumbing	Plumbing
Ap. F	Requirements of the Administrative Authority	Plumbing	Plumbing
Ap. G	Graywater Recycling Systems	Plumbing	Plumbing
Ap. H	Installation of Medical Gas and Vacuum Piping Systems	Plumbing	Plumbing
Ap. I	Fixture Unit Value Curves for Water Closets	Plumbing	Plumbing

3. Electrical Subcode:

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
Article 90	Introduction	Electrical	Electrical
Ch. 1	General	Electrical	Electrical
Ch. 2	Wiring and Protection		
	200.1-250.50	Electrical	Electrical
	250.52(A)1-2	Electrical	Electrical
	250.52(A)3	Electrical/Building	Building
	250.52(A)4-7	Electrical	Electrical
	250.52(B)-285.25	Electrical	Electrical
Ch. 3	Wiring Methods and Materials		
	300.1 to 300.20	Electrical	Electrical
	300.21	Electrical/Fire	Electrical
	300.22 to 384	Electrical	Electrical
Ch. 4	Equipment for General Use		
	400-450.28	Electrical	Electrical
	450.41-450.48	Electrical/Fire	Electrical
	455-490	Electrical	Electrical
Ch. 5	Special Occupancies	Electrical/Fire	Electrical
Ch. 6	Special Equipment		
	600-610	Electrical	Electrical
	620.1-620.12	Electrical/Elevator ¹	Elevator/Electrical ³
	620.13	Electrical/Elevator ¹	Electrical ² (on the line side of the disconnect) Elevator ² (on the load side of the disconnect) Electrical ³

	620.14-620.21	Electrical/Elevator ¹	Elevator/Electrical ³
	620.22	Electrical/Elevator ¹	Electrical ² (on the line side of the disconnect) Elevator ² (on the load side of the disconnect) Electrical ³
	620.23-620.24	Electrical/Elevator ¹	Electrical
	620.25-620.37	Electrical/Elevator ¹	Elevator/Electrical ³
	620.38	Electrical/Elevator ¹	Electrical
	620.41-620.44	Electrical/Elevator ¹	Elevator/Electrical ³
	620.51-620.51(a)	Electrical/Elevator ¹	Electrical
	620.51(b)-(d)	Electrical/Elevator ¹	Elevator/Electrical ³
	620.52	Electrical/Elevator ¹	Elevator/Electrical ³
	620.53-620.55	Electrical/Elevator ¹	Electrical ² (on the line side of the disconnect) Elevator ² (on the load side of the disconnect) Electrical ³
	620.61(a)-(b)	Electrical/Elevator ¹	Elevator/Electrical ³
	620.61(c)-(d)	Electrical/Elevator ¹	Electrical ² (on the line side of the disconnect) Elevator ² (on the load side of the disconnect) Electrical ³
	620.62-620.84	Electrical/Elevator ¹	Elevator/Electrical ³
	620.85 (except for cartop receptacle(s))	Electrical/Elevator ¹	Electrical Elevator ² (car top receptacle only)
	620.91(a) and (c)	Electrical/Elevator ¹	Elevator/Electrical ³
	620.91(b)	Electrical/Elevator ¹	Electrical
	625-692	Electrical	Electrical
	695	Electrical/Fire	Electrical
Ch. 7	Special Conditions		
	700-727	Electrical	Electrical
	760	Electric/Fire	Electrical
	770-780	Electrical	Electrical
Ch. 8	Communication Systems	Electrical	Electrical
Ch. 9	Tables	Electrical	Electrical
	N.J.A.C. 5:23-3.16(c) Automatic Rain Sensor Device	Electrical	Electrical

Note 1: Joint with Elevator Subcode Official for N.J.A.C. 5:23-12 devices not installed Group R-3, R-4, or R-5 or in structures of Group R-2 in which the elevator devices are wholly within dwelling units and are not accessible to the general public.

Note 2: The following sections are enforced by the Electrical inspector when devices covered by N.J.A.C. 5:23-12 are installed in any building excluding installations in R-3, R-4, or R-5 or in structures of Group R-2 where the elevator devices are located wholly within dwelling units and are not accessible to the general public.

Note 3: Inspection responsibility for this section shall be the electrical inspector when devices are installed in buildings of Group R-3, R-4 or Group R-5 or in buildings of Group R-2 where the elevator devices are located wholly within dwelling units and are not accessible to the general public.

4. Energy Subcode:

CABO Model Energy Code

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
Ch. 1	Administration and Enforcement	Building/Plumbing/Electrical (as applicable)	Building/Plumbing/Electrical (as applicable)
Ch. 3	Design Conditions	Building	Building
Ch. 4	Residential Building Design Systems Analysis and Design of Buildings Utilizing Renewable Energy Sources	Building	Building
Ch. 5	Residential Building Design by Component Performance Approach		
	502	Building	Building
	503	Building	Building
	504 (except 504.5)	Plumbing	Plumbing
	504.5	Electrical	Electrical
	505	Electrical	Electrical
Ch. 6	Residential Building Design by Acceptable Practice		
	602	Building	Building
	603	Building	Building
	604 (except 604.1.2.3)	Plumbing	Plumbing
	604.1.2.3	Electrical	Electrical
	605	Electrical	Electrical

ASHRAE Standard 90.1

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
Ch. 4	Administration and Enforcement	Building/Plumbing/Electrical (as applicable)	Building/Plumbing/Electrical (as applicable)
Ch. 5	Building Envelope	Building	Building
Ch. 6	Heating, Ventilating, and Air Conditioning		
	6.1-6.2.4.4	Building (as applicable)	Building (as applicable)
	6.2.4.5	Plumbing	Plumbing
	6.2.5-6.3.2.1	Building (as applicable)	Building (as applicable)
	6.3.2.2	Plumbing	Plumbing
	6.3.2.3-6.3.9	Building (as applicable)	Building (as applicable)
Ch. 7	Service Water Heating	Plumbing	Plumbing
Ch. 8	Power	Electrical (as applicable)	Electrical (as applicable)
Ch. 9	Lighting	Electrical	Electrical
Ch. 10	Other Equipment	Electrical	Electrical
Ch. 11	Energy Cost Budget Method	Building/Plumbing/Electrical (as applicable)	Building/Plumbing/Electrical (as applicable)

5. Mechanical Subcode:

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
Ch. 3	General Regulations		
	301	Building/Fire	Building
	302	Building	Building
	303	Fire	Fire
	304	Fire	Fire
	305	Plumbing	Plumbing
	306	Fire	Fire

In (b)2, changed Chapter 21 and Chapter 31 through 33 references in the Building Subcode, and inserted Chapter 12 reference in the Mechanical Subcode; and in (d)2, deleted a former Chapter 21 reference in the Building Subcode, and changed Chapter 12 reference in the Mechanical Subcode.

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

In (b)1 and (b)2, deleted "as follows: (All except M-801.2)" following "Chapter 8" in the Mechanical Code; in (d)1, deleted "Chapter 8 as follows: M-801.2" in the Mechanical Code; in (d)2, deleted "3007.3" following "413.5.2", inserted "3305.0" following "414.5", and deleted "408.3.1", "3305.0" and "414.5" at the end of the Building Subcode, and deleted "Chapter 8 as follows: M-801.2" in the Mechanical Subcode.

Amended by R.2001 d.196, effective June 18, 2001.

See: 33 N.J.R. 6(a), 33 N.J.R. 2090(a).

In (a)1, (a)2, (b)1, (b)2, (d)1 and (d)2, rewrote Mechanical Subcode and inserted Fuel Gas Subcode.

Amended by R.2001 d.244, effective July 16, 2001 (operative January 16, 2002).

See: 33 N.J.R. 1241(a), 33 N.J.R. 2471(a).

In "ENERGY SUBCODE" categories of (a) through (c), listed specific sections of Chapters 5 and 6, relating to building subcode official responsibility.

Administrative correction.

See: 33 N.J.R. 3308(a).

Amended by R.2002 d.6, effective January 7, 2002.

See: 33 N.J.R. 2570(a), 33 N.J.R. 3883(a), 34 N.J.R. 268(a).

In (a), inserted "ELECTRICAL SUBCODE" in categories 1 and 2, and updated references to officials in "ENERGY SUBCODE" category 1; in (c)1 and 2, updated "ELECTRICAL SUBCODE" chapter references.

Amended by R.2003 d.240, effective June 16, 2003.

See: 34 N.J.R. 3045(a), 35 N.J.R. 2637(c).

In (c)2, added "N.J.A.C. 5:23-3.16(c) Automatic rain sensor device".

Amended by R.2003 d.418, effective November 3, 2003.

See: 35 N.J.R. 21(a), 35 N.J.R. 5064(a).

Rewrote the section.

Amended by R.2004 d.131, effective April 5, 2004.

See: 35 N.J.R. 5336(a), 36 N.J.R. 1755(a).

In (a), (b), and (c), inserted "CABO Model Energy Code" following "ENERGY SUBCODE" and added ASHRAE Standard 90.1 tables throughout.

Amended by R.2004 d.312, effective August 16, 2004.

See: 35 N.J.R. 4947(a), 36 N.J.R. 3894(d).

Rewrote the section.

Administrative correction.

See: 37 N.J.R. 269(a).

Amended by R.2005 d.364, effective November 7, 2005.

See: 37 N.J.R. 2112(a), 37 N.J.R. 4216(a).

Rewrote the section.

5:23-3.5 Posting structures

(a) Posted use and occupancy: Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use, (use groups B, F, H, M and S) as defined in article 2 of the building subcode shall be posted on all floors by the owner with a suitably designed placard in a form designated by the building subcode official, which shall be securely fastened to the structure in a readily visible place, stating the use group and the live load and occupancy load.

(b) Posted occupancy load: Every building and structure and part thereof designed for use as a place of public assembly or as an institutional building for harboring people for penal, correctional, educational, medical or other care or treatment (use groups A, E and I) shall be posted with an approved placard designating the maximum occupancy load.

(c) Replacement of posted signs: All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

(d) Posted hydraulic system data plate: In lieu of the nameplate of the referenced NFPA standard(s), fire sprinkler system contractors are required to identify hydraulically designed fire sprinkler systems by affixing a permanently marked weatherproof metal or rigid plastic sign at the alarm valve. The nameplate shall contain information relative to the design parameters of the system as indicated on Form No. F380. The plate shall be secured at the alarm valve with corrosion resistant wire, chain, or other approved means.

(e) Identifying emblems for structures with truss construction: Identifying emblems shall be permanently affixed to the front of structures with truss construction as required by N.J.A.C. 5:70-2.20.

1. The emblem shall be of a bright and reflective color, or made of reflective material. The shape of the emblem shall be an isosceles triangle and the size shall be 12 inches horizontally by six inches vertically. The following letters, of a size and color to make them conspicuous, shall be printed on the emblem:

- i. "F" to signify a floor with truss construction;
- ii. "R" to signify a roof with truss construction; or
- iii. "F/R" to signify both a floor and roof with truss construction.

2. The emblem shall be permanently affixed to the left of the main entrance door at a height between four and six feet above the ground and shall be installed and maintained by the owner of the building.

3. Detached one and two-family residential structures with truss construction that are not part of a planned real estate development shall be exempt from the requirements of (e) above, unless required by municipal ordinance.

4. Individual structures and dwelling units with truss construction that are part of a planned real estate development shall not be required to have an identifying emblem if there is an emblem affixed at each entrance to the development.

(f) Swimming pools, spas and hot tubs: A valid electrical certificate of compliance and a bonding and grounding certificate shall be posted by the owner in a conspicuous place in or around the pool pump house or equipment control room.

Amended by R.1989 d.555, effective November 6, 1989.

See: 21 N.J.R. 2783(a), 21 N.J.R. 3460(a).

Added reference to E Use Group (educational facilities) at (b).

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Added (f).
Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).
Rewrote (d) and (e).

5:23-3.6 Standards; accepted practice

(a) This chapter, together with the subcodes, national standards and appendices it adopts by reference, shall be the primary guide to accepted engineering practice in respect to any material, equipment, system or method of construction therein specified.

(b) When this chapter and the subcodes, national standards and appendices it adopts by reference are silent, a manufacturer's recommendations for the installation of any material or assembly may be considered to be accepted engineering practice; provided, however, that a manufacturer's recommendations shall not be read to overrule this chapter or any subcode, national standard or appendix which it adopts by reference.

New Rule, R.1988 d.283, effective June 20, 1988.
See: 20 N.J.R. 699(a), 20 N.J.R. 1343(c).

Old text repealed and new text substituted.
Amended by R.1998 d.28, effective January 5, 1998.
See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Case Notes

Contractor not liable for injuries caused by failure of subcontractor to provide and install material in conformance with State building code. *Miltz v. Borroughs—Shelving, a Div. of Lear Siegler, Inc.*, 203 N.J.Super. 451, 497 A.2d 516 (App.Div.1985).

5:23-3.7 Municipal approvals of alternative materials, equipment, or methods of construction

(a) Approvals: Alternative materials, equipment, or methods of construction shall be approved by the appropriate subcode official provided the proposed design is satisfactory and that the materials, equipment, or methods of construction are suitable for the intended use and are at least the equivalent in quality, strength, effectiveness, fire resistance, durability and safety of those conforming with the requirements of the regulations.

1. A field evaluation label and report or letter issued by a nationally recognized testing laboratory verifying that the specific material, equipment, or method of construction meets the identified standards or has been tested and found to be suitable for the intended use, shall be accepted by the appropriate subcode official as meeting the requirements of (a) above.

2. Reports of engineering findings issued by nationally recognized evaluation service programs, such as, but not limited to, the Building Officials and Code Administrators (BOCA), the International Conference of Building Officials (ICBO), the Southern Building Code Congress International (SBCCI), the International Code Council (ICC), and the National Evaluation Service, Inc., shall be accepted by the appropriate subcode official as meeting the requirements of (a) above. The materials, equipment, or assembly shall be installed in accordance with the conditions specified in the report.

(b) Research and investigations: The appropriate subcode official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly, and if it is determined that the evidence submitted is satisfactory proof of performance for the use intended, he may approve its use subject to the requirements of the regulations. The cost of all tests, reports and investigations required under these provisions shall be paid by the applicant.

(c) Research reports: The appropriate subcode official may accept, as supporting data to assist in this determination, duly authenticated research reports from approved authoritative sources for all materials or assemblies proposed for use which are not specifically provided for in the regulations.

Amended by R.1992 d.390, effective October 5, 1992.

See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).

Reference to exception in 3.8 added.

Amended by R.2003 d.384, effective October 6, 2003.

See: 35 N.J.R. 2422(a), 35 N.J.R. 4712(a).

Rewrote (a).

5:23-3.8 Products violating the Code

(a) The Department shall, after public hearing and in accordance with the Administrative Procedure Act (P.L. 1968, c.410, as amended), establish and distribute to all enforcing agencies a list of items, devices and materials the regular and intended use of which would violate any provision of the State Uniform Construction Code. A list of such items is set forth in (d) below.

(b) Upon determining that any manufacturer or distributor in the State is selling or offering for retail sale any product on the list which does not have a regular and intended use that does not violate the Code, or any product which may have one or more such non-violative regular and intended use but which is being advertised or promoted for a use that does violate the Code, the Department or any

enforcing agency having jurisdiction shall give written notice of the violation of N.J.S.A. 52:27D-138a(5) to such seller. Such notice shall forbid the further sale or offering for retail sale of such product within the State and shall specify a date and time by which such product shall be removed from display to customers.

(c) Any person who, having received a notice of violation pursuant to this section, continues to sell or offer for retail sale products specified in such notice, shall be deemed to be knowingly selling or offering the product for sale in violation of the Code and shall be subject to penalty as provided by statute, in accordance with the procedures set forth in N.J.A.C. 5:23-2.31.

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section 803.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as an interior floor finish material not in conformance with section 805.2 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648; and

2. Electrical materials/supplies:

i. As stated in the National Electric Code (sections 90-7, 110-2, 110-3, and 100), only products listed, labeled, approved, and identified are acceptable. Approval is to be based on tests and listings of testing laboratories such as Underwriters Laboratories Inc. (UL), Factory Mutual (FM), or Canadian Standards Association/Nationally Recognized Testing Laboratory (CSA/NRTL), etc.

3. Plumbing materials/supplies:

i. All purpose solvent cement, except transition glues permitted in the plumbing subcode;

ii. Clear PB piping;

iii. Flexible traps and tailpieces;

iv. Sheet and tubular copper and brass trap and tailpiece fittings less than B & S 17 gauge (.045 in.);

v. Water closets requiring in excess of an average of 1.6 gallons per flush, that either have a manufacturer's date stamp of July 1, 1991 or later or were not purchased by the distributor prior to July 1, 1991;

vi. Plumbing fixtures that do not meet the standards listed in the plumbing subcode.

4. Miscellaneous materials and supplies:

i. Portable unvented natural gas, liquified petroleum gas and kerosene heaters when offered for sale for use in buildings for human occupancy, unless they are tested, listed, labeled and certified by a nationally recognized testing laboratory such as the American Gas Association Laboratories (AGA), Underwriters Laboratories, Inc. (UL) or Factory Mutual (FM);

ii. Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings.

R.1983 d.296, effective August 1, 1983.

See: 15 N.J.R. 587(a), 15 N.J.R. 1247(a).

Amended by R.1985 d.38, effective February 19, 1985.

See: 16 N.J.R. 3074(a), 17 N.J.R. 421(a).

(d) added.

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

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

(d)Ii and ii: 904.2 was 1404.2; 904.3 was 1404.3.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

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

See: 23 N.J.R. 3602(a), 24 N.J.R. 405(a).

Low volume water closet exception added at (d)4iii.

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.1997 d.508, effective December 1, 1997.

See: 29 N.J.R. 3762(a), 29 N.J.R. 5062(a).

In (d)2i, added reference to CSA/NRTL standards; in (d)3i, added the exception for transition glues; and inserted (d)3vi. Recodified from N.J.A.C. 5:23-3.8A by R.2003 d.384, effective October 6, 2003.

See: 35 N.J.R. 2422(a), 35 N.J.R. 4712(a).

Former N.J.A.C. 5:23-3.8, Department approval of nonconforming materials, repealed.

5:23-3.9 Interpretations and opinions

(a) Whenever the Commissioner shall, in accordance with applicable provisions of the Administrative Procedure Act, make any rule constituting an interpretation of any provision of the regulations, such shall be binding provided, however, that such interpretations shall be prospective in nature. Such interpretations shall not alter the ruling of a subcode official already rendered in a specific instance relating to a specific permit or structure. Requests for interpretations shall be in the form, and submitted in accordance with the procedure, set forth in N.J.A.C. 5:2-2.

(b) In response to a written inquiry or request setting forth a specific factual situation, or upon its own initiative, the Construction Code Element may issue a formal technical opinion to clarify provisions of the adopted subcodes. Such formal technical opinion shall be signed by the Assistant Director of the Element and shall be binding upon the Element and upon other code enforcement agencies and licensed officials. Formal technical opinions shall be prospective in nature, shall be based upon adopted subcodes or upon authoritative test results or standards incorporated by reference into an adopted subcode and shall not alter the ruling of a licensed official already rendered in a specific instance relating to a specific permit or structure, except that any such formal technical opinion may be considered in the context of an appeal from any such ruling.

(c) The Construction Code Element may issue bulletins to provide advice to code enforcing agencies, builders, and designers. Bulletins may be issued when the Element finds that an issue that is in need of clarification is adequately dealt with by existing rules and that rulemaking is therefore not appropriate or necessary. Consultation with the Code Advisory Board shall be required prior to the issuance of any bulletin.

(d) In response to a written or oral inquiry or request setting forth a specific factual situation, a staff member of the Construction Code Element may issue an informal opinion as to the proper application of the regulations if the issue is one with which he has authority to deal. Such informal opinion shall only be in writing if it is issued in response to a written inquiry or request and shall not be binding upon the Element or any other party.

Amended by R.1981 d.454, effective December 7, 1981.

See: 13 N.J.R. 561(a), 13 N.J.R. 886(a).

Section substantially amended.

Administrative Correction: Name change.

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

Amended by R.1995 d.340, effective June 19, 1995.

See: 27 N.J.R. 1512(a), 27 N.J.R. 2388(a).

Redesignated (c) as (d) and added a new (c).

Administrative correction.

See: 31 N.J.R. 4259(a).

5:23-3.10 (Reserved)

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

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

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

Recodified to 5:23-4.3A by R.1992 d.272, effective July 6, 1992.

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

Section was "Enforcing agency classification".

5:23-3.11 Enforcement activities reserved to the Department

(a) Except as otherwise provided in N.J.A.C. 5:23-3.11A(b), the Department of Community Affairs shall be the sole plan review agency for the following structures:

1. Electrical generating stations and substations, including nuclear;
2. Incineration plants;
3. Solid waste disposal plants;
4. Class I and Class II structures where required in accordance with N.J.A.C. 5:23-4.3A and N.J.A.C. 5:23-4.24(a)2ii;
5. Casino hotels;
6. Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains;

7. All premanufactured systems for Class I and Class II structures, other than those authorized to be approved by an inplant inspection agency licensed to perform Class I and Class II plan review as provided in N.J.A.C. 5:23-4A.10, and all on-site installation of Class I and Class II premanufactured construction within the jurisdiction of a local enforcing agency that is not a Class I or Class II agency, as the case may be.

8. Health care facilities, as defined in N.J.A.C. 5:23-1.4;

9. Public school facilities, as defined in N.J.A.C. 5:23-1.4; and

10. Prototype plans intended for use in more than one municipality.

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in structures of Groups other than R-2, R-3, R-4, or R-5 in which the elevator devices are wholly within dwelling units and not accessible to the general public, in all buildings and structures other than those that:

1. Are in a municipality that has an elevator subcode official; and

2. Are otherwise within the plan review jurisdiction of the local enforcing agency.

(c) A permit shall not be issued until the required plans for the building or structure have been released by the department. The Department shall insure that the municipal enforcing agency receives a copy of the released plans.

1. Exception: In the case of a permit application based upon prototype plans released by the Department, it shall be the responsibility of the applicant to submit the items listed at N.J.A.C. 5:23-2.15(e)2ii, including a reference set of plans, the prototype file identification number, the plan number and date of the released prototype plan, to the municipal enforcing agency.

(d) The department may perform field inspections for any of the above projects when it deems such activity appropriate. However, such action shall not relieve the municipality of the obligation to perform field inspections for any project for which the municipality has granted a permit.

(e) Whenever the department shall determine that there exists a violation of these regulations, it shall take appropriate action and shall provide the municipality with copies of all notices, orders, and other applicable information. The department and any municipality may consolidate or take other steps to expedite any matter of which they jointly complain, but in no event shall the owner of any building subject to the act be sanctioned twice for the same violations.

(f) In any case where the department shall notify a municipality that a violation exists, no certificate of occupancy may issue until the department notifies the municipality that the violation has been abated.

(g) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.15 through 7.31). Any complaint of noncompliance with these rules shall be forwarded to the Department.

(h) The Department of Community Affairs shall be the sole agency having authority to grant variations from the requirements of the Asbestos Hazard Abatement Subcode, pursuant to N.J.A.C. 5:23-8.4.

(i) The Department of Community Affairs shall be the sole agency for the enforcement of the Playground Safety Subcode (N.J.A.C. 5:23-11) with regard to all matters not within the scope of a construction permit issued by a local enforcing agency; provided, however, that this subsection shall not be construed as prohibiting the Department of Education from including review of compliance with applicable playground requirements in its ongoing district monitoring process.

(j) The Department shall be the sole enforcing agency for the following work:

1. Amusement rides;

2. Ski lifts;

3. Billboards located on land owned or controlled by any State, county or local department, agency, board, commission, authority, or instrumentality; and

4. Liquefied petroleum gas installations, except vapor delivery installations utilizing containers with an aggregate water capacity of 2,000 gallons or less, which jurisdiction is retained by the municipal enforcing agency.

Amended by R.1981 d.455, effective December 7, 1981.

See: 13 N.J.R. 561(b), 13 N.J.R. 886(b).

Correction: Codification error and (a)6 was missing.

See: 16 N.J.R. 1621(a).

Administrative Change: This section has been divided into 3.11 and 3.11A administratively.

See: 18 N.J.R. 1842(a).

Amended by R.1988 d.352, effective August 1, 1988.

See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

Added (f).

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 requirements added to (a)7.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

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

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

Enforcement of elevator, moving walk and escalator requirements for other than R-3 and R-4 reserved to Department.

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.1992 d.183, effective April 20, 1992.

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

Enforcement of public employees' indoor air quality subcode assigned to DCA.

Amended by R.1994 d.28, effective January 18, 1994.

See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).

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

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

Amended by R.1997 d.377, effective September 15, 1997.

See: 29 N.J.R. 2741(b), 29 N.J.R. 4102(b).

In (g), amended N.J.A.C. references; deleted (g)1; and substantially amended (h).

Amended by R.1997 d.417, effective October 6, 1997.

See: 29 N.J.R. 3387(a), 29 N.J.R. 4285(a).

In (a), inserted "Except as otherwise provided . . . and (d),"; added (a)8 and 9; and in (g), amended N.J.A.C. references.

Amended by R.1999 d.351, effective October 18, 1999.

See: 31 N.J.R. 1838(a), 31 N.J.R. 3082(a).

Added (i).

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (a), changed N.J.A.C. reference; and added (j).

Amended by R.2001 d.127, effective April 16, 2001.

See: 33 N.J.R. 392(a), 33 N.J.R. 1195(a).

In (g), amended the N.J.A.C. reference.

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

In (j)6, inserted "or vapor delivery installations utilizing containers with an aggregate water capacity of 2,000 gallons or less," following "(building subcode Use Group R-3/R-4)".

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (b), substituted "moving walks in structures of Groups other than R-2, R-3, R-4, or R-5" for "moving walks in Use Groups R-3, R-4, or R-2 structures" preceding "in which the elevator devices are wholly within dwelling units".

Amended by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Added (a)10; in (c), substituted "released" for "approved" following "enforcing agency receives a copy of the" and added 1.

Administrative correction.

See: 36 N.J.R. 1757(a).

Amended by R.2004 d.260, effective July 6, 2004.

See: 35 N.J.R. 3474(b), 36 N.J.R. 3274(a).

In (j), rewrote 3, deleted former 4 and 5, and recodified former 6 as 4.

Amended by R.2004 d.291, effective August 2, 2004.

See: 36 N.J.R. 1858(a), 36 N.J.R. 3525(b).

In j(4), deleted, "one- and two-family residential (building subcode Use Groups R-3 and R-5) or" preceding "vapor delivery".

Case Notes

Delaware River Port Authority was not subject to Construction Code or anti-discrimination laws. *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden*, 111 N.J. 389, 545 A.2d 127 (1988).

5:23-3.11A Public school facility plan review and inspections; Uniform Construction Code enhancements in public school facilities

(a) Plan review for the following types of projects shall be performed by the Department of Community Affairs. Prior to the release of plans for the following types of projects, the Department of Education shall ensure that the plans meet the standards for educational adequacy set forth in N.J.A.C. 6A:26:

1. New public school buildings, including the creation of a new public school building through the change of use of an existing building;
2. Additions to existing public school buildings;

3. Alterations changing the total number of instructional spaces, the size of any such spaces or type of any such spaces;

4. Installations of mobile units; or

5. Any site or building change or alteration for the purpose of making the site and school barrier-free pursuant to N.J.A.C. 5:23-7 and accessible to the handicapped pursuant to section 504 of the Federal Rehabilitation Act of 1973.

(b) In lieu of obtaining construction code plan review and release from the Department of Community Affairs, a school district, upon notice to and approval by the Department, may secure construction code plan review and release from a municipal code enforcing agency, pursuant to P.L. 1990, c.23.

1. The municipal code enforcing agency providing construction code plan approval must agree to perform the review and must be appropriately classified for the proposed project in accordance with this chapter.

i. The municipal code enforcing agency in the municipality where the proposed project is to take place shall be given the right of first refusal to review the plans provided that the agency is appropriately classified for the proposed project in accordance with this chapter.

2. The municipal code enforcing agency performing the construction code plan review may require the payment of any municipal plan review fees.

3. No construction permit shall be issued for a public school facility unless and until the final plans and specifications have been released by the Department or an appropriately classified municipal code enforcing agency.

4. The municipal code enforcing agency within the jurisdiction in which the facility is located shall be responsible for construction permit issuance, construction inspection and certificate of occupancy issuance.

5. Amendments to released plans and specifications for reasons other than educational adequacy shall be submitted for review and release to the Department or the municipal code enforcing agency, whichever originally released the plans.

6. Release of the plans by the Department or the municipal code enforcing agency, as the case may be, shall not preclude the enforcing agency doing the inspection from issuing a stop work order in the event of a violation of the code. The enforcing agency doing the inspection shall not, however, issue a stop work order based on its disagreement with the released plans unless the agency that released the plans, be it the Department or another local enforcing agency, agrees that the issuance of such an order is appropriate. In the event that the enforcing agency doing the inspection believes there to be an error in the plans, that enforcing agency shall give prompt notice of the error that is believed to exist to the Department or the municipal agency that reviewed the plans, as the case may be.

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 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 Code Services, Training Section along with a copy of the construction permit (Form F170). 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. When plans have been reviewed and released by the Department or when a plan review is waived by the municipality in accordance with N.J.A.C. 5:23-2.15(e)1x, 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.

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.

4. Whenever a permit application is received based on a released prototype plan, the permit fee shall be reduced by the amount of the plan review fee.

i. For Statewide prototype plans released by the Department or for other prototype plans where the prototype did not include the foundation detail, the construction permit fee shall be reduced by 15 percent from the amount otherwise specified in the municipal enforcing agency fee schedule.

(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 types of plumbing, electrical and fire protection fixtures and devices as herein provided.

1. 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 or rating of electrical equipment and devices to be installed. The fee shall be a unit rate per fixture or per kilowatt, horsepower or ampere rating of the device or equipment. The unit rate may vary for different types of fixtures or devices, 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 performed by a mechanical inspector or a plumbing inspector in a structure of Group R-3, R-4, or R-5. 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. In the alternative, the municipality may 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. The fee for the first issuance and the renewal of a temporary certificate of occupancy shall not exceed \$30.00.

i. Exception: There shall be no fee for the first issuance of the temporary certificate of occupancy provided the certificate of occupancy fee is paid at that time.

4. Where a written request for a temporary certificate of occupancy is made for reasons other than uncompleted work covered by the permit (such as prior approvals from state or municipal agencies), the duration of the temporary certificate of occupancy shall be reasonably consistent with the time required for compliance with the conditions of the prior approval.

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

6. 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) 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.

(j) Fees to be charged by municipalities where private on-site inspection and plan review agencies carry out subcode 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.

(k) The fee charged for the annual electrical inspection of swimming pools, spas or hot tubs shall be a flat fee and the amount of the fee shall be set to cover the costs.

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)iv 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).

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

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

Amended by R.1997 d.418, effective October 6, 1997.

See: 29 N.J.R. 3402(a), 29 N.J.R. 4286(a).

In (c)5, inserted reference plumbing inspector.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Rewrote (c)3; and added (l).

Amended by R.2001 d.347, effective October 1, 2001.

See: 32 N.J.R. 3218(a), 33 N.J.R. 3430(a).

Rewrote (f).

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (c), rewrote 5.

Amended by R.2004 d.144, effective April 5, 2004.

See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

In (b), rewrote 2, deleted the N.J.A.C. reference in 3 and added 4; deleted former (i) and recodified former (j) through (l) as (i) through (k).

Case Notes

Owner was not entitled to hearing before administrative law judge to review adverse determination of Department of Community Affairs regarding its challenge to permit fees charged in connection with construction of new building absent evidence that township's permit fee revenues exceeded its expenditures, in violation of governing law. *Toys R Us, Inc. v. Township of Mount Olive*, 300 N.J.Super. 585, 693 A.2d 539 (A.D.1997).

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

5:23-4.19 New Jersey State permit surcharge 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 Division of Codes and Standards in the manner herein provided.

(b) Amount: This fee shall be in the amount of \$0.00265 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 shall be \$1.35 per \$1,000 of value of construction.

1. No fee shall be collected for preengineered systems of commercial farm buildings.

2. No fee shall be collected for permits to perform asbestos abatement or lead abatement.

3. No fee shall be collected for permits for the construction or rehabilitation of residential units that are to

be legally restricted to occupancy by households of low or moderate income, as defined in N.J.A.C. 5:43-1.5.

4. No fee shall be collected for demolition of buildings or structures.

5. No fee shall be collected for work consequential to a natural disaster when the local code enforcement agency is waiving its fee.

(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).

Amended by R.1997 d.303, effective July 21, 1997.

See: 29 N.J.R. 1437(b), 29 N.J.R. 3247(a).

Subdivided (b); in (b), deleted reference to preengineered systems of commercial farm buildings; and added (b)2.

Amended by R.2001 d.194, effective June 18, 2001.

See: 33 N.J.R. 1041(a), 33 N.J.R. 2097(a).

In (a), substituted "Division of Codes and Standards" for "Bureau of Regulatory Affairs"; in (b), added 3 and 4.

Amended by R.2002 d.42, effective February 4, 2002.

See: 33 N.J.R. 3713(a), 34 N.J.R. 732(a).

In (b), added 5.

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (b), substituted "\$0.0019" for "\$0.0016" and "\$0.96" for "\$0.80" in the introductory paragraph.

Administrative correction.

See: 35 N.J.R. 2208(b).

Amended by R.2003 d.249, effective June 16, 2003.

See: 35 N.J.R. 1361(a), 35 N.J.R. 2639(a).

In (b), substituted "\$ 0.00265" for "\$ 0.0019" and "\$ 1.35" for "\$ 0.96".

5:23-4.20 Department 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.

4. Where the Department, pursuant to N.J.A.C. 5:23-4.24, is designated as the plan review agency, or when the Department has been requested to provide plan review services by a municipality pursuant to N.J.A.C. 5:23-4.24, or when the Department is designated as the local enforcing agency pursuant to N.J.A.C. 5:23-4.3, the following schedule of fees shall pertain.

5. The construction or rehabilitation of residential units that are to be legally restricted to occupancy by households of low or moderate income shall be exempted from the fees set forth in (b) and (c) below and otherwise payable to the Department.

6. No fee shall be collected for work consequential to a natural disaster when the Department is the local enforcing agency.

(b) Departmental plan review fee:

1. The plan review fee for new construction shall be based upon the volume of the structure.

i. For buildings or structures in Use Groups A, F or S, the plan review fee shall be \$.010 per cubic foot;

ii. For health care facilities in Use Groups B or I, the plan review fee shall be \$.022 per cubic foot; and

iii. For all other buildings or structures, the plan review fee shall be \$.016 per cubic foot.

2. The plan review fee for renovations, alterations, repairs, site construction associated with pre-engineered systems of commercial farm buildings, premanufactured construction and external utility connections for premanufactured construction shall be based upon the estimated cost of work.

i. For health care facilities in Use Groups B or I, the fee shall be \$14.00 per \$1,000 or part thereof for estimated cost not exceeding \$50,000, \$11.00 per \$1,000 or part thereof for estimated cost in excess of the first \$50,000 and not exceeding \$100,000, and \$9.00 per \$1,000 or part thereof for estimated cost in excess of the first \$100,000; and

ii. For all other buildings or structures, the fee shall be \$10.00 per \$1,000 or part thereof for estimated cost not exceeding \$50,000, \$8.00 per \$1,000 or part thereof for estimated cost in excess of the first \$50,000 and not exceeding \$100,000, and \$7.00 per \$1,000 or part thereof for estimated cost in excess of the first \$100,000.

3. The elevator device plan review fee shall be as set forth in (c)6 and 7 below.

4. There shall be an additional fee of \$45.00 per hour for review of any amendment or change to a plan that has already been released.

5. In any case where the Department conducts plan review for a local enforcing agency, the fee charged by the local enforcing agency for inspection services shall be 80 percent of the fee that would otherwise be determined under the local fee schedule.

(c) Departmental (enforcing agency) fees shall be as follows:

1. The fee for plan review shall be 20 percent of the amount to be charged for a construction permit.

i. The elevator device plan review fee shall be as in (c)6 and 7 below.

ii. The fee for plan review for Statewide prototype plans released by the Department or for other prototype plans where the prototype did not include the foundation detail shall be five percent of the amount to be charged for a construction permit.

2. The basic construction permit fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and rating of electrical devices, the number of sprinklers, standpipes and detectors (smoke and heat) at the unit rates and/or the applicable flat fees as provided herein plus any special fees.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be com-

puted in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.027 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.015 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, A-5, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0008 per cubic foot for structures on farms, including commercial farm building under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed \$1,145.

(2) Fees for renovations, alterations and repairs or site construction associated with pre-engineered systems of commercial farm buildings, premanufactured construction, and the external utility connection for premanufactured construction shall be based upon the estimated cost of work. The fee shall be in the amount of \$24.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$18.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$15.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3) Fees for additions shall be computed on the same basis as for new construction for the added portion.

(4) Fees for combination renovations and additions shall be computed as the sum of the fees computed separately in accordance with items (2) and (3) above.

(5) The fee for tents, in excess of 900 square feet or more than 30 feet in any dimension, shall be \$92.00.

(6) The fee for roofing and siding work completed on structures of Group R-3 or R-5 shall be \$46.00.

(7) The fee for an above-ground swimming pool shall be \$100.00 for a pool with a surface area greater than 550 square feet; the fee in all other cases shall be \$50.00. The fee for an in-ground swimming pool shall be \$150.00 for a pool with a surface area greater than 550 square feet; the fee in all other cases shall be \$75.00.

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of \$10.00 per fixture, piece of equipment or appliance connected to

the plumbing system, and for each appliance connected to the gas piping or oil piping system, except as indicated in (c)2ii(2) below.

(2) The fee shall be \$65.00 per special device for the following: grease traps, oil separators, refrigeration units, utility service connections, backflow preventers equipped with test ports (double check valve assembly, reduced pressure zone and pressure vacuum breaker backflow preventers), steam boilers, hot water boilers (excluding those for domestic water heating), active solar systems, sewer pumps and interceptors. There shall be no inspection fee charged for gas service entrances.

iii. Electrical fixtures and devices: The fee shall be as follows:

(1) For the first block consisting of one to 50 receptacles, fixtures or devices, the fee shall be \$36.00; for each additional block consisting of up to 25 receptacles, fixtures or devices, the fee shall be \$6.00. For the purpose of computing this fee, receptacles, fixtures or devices shall include lighting fixtures, wall switches, convenience receptacles, sensors, dimmers, alarm devices, smoke and heat detectors, communications outlets, light-standards eight feet or less in height including luminaries, emergency lights, electric signs, exit lights or similar electric fixtures and devices rated 20 amperes or less including motors or equipment rated less than one horsepower (hp) or one kilowatt (kw).

(2) For each motor or electrical device rated from one hp or one kw to 10 hp or 10 kw; for each transformer or generator rated from one kw or one kva to 10 kw or 10 kva; for each replacement of wiring involving one branch circuit or part thereof; for each storable pool or hydro massage bath tub; for each under-water lighting fixture; for household electric cooking equipment rated up to 16 kw; for each fire, security or burglar alarm control unit; for each receptacle rated from 30 amperes to 50 amperes; for each light-standard greater than eight feet in height including luminaries; and for each communications closet, the fee shall be \$10.00.

(3) For each motor or electrical device rated from greater than 10 hp or 10 kw to 50 hp or 50 kw; for each service equipment, panel board, switch board, switch gear, motor-control-center, or disconnecting means rated 225 amperes or less; for each transformer or generator rated from greater than 10 kw or 10 kva to 45 kw or 45 kva; for each electric sign rated from greater than 20 amperes to 225 amperes including associated disconnecting means; for each receptacle rated greater than 50 amperes; and for each utility load management device, the fee shall be \$46.00.

(4) For each motor or electrical device rated from greater than 50 hp or 50 kw to 100 hp or 100 kw; for each service equipment, panel board, switch board, switch gear, motor-control-center or disconnecting means rated from greater than 225 amperes to 1,000 amperes; and for each transformer or generator rated from greater than 45 kw or 45 kva to 112.5 kw or 112.5 kva, the fee shall be \$92.00.

(5) For each motor or electrical device rated greater than 100 hp or 100 kw; for each service equipment, panel board, switch board, switch gear, motor-control-center or disconnecting means rated greater than 1,000 amperes; and for each transformer or generator rated greater than 112.5 kw or 112.5 kva, the fee shall be \$457.00.

(6) The fee charged for electrical work for each permanently installed private swimming pool as defined in the building subcode, spa, hot tub or fountain shall be a flat fee of \$46.00 which shall include any required bonding, and associated equipment such as filter pumps, motors, disconnecting means, switches, required receptacles, and heaters, etc., excepting panelboards and under-water lighting fixtures. For public swimming pools, the fee shall be charged on the basis of number of electrical fixtures and rating of electrical devices involved in accordance with (c)2iii(1) through (5) above.

(7) The fee charged for the installation of single and multiple station smoke or heat detectors and fire, burglar or security alarm systems in any one or two-family dwelling shall be a flat fee of \$23.00 per dwelling unit. For fire, burglar and security alarm systems and detectors in buildings other than one or two-family dwellings, the fee shall be charged in accordance with (c)2iii(1) and (2) above.

(8) For installations consisting of multimeter stacks, the fee shall be based on the ampere rating of the main bus and not upon the number of meters or rating of disconnects on the meter stack. Individual loadside panel boards shall be charged in accordance with (c)2iii(3), (4) or (5) above. There shall be no additional fee charged for the concurrent installation of individual feeder conductors.

(9) For motors or similar devices requiring concurrent installation of individual controls, relays and switches, the fee shall be based only upon the rating of the motor or device. There shall be no additional fee charged for the concurrent installation of individual circuit components, for example, controllers, starters, and disconnecting means.

(10) For electrical work requiring replacement of service entrance conductors or feeder conductors only, the fee shall be in accordance with (c)2iii(2) through (5) above based on the designated ampere rating of the overcurrent device of the service or feeder.

(11) The fee charged for process equipment shall be based on the ampere rating of the overcurrent device protecting the conductor feeding the process equipment or the cutoff device.

(12) For the purpose of computing these fees, all electrical and communications devices, utilization equipment and motors which are part of premises wiring, except those which are portable plug-in type, shall be counted.

iv. For fire protection and hazardous equipment, sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums, the fee shall be as follows:

(1) The fee for 20 or fewer heads shall be \$65.00; for 21 to and including 100 heads, the fee shall be \$120.00; for 101 to and including 200 heads, the fee shall be \$229.00; for 201 to and including 400 heads, the fee shall be \$594.00; for 401 to and including 1,000 heads, the fee shall be \$822.00; for over 1,000 heads, the fee shall be \$1,050.

(2) The fee for one to 12 detectors shall be \$36.00; for each 25 detectors in addition to this, the fee shall be in the amount of \$12.00.

(3) The fee for each standpipe shall be \$229.00.

(4) The fee for each independent pre-engineered system shall be \$92.00.

(5) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be \$46.00.

(6) The fee for each kitchen exhaust system shall be \$46.00.

(7) The fee for each incinerator shall be \$365.00.

(8) The fee for each crematorium shall be \$365.00.

(9) For single and multiple station smoke or heat detectors and fire alarm systems in any one or two-family dwellings, there shall be a flat fee of \$23.00 per dwelling unit. For detectors and fire alarm systems in buildings other than one or two-family dwellings, the fee shall be charged in accordance with (c)2iv(2) above.

3. Fees for certificates and other permits are as follows:

i. The fee for a demolition or removal permit shall be \$65.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one- or two-family dwellings (Group R-3 or R-5 of the building subcode), structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and \$120.00 for all other Groups.

ii. The fee for a permit to construct a sign shall be as follows:

(1) Fees for pylon signs shall be \$4.00 per square foot for the first 100 square feet, \$3.00 per square foot for the next 400 square feet and \$2.00 per square foot thereafter;

(2) Fees for ground signs or wall signs shall be \$2.00 per square foot for the first 100 square feet, \$1.50 per square foot for the next 400 square feet and \$1.00 per square foot thereafter;

(3) The minimum fee shall be \$46.00.

iii. The fee for a certificate of occupancy shall be \$28.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$120.00.

v. The fee for a certificate of continued occupancy issued under N.J.A.C. 5:23-2.23(c) shall be \$120.00.

vi. The fee for the first issuance and the renewal of a temporary certificate of occupancy shall be \$28.00.

(1) Exception: There shall be no fee for the first issuance of the temporary certificate of occupancy provided the certificate of occupancy fee is paid at that time.

(2) Exception: Where a written request for a temporary certificate of occupancy is made for reasons other than uncompleted work covered by the permit (such as uncompleted work required by prior approvals from state or municipal agencies), no renewal fee shall be charged.

vii. The fee for plan review of a building for compliance under the alternate systems and nondepletable energy source provisions of the energy subcode shall be \$274.00 for one- and two-family dwellings (Group R-3 or R-5 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and \$1,369 for all other structures.

viii. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$594.00 for class I structures and \$120.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$229.00 for class I structures and \$65.00 for class II and class III structures.

ix. The fee for a permit for lead hazard abatement work shall be \$140.00. The fee for a lead abatement clearance certificate shall be \$28.00.

4. For cross connections and backflow preventers that are subject to testing, requiring reinspection annually, the fee shall be \$46.00 for each device when they are tested.

5. Annual permit requirements are as follows:

i. 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 who are 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 purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing.

ii. Fees for annual permits shall be as follows:

(1) One to 25 workers (including foremen) \$667.00/worker; each additional worker over 25, \$232.00/worker.

(2) Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode and a list of not more than three individuals to be trained per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Code Services, Education Unit along with a copy of the construction permit (Form F170). 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.

6. The fee for plan review for elevator devices in structures of Group R-3, R-4, or R-5, and for elevator devices wholly within dwelling units in structures of Group R-2 shall be \$50.00 for each device.

7. The fee for plan review for elevator devices in structures of Groups other than R-3, R-4, or R-5 and devices in structures of Group R-2 exempted by (c)6 above shall be \$260.00 for each device.

8. The fees for elevator device inspections and tests shall be as set forth in N.J.A.C. 5:23-12.

9. The fee for a mechanical inspection in a structure of Group R-3 or R-5 by a mechanical inspector shall be \$43.00 for the first device and \$10.00 for each additional device. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.

10. The fee for the annual electrical inspection of swimming pools, spas or hot tubs shall be \$36.00.

(d) The fee for an application by a manufacturer, distributor, owner or any other person for approval of any fixture, appurtenance, material or method, pursuant to N.J.A.C. 5:23-3.8, shall be an amount equal to the cost incurred, or to be incurred, by the Department for such tests as the Department may require, plus an administrative surcharge in the amount of 10 percent of such cost.

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

Text substantially amended. Department fees increased approximately 50 percent.

Amended by R.1982 d.463, effective January 3, 1983.

See: 14 N.J.R. 1129(a), 14 N.J.R. 1449(a).

Added (c)10, periodic reinspection fees.

Amended by R.1983 d.548, effective December 5, 1983.

See: 15 N.J.R. 1406(a), 15 N.J.R. 2033(b).

In (c)2., added "mechanical systems and equipment" and "the number of sprinklers and standpipes". Also added iv.-v.

Amended by R.1983 d.641, effective January 17, 1984.

See: 15 N.J.R. 1911(a), 16 N.J.R. 129(b).

Substantial changes in section.

Correction: 16 N.J.R. 2267(a).

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

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

(c)11 and 12 added.

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)12 "Prior to the issuance of the annual permit" and "Bureau of Construction Code Enforcement".

Amended by R.1987 d.490, effective November 16, 1987.

See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Fees raised.

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

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

Amended extensively based on an overall increase of approximately 30 percent in fees for code enforcement and planned real estate development, and an increase in the State training fee per cubic foot volume of new construction. Changed fee amounts throughout.

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 with change.

Restructured section.

In (a): added new 5.

In (c): deleted (c)2i(5) regarding minor construction work fees.

In (c)2ii(2): added text to specify equipment fees and deleted (c)2ii(3) regarding fixtures.

In (c)2iii: deleted (3)-(5) and added new (3)-(6).

Deleted (c)3-6 regarding fees, and added (c)2iv, with new (3)-(7) on new fee structure.

Added (c)3 and 4 and renumbered (c)7-12 as (c)3-6ii.

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

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

Technical change of Form number in (c)6ii.

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

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

In (b), plan review surcharge increased from 30 to 40 percent; plan review only increased from 20 to 25 percent; minimum fee increased from \$33.00 to \$43.00.

In (c)2, basic construction fee permit increased from \$33.00 to \$43.00.

In (c)2i(1), new construction fee increased from \$0.019 to \$0.025; for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1, S-2 increased from \$0.011 to \$0.014; farm structures increased from \$0.0005 to \$0.0007; maximum farm structures fee increased from \$815.00 to \$1,060.

In (c)2i(2), fees increased from \$17.00 to \$22.00; from \$13.00 to \$17.00 above \$50,000; from \$11.00 to \$14.00 above \$100,000.

In (c)2ii(1), fee increased from \$7.00 to \$9.00 per fixture.

In (c)2ii(2), fee increased from \$46.00 to \$60.00 per special device.

In (c)2iii(1), fee increased from \$25.00 to \$33.00 for one to 50 receptacles or fixtures; each 25 additional increased from \$4.00 to \$5.00.

In (c)2iii(2), fee increased from \$7.00 to \$9.00.

In (c)2iii(3), fee increased from \$33.00 to \$43.00.

In (c)2iii(4), fee increased from \$65.00 to \$85.00.

In (c)2iii(5), fee increased from \$325.00 to \$423.00.

In (c)2iv(1), fee increased from \$46.00 to \$60.00 for 20 or fewer heads; from \$85.00 to \$111.00 for 21 to 100 heads; from \$163.00 to \$212.00 for 101 to 200 heads; from \$423.00 to \$550.00 for 201 to 400 heads; from \$585.00 to \$761.00 for 401 to 1,000 heads; from \$748.00 to \$972.00 for over 1,000 heads.

In (c)2iv(2), fee increased from \$163.00 to \$212.00.

In (c)2iv(3), fee increased from \$65.00 to \$85.00.

In (c)2iv(4) and (5), fee increased from \$33.00 to \$43.00.
 In (c)2iv(6) and (7), fee increased from \$260.00 to \$338.00.
 In (c)4i, demolition and removal permit increased from \$46.00 to \$60.00 and for form structure removal from \$85.00 to \$111.00.
 In (c)4ii, fee for permit to construct a sign increased from \$0.85 to \$1.11 per square foot; minimum fee increased from \$33.00 to \$43.00.
 In (c)4iii, certificate of occupancy fee increased from \$85.00 to \$111.00; minimum fee for form structures increased from \$46.00 to \$60.00.
 In (c)4iv, fee increased from \$124.00 to \$161.00.
 In (c)4v, fee increased from \$85.00 to \$111.00.
 In (c)4vii, fee increased from \$20.00 to \$26.00.
 In (c)4viii, fees increased from \$195.00 to \$254.00 for one and two-family homes and from \$975.00 to \$41,268 for light commercial structures.
 In (c)4ix, fees increased from \$423.00 to \$550.00 for class I structures and from \$85.00 to \$111.00 for class II and III structures. Resubmission of applications increased from \$163.00 to \$212.00 for class I structures and from \$46.00 to \$60.00 for class II and III structures.
 In (c)5iii, fees increased from \$33.00 to \$43.00 for thrice annual testing and from \$85.00 to \$111.00 for annual testing.
 In (c)6ii(1), fees increased from \$475.00 to \$618.00 for one to 25 workers and from \$165.00 to \$215.00 per worker over 25.
 In (c)6ii(2), fee increased from \$100.00 to \$130.00.
 Amended by R.1991 d.325, effective July 1, 1991.
 See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).
 Departmental fees set at (c).
 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.
 Notice of correction, effective May 18, 1992.
 See: 24 N.J.R. 1879(b).
 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 (c).
 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.1992 d.390, effective October 5, 1992.
 See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).
 Fee for indirect apportionment systems set at (d).
 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 throughout.
 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)9.
 Amended by R.1994 d.28, effective January 18, 1994.
 See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).
 Administrative Correction.
 See: 26 N.J.R. 796(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.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.475, effective September 5, 1995 (operative January 1, 1996).
 See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).
 In (c)5ii(2) 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).
 Eliminated minimum fee in (b) and rewrote (c).
 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).
 Amended by R.1995 d.647, effective December 18, 1995 (operative March 18, 1996).

See: 27 N.J.R. 3517(a), 27 N.J.R. 5012(a).
 Amended by R.1997 d.409, effective October 6, 1997.
 See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).
 Amended by R.1998 d.35, effective January 5, 1998.
 See: 29 N.J.R. 4215(a), 30 N.J.R. 194(a).
 In (c)2.i.(1), added A-5 structures to the fee schedule.
 Amended by R.2000 d.47, effective February 7, 2000.
 See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).
 Rewrote (c).
 Amended by R.2000 d.166, effective April 17, 2000.
 See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).
 In (c)3i, inserted a reference to group R-4.
 Amended by R.2001 d.194, effective June 18, 2001.
 See: 33 N.J.R. 1041(a), 33 N.J.R. 2097(a).
 In (a)5, substituted "The construction or rehabilitation of" for "Newly constructed".
 Amended by R.2001 d.347, effective October 1, 2001.
 See: 32 N.J.R. 3218(a), 33 N.J.R. 3430(a).
 In (c)3, inserted new vi, and recodified former vi through viii as vii through ix.
 Amended by R.2002 d.6, effective January 7, 2002.
 See: 33 N.J.R. 2570(a), 33 N.J.R. 3883(a), 34 N.J.R. 268(a).
 In (c)5ii(2), substituted "Education Unit" for "Training Section".
 Amended by R.2002 d.42, effective February 4, 2002.
 See: 33 N.J.R. 3713(a), 34 N.J.R. 732(a).
 In (a), added 6.
 Amended by R.2002 d.260, effective August 5, 2002.
 See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).
 Rewrote (b) and (c)1.
 Amended by R.2004 d.67, effective February 17, 2004.
 See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).
 Added references to Group R-5 throughout.
 Amended by R.2004 d.144, effective April 5, 2004.
 See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).
 Rewrote (c)1.
 Amended by R.2004 d.260, effective July 6, 2004.
 See: 35 N.J.R. 3474(b), 36 N.J.R. 3274(a).
 In (c)3, rewrote ii.

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of \$2,800 for each subcode for which authorization is sought.

(b) Reauthorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of \$1,400 for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12 month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

Amended by R.1984 d.260, effective July 2, 1984.
 See: 16 N.J.R. 3(a), 16 N.J.R. 1714(e).

Section substantially amended.
 Amended by R.1985 d.353, effective July 15, 1985.
 See: 17 N.J.R. 1032(a), 17 N.J.R. 1758(b).

(b)1: substantially amended.
 Public Notice: Notice of Petition to amend section.
 See: 17 N.J.R. 2688(a).

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

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

Text on inplant inspection agencies deleted.

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

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

In (a), authorization fee increased from \$2,000 to \$2,600. In (b), reauthorization fee increased from \$1,000 to \$1,300.

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.

5:23-4.22 (Reserved)

Amended by R.1984 d.481, effective November 5, 1984.

See: 16 N.J.R. 2031(a), 16 N.J.R. 3006(a).

Amended by R.1986 d.142, effective May 5, 1986.

See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).

Substantially amended.

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

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

Modular unit fee of \$100.00 deleted; title changed.

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

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

In (a) and (b), insignia fee increased from \$50.00 to \$65.00.

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.

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

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

Section was "Building element and manufactured home add-on unit insignia of certification fees".

5:23-4.23 Payment of fees

(a) All fees paid to the Department under the regulations shall be nonrefundable except as otherwise specifically set forth in the regulations. All fees shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

5:23-4.24 Plan review by the Department of Community Affairs

(a) There is established in the Department of Community Affairs, Division of Codes and Standards, a Bureau of Construction Projects Review, hereinafter "the plan review bureau." The plan review bureau shall review plans, applications and specifications submitted to the Department in its enforcing agency capacity, and as further required or permitted by this section.

(b) Plan review:

1. Plan review shall be required for all uses except as may be otherwise provided in the regulations whenever the department acts as an enforcing agency in any municipality.

2. Special or hazardous uses and types of construction:

i. N.J.A.C. 5:23-3 divides all construction into three classes according to its 'complexity and potential hazard to the public health and safety. N.J.A.C. 5:23-5 provides for three levels of subcode official certification which correspond to the three classes in N.J.A.C. 5:23-5.

ii. For class 1, department plan review and release shall be required on the effective date of the regulations prior to the issuance of a construction permit unless the construction official and each appropriate subcode official in the municipal enforcing agency is certified by the commissioner as a class one construction official or subcode official.

iii. For class two, department plan review and release shall be required after January 1, 1981, prior to the issuance of a construction permit unless the construction official and each appropriate subcode official in the municipal enforcing agency is certified by the commissioner as a class one or class two construction official or subcode official.

iv. For class three, departmental plan review shall not be required except when the department acts as the enforcing agency.

v. Installations of elevators, escalators, and moving walks, except devices in structures of Group R-3, R-4, or R-5 and those devices in structures of Group R-2 that are otherwise exempted in N.J.A.C. 5:23-3.11(b), shall require Departmental plan review and release.

3. Premanufactured construction: Department plan review and release shall be required for all modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4A.10.

(c) The plan review bureau shall review all applications, plans and specifications for conformance to the regulations.

(d) Plans reviewed by the Department that are judged to be in conformance with the regulations shall be stamped with the word "released" and signed and dated by the reviewing official of the Department.

(e) All plans submitted, and any amendments thereto, accompanied by the required fee, shall be numbered, docketed, and examined promptly after their submission for compliance with the regulations. In the case of plans submitted by an architect or engineer bearing his or her signature, registration number, and seal, plan examination may, except for compliance with exit requirements, be limited to a supervisory check.

(f) If the Department judges a plan not to be in conformance with the regulations, it shall notify the applicant in writing of the reason for rejection.

(g) The Department shall provide such technical assistance to the applicant as may be appropriate pursuant to the regulations.

Amended by R.1994 d.436, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 2183(a), 26 N.J.R. 3707(a).

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

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

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (c), substituted "\$52.00" for "\$43.00".

Amended by R.2004 d.365, effective October 4, 2004.

See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

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

Case Notes

Asbestos safety technician unauthorized to issue waiver of codified asbestos hazard abatement procedures. *Gromen v. Bureau of Code Services*, 97 N.J.A.R.2d (CAF) 35.

5:23-8.11 Asbestos safety control monitor

(a) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subchapter.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner or his authorized agent. The contract shall specify: the scope of the project with the provision that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subchapter, how the asbestos safety control monitor is to be paid for its services and the name of the employee who shall serve as the representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subchapter.

2. Each asbestos safety control monitor authorized by the Department shall organize its operation to effectively fulfill the requirements of this subchapter. Each person assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the Department.

3. The asbestos safety control monitor shall report to the Department through its designee and shall be subject to the orders and directives of the Department in matters relating to the enforcement of this subchapter.

(b) The Department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the Department.

i. Except that applicants who have received notice from the Department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the

time of undertaking any such activity that he has not yet been authorized by the Department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application on the prescribed form, with the required fee pursuant to (h) below, and any additional information the Department may require.

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons for denial.

4. The application for authorization shall contain information relating to:

i. The financial integrity of the applicant as evidenced by a reviewed financial statement prepared by an independent certified public accountant;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel who are to be assigned as asbestos safety technicians are certified by the Department;

iii. The type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall be accredited by the National Institute of Standards and Technology (NIST). The laboratory shall be a current proficient participant in the American Industrial Hygiene Association Proficiency Analytical Testing Program or any other recognized equivalent program for PCM. All laboratory analysis shall be performed in accordance with N.J.A.C. 5:23-8.21;

iv. The names of all technical personnel, including asbestos safety technicians with their certification numbers, and their range of salaries and other compensation;

v. The policies and procedures of the applicant for the hiring, training, education, and supervision of all technical personnel involved in the supervision and performance of duties pursuant to this subchapter;

vi. The prior experience of the applicant in performing similar or related functions;

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subchapter; and

viii. A statement that the applicant is not affiliated with, or influenced or controlled by any producer, manufacturer, supplier or vendor of products, supplies or equipment used in asbestos hazard abatement or by any abatement contractor; and

ix. Proof of insurance as required pursuant to N.J.A.C. 5:23-8.11(c)3v.

5. Authorization shall be valid for a period of one year. The expiration dates shall be March 31 or September 30.

6. Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration for the current authorization from the Department. The asbestos safety control monitor shall make current the information previously submitted to the Department. The asbestos safety control monitor shall provide additional information as the Department may request. The application shall be accompanied by the fee established pursuant to (h) below. The Department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following receipt by the Department of an application for reauthorization, the Department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the Department shall provide the asbestos safety control monitor with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the Department.

ii. The Department, on its own motion or at the request of any asbestos safety control monitor, may grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, approved plans, air tests, log sheets and any other information that may be required by the enforcing agency or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.

1. The asbestos safety control monitor shall provide the Department with written notification of any change of licensed personnel and any change of principals within 30 days.

2. The enforcing agency shall be the sole agent for the collection of all fees and penalties from the property owner, the designated agent or anyone in their employ.

3. Each asbestos safety control monitor shall have the following responsibilities:

i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode for the projects contracted;

ii. To review and approve the plans and specifications, release them in writing, and forward them to the enforcing agency for issuance of a permit;

iii. To be subject to the department's rulings, directives and orders;

iv. To provide adequate supervision to its employees to ensure conformance to the provisions of this subchapter;

v. To carry liability insurance equal to that required of private enforcing agencies pursuant to N.J.A.C. 5:23-4.14(e)5;

vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subchapter.

vii. To provide technical assistance to the building owner in the preparation of a construction permit application;

viii. To provide written notification of the start of a project to the department a minimum of 10 days prior to the start of the project and telephone notification to the department by the asbestos safety technician on the first day of the start of the project;

ix. To perform all required inspections and reinspections pursuant to this subchapter;

x. To perform all tests required by this subchapter;

xi. To give testimony at a hearing or in court, as required by the construction official or the Department;

xii. To prepare all reports required by this subchapter or as may be required by the Department from time to time;

xiii. To meet its obligations under its contract with the building owner;

xiv. To issue and maintain documentation and certification, including, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work;

xv. To ensure the attendance of all technical and supervisory employees at required training and orientation programs; and

xvi. Upon completion of an asbestos hazard abatement project, the asbestos safety control monitor shall submit a final comprehensive report consisting of, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The final report shall be submitted to the building owner within 60 days of issuance of the Certificate of Completion. A copy of the final report shall be made available to the Department within 10 days of written request.

(d) Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitoring services in connection with an asbestos hazard abatement project, the asbestos safety control monitor shall not have any economic relationship with another party involved with the project. Laboratory services needed by the asbestos safety control monitor shall not be provided by any laboratory that has any economic relationship with the abatement contractor.

1. The asbestos safety control monitor may perform air monitoring required pursuant to the related OSHA requirements only through a contract with the building owner.

(e) Penalty, suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the Department may suspend or revoke its authorization of any asbestos safety control monitor or assess a civil penalty, in accordance with N.J.A.C. 5:23-2.31, if the Department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of this subchapter, or that a change of facts or circumstances makes it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subchapter in a satisfactory manner, or any provision of this subchapter has been violated, or that the asbestos safety control monitor has been negligent or has engaged in misconduct in the performance of any of its duties, or that the asbestos safety control monitor has failed to maintain a minimally acceptable level of competence.

i. During the period of suspension, the affected asbestos safety control monitor shall not be authorized

to discharge any of its responsibilities under this subchapter unless otherwise specified in the notice of suspension or order of the Department.

2. The Department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the Department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The Department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the Department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization stating the grounds therefore. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereunder and to enter into an implementing contract with any other asbestos safety control monitor.

(f) In addition or as an alternative to revoking or suspending an authorization, or assessing a penalty, the department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants such a response. Such letter shall be made part of the authorization file of the firm.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of an authorization.

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subchapter for approval as an asbestos safety control monitor shall pay a fee of \$4,200 for the authorization which is sought.

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, accompa-

nied 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 \$2,100.

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).

Amended by R.2002 d.260, effective August 5, 2002.

See: 34 N.J.R. 1572(a), 34 N.J.R. 2781(c).

In (h), substituted "\$4,200" for "\$3,500" in 1 and "\$2,100" for "\$1,750" in 3.

Amended by R.2004 d.365, effective October 4, 2004.

See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (e)1, substituted "in accordance with N.J.A.C. 5:23-2.31" for "of not more than \$500.00 per violation" in the introductory paragraph. Administrative correction.

See: 36 N.J.R. 5337(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;