

5:23-1.4 Definitions

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

“Building” means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing shelter, enclosure and support of individuals, animals or property of any kind. When used herein, building and structure shall be interchangeable except where the context clearly indicates otherwise.

“Building subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the building subcode within the jurisdiction of the enforcing agency.

“Business day” means any day of the year, exclusive of Saturdays, Sundays, and legal holidays.

“Certificate of approval” means a certificate issued pursuant to N.J.A.C. 5:23-2 upon completion of work that requires a construction permit but not a certificate of occupancy.

“Certificate of compliance” means the certificate provided for in N.J.A.C. 5:23-2, indicating that potentially hazardous equipment is being maintained in accordance with the Act and this chapter.

“Certificate of continued occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that as a result of a general inspection of the visible parts of the building, no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32 have been found, and that the existing use of the building has heretofore lawfully existed.

“Certificate of occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act and the regulations.

“Class I structure” means a structure not listed in N.J.A.C. 5:23-4.3A(d)1i through v or 2ii through xx.

“Class II structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)2ii through xx.

“Class III structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)1i through v.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Construction Board of Appeals” means the board provided for in subchapters 2 and 5 of this chapter.

“Construction official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and administer the regulations within the jurisdiction of the enforcing agency.

“Construction permit” means an authorization to begin work subject to the conditions established in subchapter 2 of this chapter.

“Department” means the Department of Community Affairs.

“Effective date” means, in the case of a new rule, amendment or repeal, the date of promulgation in the New Jersey Register. The effective date of a readoption is the date of filing with the Office of Administrative Law.

“Electrical subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and provisions of the electrical subcode within the jurisdiction of the enforcing agency.

“Elevator” or “elevator device” means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or a power driven, inclined, continuous stairway used for raising or lowering passengers; or a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, but it is not limited to, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standards for Belt Manlifts).

“Elevator subcode official” means a qualified person appointed by the municipal appointing authority or the Commissioner, pursuant to the Act and this chapter, to enforce the provisions of any subcode specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Enforcing agency” means the municipal or State administrative entity charged with the administration and enforcement of the regulations consisting of the construction official, subcode officials and assistants thereto appointed in accordance with N.J.S.A. 52:27D-126 of the act and the regulations.

“Equipment” means plumbing, heating, electrical, ventilating, air conditioning, refrigerating and fire prevention equipment, and elevators, dumb waiters, escalators, boilers, pressure vessels and other mechanical facilities or installations, which are related to building services and shall not include manufacturing, production or process equipment, but which shall include connections from building service to process equipment.

“Facility” for the purpose of applying for an annual permit means exclusive of a hotel/casino, a building or group of buildings under common ownership or control and whose maintenance work is performed under the direct supervision of a maintenance supervisor.

“Fire protection subcode official” means a qualified person appointed by the appropriate appointing authority or the commissioner pursuant to the act and the regulations to enforce those portions of any subcode, specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Health care facility” means the facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including but not limited to a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, home for the sheltered care of adult persons, and bioanalytical laboratory or central services facility serving one or more such institutions, but excluding institutions that provide healing solely by prayer.

1. This definition shall not be deemed to include nurses, doctors, or other staff housing not attached in accordance with minimum fire separation standards in the building subcode; administrative offices not attached in accordance with minimum fire separation standards in the building subcode; parking garages, or other such facilities for which the Federal government does not impose standards as a condition of funding.

“Hearing examiner” means a person appointed by the commissioner to conduct hearings, summarize evidence and make findings of fact.

“Lead abatement” means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures. “Lead abatement” shall not include painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, unless it is evident from the statements and/or actions of a person or persons authorizing or performing such services that an objective of the work is the mitigation or permanent elimination of a lead-based paint hazard.

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

“Maintenance” means the replacement or mending of existing work with equivalent materials or the provision of additional work or material for the purpose of the safety, healthfulness and upkeep of the structure and the adherence to such other standards of upkeep as are required in the interest of public safety, health and welfare.

“Major work” means any construction work for which any prior approvals are required, any construction of a new structure not previously occupied and any construction work other than ordinary repairs otherwise not qualifying as “minor work” or a “small job”.

“Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that such term shall also include any structure which meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer has voluntarily filed a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401 et seq.

“Minor work” means construction work undertaken in existing structures, requiring no prior approvals and no plan review, not altering in any way the structural members of a building and meeting the definition set forth in N.J.A.C. 5:23-2.17A.

“Municipality” means any city, borough, town, township or village.

“Municipal Procedures Manual” means the book established by the Commissioner, effective January 1, 1984, and any subsequent revisions, detailing the steps to be followed in completing, processing and filing the standards forms, logs and reports required for administration and enforcement of the State Uniform Construction Code.

“Operative date” means the date upon which the Department and local enforcing agencies shall enforce, and all parties shall comply with, an effective rule. Unless otherwise provided in the notice of adoption published in the New Jersey Register, the effective date is the operative date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Certificate of continued occupancy” and “prior approvals” recodified.

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

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

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

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

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

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

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

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

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

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

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

Definition for "Facility" added.

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

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

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

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

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

Industrialized/modular buildings added to definition of premanufactured system.

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

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

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

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

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

Definitions added for Class I, II and III structures.

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

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

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

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

Administrative Correction.

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

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

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

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

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

Case Notes

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

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

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

5:23-1.5 Effective date

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

(b) Exceptions include:

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

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

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

5:23-1.6 Prior permits; extensions

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

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

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

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

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

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

New (c) added.

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

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

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

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

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

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

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

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

5:23-1.7 Validity

(a) If any provision of the regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the regulations which can be given effect, and to this end the provisions of the regulations are severable.

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

4. Permit requirements for tents and membraned structures shall be as set forth in N.J.A.C. 5:23-3.14(b)16i. A temporary greenhouse meeting the criteria set forth in N.J.A.C. 5:23-3.14(b)16i(4) shall not require a permit except as otherwise provided in N.J.A.C. 5:23-3.14(b)16i(5).

5. Gas utility company shall not be required to obtain a permit or give notice to the enforcing agency for replacement of interior gas utility company-owned metering (meter and related appurtenances) by exterior gas utility company owned-metering if the work is performed by qualified employees of the gas utility company.

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1. Identification of the facility and the buildings covered by the application for the annual permit.

2. Identification of the location within the facility where the annual permit records will be maintained.

3. A listing of the names, titles and trade specialties of the facility's full-time maintenance staff.

4. The name of the person responsible for the maintenance logs, job assignments and quality control.

5. A statement from the management of the facility attesting that the maintenance staff performing work under the annual permit are under the direct supervision of a qualified individual, as set forth under N.J.A.C. 5:23-2.14(e)1, or are individually qualified in their respective trades.

i. Evidence of qualification shall be journeyman status, civil service status, trade experience, trade school certification, college degree, State licensure pursuant to law or other appropriate evidence of competence.

ii. No person employed on the maintenance staff of a facility shall be deemed to be qualified to engage in lead abatement unless he or she has been certified by the New Jersey Department of Health pursuant to section 3 of P.L. 1993, c.288 (N.J.S.A. 26:20-3) (see N.J.A.C. 8:62).

6. A statement from the management explaining their procedures for providing training at Department seminars on construction codes on a regular basis for at least one, but not more than three, individuals per subcode.

7. A statement from the management explaining the procedures of the applicant to ensure proper quality control of the work performed under the annual permit.

8. Receipt of the required annual permit fee and training registration fee.

(d) The Construction Official, upon review of the application may issue or deny an annual construction permit in

whole or in part. The construction permit (Form F-170C) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.

(e) Conditions of the annual permit are as follows:

1. The "annual permit" may be issued for building/fire protection, electrical, mechanical or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge as evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification for which the annual permit is sought.

i. An approved copy of the annual permit application shall be kept at a facility's maintenance office within the municipality having jurisdiction for review by the Construction Official and appropriate subcode official. The Construction Official shall be notified of the location of the facilities maintenance office.

2. The life of the annual construction permit shall be limited to one year;

3. The facility shall maintain a construction log of all work performed. The construction log shall contain the date, a brief description and estimated or actual cost of the project. This log shall be subject to a quarterly inspection by the construction official or his authorized representative. Any business record showing when and where work was done and the extent of such work shall be deemed to be a construction log: Applications for the renewal of the "annual permit" shall be filed with the Construction Official at least 60 days prior to the expiration of the current annual permit. The facility application shall make current the information previously submitted to the Construction Official. The application for renewal shall be accompanied by the established fee.

4. The annual permit covers all construction or maintenance work done by the facility's full-time maintenance staff, but shall not include work performed by outside contract even if the contractor is hired by the facility and working under direct supervision of the facility's maintenance staff. Work performed by outside contract shall be subject to applicable UCC regulations and State Licensure Law.

5. A permanent work log, approved by the construction official, of all work done under the "annual permit" must be maintained at a facilities maintenance office on site or must be available at the time of the inspection upon 24 hours notice of such inspection. The log must contain the date, a brief description of the work, photographs for any work which was not inspected prior to closing as set forth in (e)8 below, and the name of the

person supervising the work. The log shall be retained for three years.

6. Architectural or engineering drawings, as required by law for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7. The appropriate subcode official, at least two (2) times a year, shall perform inspections of the facility for which an annual permit has been issued. The maximum time between inspections shall be a six month period.

8. Work that is normally inspected prior to closing shall be ordered to be reopened by the facility upon written notice from the Construction Official or appropriate subcode official if he has reason to believe that a violation is present. A photograph shall be taken of any work intended to be enclosed without inspection.

9. Any work that is done under the supervision of the facilities maintenance staff and under a regular construction permit shall be entered into the annual permit log. The construction permit number shall be listed as a part of the entry.

10. Training for annual permits shall be provided at the seminars for code officials.

i. The facility shall provide a list of at least one, but not more than three, individuals per subcode who are required to complete five hours of continuing education per year.

ii. The Department shall maintain the training records for each annual permit. The annual permit shall not be renewed unless the facility completes the training for each issued subcode.

iii. The Department shall notify the construction official who issued the permit if the training has not been completed.

11. Any changes to the annual construction permit application shall be forwarded to the Construction Official within 30 days of the change.

12. The following work is not permitted under an annual permit:

i. Any work done on a facility that would result in a change of use of a building or part of a building;

ii. New buildings and additions regardless of size;

iii. Alterations completed between inspection periods in excess of 5,000 square feet per building;

iv. Any work done on a facility that would result in an increase to the area of a building;

v. The installation or alteration of a sprinkler system;

vi. Any work that affects the required means of egress;

vii. Any modification work, other than routine maintenance, that affects life safety systems, such as, but not limited to:

(1) Emergency lighting systems;

(2) Smoke and heat detection systems;

(3) Stand-by generator systems;

(4) Emergency smoke evacuation systems.

viii. Any work which would disturb asbestos and require a permit to perform.

(f) Construction requirements for commercial farm buildings shall be as set forth in N.J.A.C. 5:23-3.2(d).

As amended, R.1981 d.462, eff. December 7, 1981.

See: 13 N.J.R. 390(a), 13 N.J.R. 885(d).

(c)1i: added "under the control and supervision of a person"; (c)1iii: added "any business construction log."

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

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

Section substantially amended.

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

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

Subsection (e) substantially amended.

Administrative Correction: "facility's" changed from "facilities" throughout.

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

Amended by R.1990 d.558, effective November 19, 1990.

See: 22 N.J.R. 1969(b), 22 N.J.R. 3483(a).

Conditional exemption for hoophouses or polyhouses added.

Amended by R.1991 d.60, effective February 19, 1991.

See: 22 N.J.R. 3609(a), 23 N.J.R. 405(b).

Gas utilities exempt from permit and notice requirements.

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

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

Mechanical work added to (e)1.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (d).

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

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

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

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).

Rewrote (c)6 and (e)10.

5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted on the standard Construction Permit Application form prescribed by the Commissioner at N.J.A.C. 5:23-4.5(b)2 and shall be accompanied by the required fee as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following:

1. The name and address of the owner: Where the owner is not a resident of the State, he shall designate a resident as agent for the purpose of service of any notices or orders which may be necessary. Such address shall not be limited to a post office box, but shall specify a physical location where such owner or agent may be found during normal business hours. Where the owner is a corporation, partnership or other business entity, the application shall indicate the names and addresses of the officers, or other responsible persons upon whom service may be made;

2. The street address and lot and block number of the property upon which the building or structure is proposed to be erected;

3. A description of the proposed work, including the use group classification, proposed construction type, lot ground coverage in square feet, total floor area in square feet, total building or structure volume in cubic feet, the total number of plumbing fixtures, the total number of electrical fixtures, outlets and major appliances, a description of the type of heating system, the source of water supply, the mode of sanitary waste disposal and a listing of any special, unusual or hazardous facilities proposed for inclusion in the building or structure;

4. The estimated cost of the work for which a permit is sought, including but not limited to building construction, on-site construction, and all integral equipment, built-in furnishings and finishes. Where any material or labor proposed for installation in the building or structure is furnished or provided at no cost, its normal or usual cost shall be included in the estimated cost;

5. A statement that all required State, county and local prior approvals have been given, including such certification as the construction official may require;

6. For Class I structures, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode; and

7. If the work involves lead abatement, the applicant shall provide the following:

i. A copy of the scope of work which shall describe precisely the location and extent of the work;

ii. A sketch plan showing the locations where abatement work is to be performed and showing emergency egress routes for any occupants to be in the building during abatement;

iii. A record of all materials to be used for all phases of the job, including encapsulants, enclosures, containment materials and replacement components, as appropriate;

iv. A copy of the lead evaluation report, if any has been done, prepared by a business firm certified by the

Department pursuant to N.J.A.C. 5:17 to do lead evaluation; and

v. The degree to which any lead hazards identified in any report prepared by a lead evaluation firm certified by the Department will be abated.

(b) In addition, the following information shall be required on any application for a construction permit when such information is available, but not later than the commencement of work.

1. The names and addresses of all contractors engaged or planned for engagement by the owner in the execution of the work.

i. A current validated State builder registration card shall be shown by the contractor and the registration number of the contractor shall be recorded on the permit, pursuant to the New Home Warranty and Builder's Registration Act (N.J.S.A. 46:3B-1 et seq.), if the project is a one or two family dwelling, condominium or cooperative, unless it is to be built in whole or in part by an owner, in which case an affidavit shall be filed by the owner on a form prescribed by the Department of Community Affairs, in which he acknowledges that work done by him, or by a subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act and states that he will disclose this information to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy.

2. The name and license number of the contractor or subcontractor for plumbing and for electrical work where such work is proposed.

i. Plumbing and electrical work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single family homeowner on his own dwelling.

ii. The seal and signature of the licensed plumbing and electrical contractor shall be affixed to the corresponding subcode application form.

3. The name and address of the responsible person who will be in charge of the work and who is responsible to the owner for ensuring that all work is installed and completed in conformity with the regulations. The person may be the design architect or engineer, the contractor or a third party acceptable to the construction official.

4. If the work involves lead abatement, one of the following shall be supplied:

i. The name and Department certification number issued pursuant to N.J.A.C. 5:17 of any business firm undertaking the lead abatement; or

ii. If the work is to be done by employees of the owner of the property, the name and New Jersey

Department of Health certification number issued pursuant to N.J.A.C. 8:62 of each such employee; or

iii. If the work is to be done on an owner-occupied single family dwelling, a certification by the owner stating that he or she owns and occupies the property as a principal place of residence, will be performing the abatement work, and has received the written information for homeowners prepared by the Department explaining the danger of improper lead abatement, procedures for conducting safe lead abatement, and the availability of certified lead abatement contractors or of any available training for homeowners.

5. In the event of any change of contractor or person in charge of work under (b)1, 2, 3 and 4 above, such change shall be filed as an amendment to the application.

(c) A separate application and permit shall be required for each building.

(d) Application for a permit shall be made by the owner, or his agent, a licensed engineer, architect or plumbing, electrical or other contractor employed in connection with the proposed work. If the application is by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner in fee, and that the applicant is authorized to make such application. All issued permits shall remain the property of the owner even if the application was made by a contractor or authorized agent.

(e) Plans, plan review, plan approval:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Plan review:

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

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

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

application for construction permit as herein provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Text added at (a)6 on Class I structure. Amended by R.1993 d.353, effective July 19, 1993. See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a). Amended by R.1995 d.381, effective July 17, 1995. See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a). Amended by R.1995 d.544, effective October 16, 1995. See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Case Notes

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

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

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

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

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

5:23-2.16 Construction permits—procedure

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

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

(b) Suspension of permit: Any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

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

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

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

(f) Certificate fees:

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

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

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

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

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

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

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

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

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

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

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

(j) Rules concerning the appeal of fees are:

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

Old (a)4 deleted and new text substituted.

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

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

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

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

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

Minor technical changes made throughout section.

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

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

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

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

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

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

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

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

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (a)5.

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

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

No inspection fee for gas service entrances.

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

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

Added (c)5.

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

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

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

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

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

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

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

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

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

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).

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

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

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

Rewrote (f) and (g).

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

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

Case Notes

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

5:23-4.19 State of New Jersey training fees

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

(b) Amount: This fee shall be in the amount of \$0.00016 per cubic foot volume of new buildings and additions. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The fee for all other construction, except pre-engineered systems of commercial farm building, shall be \$0.80 per \$1,000 of value of construction. No fee shall be collected for pre-engineered systems of commercial farm building.

(c) Remitting and reporting:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (b) increased fee amount from \$0.0014 to \$0.0016 per cubic foot. Amended by R.1992 d.47, effective February 3, 1992.

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

Fees to be paid to Regulatory Affairs.

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

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

Fee amount amended at (b).

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

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

5:23-4.20 Departmental fees

(a) General:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New Rule R.1986 d.143, effective May 5, 1986.
See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).
Amended by R.1989 d.342, effective July 3, 1989.

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

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

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

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

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

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

Recodified from 5:23-8.14 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Coordination with other permits", recodified as 5:23-8.6.

5:23-8.18 Demolition

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

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

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

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

New Rule R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

(e) substantially amended and results of .02 fibers change to .020. Amended by R.1989 d.342, effective July 3, 1989.

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

Recodified old 8.21 as new 8.22.

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

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

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

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

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

Recodified from 5:23-8.22 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Asbestos safety control monitor", recodified as 5:23-8.11.

5:23-8.19 Abatement in occupied buildings

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Engineering controls shall be implemented as follows:

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

ii. The contractor shall install a sufficient number of HEPA filter equipped air filtration units to cause a complete air change or total air filtration within the work area at least once every 15 minutes. (Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area or to prohibit additional air changes per hour.) The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.05 inches w.c. (Nothing in this subchapter shall be construed to limit the maximum pressure differential established between the work area and occupied spaces.)

(1) Make up air shall not be drawn through openings in the separation barriers in buildings greater than four stories in height, unless those openings are equipped with systems or devices which will not permit air flow except toward the work area and the air filtration and exhaust units located in the work area.

3. Work area protection shall be assured as follows:

i. Floors shall be covered with two layers of polyethylene sheeting which shall overlap at the seams and which shall be applied to the floor, individually sealed. The first layer shall extend up the wall at least 12 inches. The second floor layer shall be installed and extend up sidewalls at least 24 inches.

ii. Walls shall be covered with one layer of polyethylene sheeting individually sealed to the wall. The layer shall hang straight down overlapping the second layer of floor sheeting on the wall by at least 18 inches.

iii. Sheeting shall be sized to minimize the number of seams. No seams shall be located at the joints between walls and floors. As a minimum, no seam shall stop within 12 inches of a corner and sheeting shall overlap at least 12 inches between seams of adjacent layers.

iv. When a strippable coating is used in place of polyethylene sheeting, it shall be used in accordance with N.J.A.C. 5:23-8.15(f)7 and the product shall be applied during periods of minimal occupancy as determined by the owner and included in the approved plan.

4. Monitoring shall be conducted as follows:

i. Air sampling shall be done as follows:

(1) At a minimum, one sample at the beginning of each work shift, one every four hours thereafter, and one at the end of the contractor's work day for every 10,000 square feet of occupied space adjacent to the work area shall be collected and analyzed. Air samples shall be taken in areas where the greatest potential for fiber migration exists. In addition to the requirements noted above, air samples shall be taken at the entrance(s) to the work area and any other interior spaces from which make-up air is drawn.

Additional samples shall be taken for all areas such as stairwells, communicating shafts, elevators, plenums, ducts which pass through the work area and which are in service, and unusual room and building configurations. If air levels exceed the permitted fiber count, the applicable requirements of the contingency plan in (c)5 below shall be followed.

(A) At least one air sample shall be collected and analyzed during the work shift inside the work area. The results of this test will not, however, trigger the requirements of the contingency plan.

(2) A secure chain of custody for air samples shall be established in writing as part of the approved plan by the asbestos safety control monitor firm. The final disposition of samples (whether they should be retained or disposed of after analysis and if retained, who keeps them) shall be determined prior to the commencement of asbestos abatement.

(3) The services of a testing laboratory, as delineated in N.J.A.C. 5:23-8.21(a)1 and 2, shall include a microscope and laboratory technician at the project site or the capacity to obtain results within four hours from start of sample. The laboratory technician shall be listed in the Asbestos Analyst Registry of the American Industrial Hygiene Association for PCM analysis or qualified by other programs recognized by the Department as equivalent. If the laboratory technician is on site, the owner shall provide a safe and clean space for the analysis of samples separate and distinct from the work area. Air samples are to be analyzed via NIOSH 7400 and verbal results made available for a determination regarding continued occupancy. A written record of test results shall be kept at the job site and included in the final report.

(4) Ten percent of all abatement samples shall be re-analyzed within 24 hours at a laboratory for quality control purposes.

(5) Daily occupancy shall be allowed when the results of all the air samples are less than or equal to 0.010 fibers/cc by Phase Contrast Microscopy. If air levels exceed 0.010 fibers/cc, the contingency plan during abatement in (c)5 below shall be followed.

(6) In the case of reoccupancy and final clearance, all air samples used to determine reentry shall be analyzed by an accredited laboratory.

ii. Pressure monitoring shall be carried out as follows:

(1) Pressure differential shall be monitored by digital manometers with continuous printout or other approved low pressure monitoring devices. Sensor tubes used for monitoring shall be placed so that the air filtration devices shall not cause false readings. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

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

(3) Written documentation of pressure differential shall be provided by the asbestos safety technician either by continuous printout devices. The asbestos safety technician and the contractor supervisor will ensure, prior to the completion of the work shift, the integrity of the containment site before workers depart.

(4) The pressure differential shall be greater than or equal to 0.05 inches w.c. at the pre-commencement inspection (at the time of approval immediately prior to the start of abatement work).

(A) In addition to providing a pressure differential greater than or equal to 0.5 inches w.c. for the pre-commencement inspection, a smoke test shall be conducted to demonstrate that the work area has been isolated properly and that pressure differentials have been established to prevent fiber migration from the work area.

(5) Daily Occupancy shall be allowed when the pressure differential is equal to or exceeds 0.05 inches w.c. If the air pressure differential drops below 0.05 inches w.c., the contingency plan during abatement in (c)5 below shall be followed.

5. Contingency plan during abatement shall be implemented as described below. These are the minimum requirements which shall be enforced by asbestos safety control monitors. These requirements shall not limit the asbestos safety control monitors from instituting additional requirements, if necessary, for the protection of the building occupants.

i. If the pressure differential drops below 0.05 inches w.c., the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss.

(2) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction, changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

ii. If the pressure differential drops below 0.01 inches w.c., the following procedures shall be implemented:

(1) The contractor shall cease abatement activity in the work area.

(2) The asbestos safety control monitor shall notify the building owner to evacuate the pressurized space(s). The pressurized space(s) shall include all space outside the work area which is pressurized to maintain the required pressure differential relative to the work area and is isolated from the rest of the building in terms of air flow. The pressurized space may include the entire building exclusive of the work area or any part of the building that is pressurized to isolate it from the work area.

(3) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls and determine the source of the pressure loss.

(4) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction, changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

(5) Reoccupancy shall not be permitted in any area unless a pressure differential of 0.05 inches w.c. or greater is reestablished.

(6) If a pressure differential of 0.05 inches w.c. or greater is not reestablished within 24 hours of the first reading below 0.01 inches w.c., then the building shall be evacuated.

iii. If air levels exceed 0.010 f/cc, the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the high air level.

(2) An additional/second PCM air sample shall be taken at each place at which a high air level was obtained. The additional/second PCM sample may be split, and if the result of the air sample is less than or equal to 0.010 f/cc the contingency plan is terminated. If the result of the air sample exceeds 0.010 f/cc, the contractor, in consultation with the asbestos safety control monitor, shall choose the option of cleaning and retesting by PCM analysis or analyzing the split sample by TEM analysis. If the result of the TEM analysis exceeds 0.010 f/cc, then cleaning shall be undertaken.

(3) The decision as to the timing of the cleaning activity shall be made by the asbestos safety control monitor firm in consultation with the building owner and the contractor.

(4) Cleaning shall include, but not be limited to, wet wiping and misting the air. Cleaning the affected area shall be continued outside of containment and PCM sampling shall also be continued until the result in the area is equal to or less than 0.010 f/cc by either PCM or TEM analysis.

(5) If laboratory analysis of air samples does not yield a reading less than or equal to 0.010 f/cc within 24 hours of receipt of the first test result above 0.010 f/cc, then the building shall be evacuated.

(6) Reoccupancy shall not be permitted in any area where PCM analysis reveals results greater than 0.010 f/cc, unless TEM results indicate asbestos fibers are equal to or less than 0.010 f/cc. In the case of reoccupancy, all air samples used to make the determination to allow reentry shall be analyzed by an accredited laboratory.

iv. If a power outage occurs during active abatement work, the building occupants shall be evacuated until the air samples determine that the occupied spaces are safe, and power has been restored. If a power outage occurs when the building is unoccupied, occupancy will not be permitted until air samples determine that the spaces to be occupied are safe and power has been restored.

6. Security shall be required as follows:

i. In high risk areas, the owner shall provide a 24 hour security guard to ensure protection against damage or vandalism to separation barriers, engineering systems, monitoring devices, or other equipment.

ii. The owner shall provide continuous unlimited access for the asbestos safety technician in all occupied spaces for installation, maintenance, and data collection from monitoring systems.

iii. The asbestos safety control monitor firm shall include provisions in the plan and the asbestos safety technician shall ensure that filters are changed as necessary and that pressure differential is maintained around the clock until the project is completed.

7. Waste removal shall be accomplished as follows:

i. The waste removal route of travel is to be designated on the abatement plans and shall be separate and distinct from the normal route of travel used by building occupants. Waste removal shall occur during the time of least amount of building occupancy. If the route of travel is to be used the following day by building occupants, air monitoring must be performed, and if the results of air levels exceed 0.010 f/cc, then the waste removal route is to be wet wiped using amended water, HEPA vacuumed and retested until an acceptable air level is achieved prior to allowing occupancy of the area.

ii. The waste removal process shall be closely monitored visually and through air sampling by the asbestos safety technician.

iii. No dumpster shall remain on the premises overnight unless the dumpster is locked and labeled to indicate that it contains asbestos-contaminated waste.

8. A written statement shall be signed by the asbestos safety control monitor denoting that an asbestos abatement will occur during building occupancy and verifying that the above requirements will be maintained. This written statement shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency. This statement shall include the areas to be occupied during the abatement and the number of occupants.

Recodification and New Rule, R.1993 d.198, effective June 7, 1993. See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Asbestos safety technician; certification requirements", recodified as 5:23-8.10(a)-(c).

5:23-8.20 Removal of non-friable asbestos-containing material

(a) This section applies to all non-friable, miscellaneous asbestos-containing material.

1. When the removal method will cause the building environment to become contaminated with airborne asbestos fibers caused by a combination of mechanical and manual tasks, such as grinding the surface of vinyl asbestos floor tiles, then complete separation of the worksite from the rest of the building shall be required and the precautions and procedures as delineated in N.J.A.C. 5:23-8.15 or 8.19, as appropriate, shall be followed. A construction permit for asbestos abatement pursuant to this subchapter shall be required.

2. When the removal method will not contaminate the building environment with airborne asbestos fibers, such as when an electric heating appliance is used to loosen vinyl asbestos floor tiles or when the "Recommended Work Practices for the Removal of Resilient Floor Coverings" (latest edition) by the Resilient Floor Covering Institute are followed in removing floor tile, sheet vinyl flooring and the associated adhesives, then general isolation of the work area from the surrounding environment by the closing of doors and windows in the removal areas, when feasible, safe work practices and proper clean-up procedures shall be required.

(b) The disposal of non-friable asbestos-containing material and/or asbestos-contaminated waste shall conform to the New Jersey Department of Environmental Protection and Energy requirements specified in N.J.A.C. 7:26.

(c) Exception: This section shall not apply to non-friable asbestos-containing material found on the exterior of the building such as asbestos siding, transite and asbestos cement board, asbestos roof shingle, felts and build up roofing materials. Safe work practices shall be employed to minimize asbestos fiber exposure during the tear-off period. A construction permit shall be obtained if required pursuant to N.J.A.C. 5:23-2. Disposal of this waste shall be in accordance with regulations for the disposal of such material adopted by the New Jersey Department of Environmental Protection and Energy.

Recodified from 5:23-8.24 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, "Application of asbestos", recodified as 5:23-8.12.

5:23-8.21 Air monitoring methodology

(a) Air sampling specified in this section shall be performed by the asbestos safety technician in accordance with the procedures specified in this subchapter and shall be analyzed by a laboratory pursuant to 40 CFR 763.90.

1. For phase contrast microscopy (PCM) analysis, laboratories shall be currently enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program or an equivalent recognized program.

2. Analysis by PCM shall use the NIOSH 7400 method delineated in "Fibers" publication in the NIOSH Manual of Analytical Methods, 3rd edition, 2nd supplement, August 1987 or the latest edition. Maximum turnaround time from sample collection through data reporting shall be 24 hours.

3. For transmission electron microscopy (TEM) analysis, laboratories shall participate in the National Institute of Standards and Technology—National Voluntary Laboratory Accreditation Program (NIST-NVLAP) and shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E of 40 CFR 763. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

4. All pumps shall be calibrated prior to initial sampling using a primary standard. Pumps shall be recalibrated with a minimum of a secondary standard before and after each sample is collected. Protocols shall be established for periodic calibration, using a primary standard. The frequency of primary recalibration checks shall be initially high, until experience is accumulated to show that it can be reduced while maintaining the required sampling accuracy. Records shall be kept of all calibrations and shall be part of the daily log.

(b) Air sampling while abatement is in progress shall comply with the following procedures:

1. A minimum of three samples per eight hour shift shall be collected (one at the beginning of each shift, one every four hours thereafter, and one at the end of the contractor's work day). One stationary sample shall be collected within the clean room of the decontamination unit and two samples collected adjacent to the work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers and/or work area. Testing results shall not indicate that concentrations above 0.01 fibers per cubic centimeter have occurred outside the containment barrier or above 0.02 fibers per cubic centimeter within the clean room of the decontamination chamber during the abatement project.

2. For abatement projects in occupied buildings, additional samples shall be taken in spaces adjacent to the work area and inside the work area and analyzed by PCM as required by N.J.A.C. 5:23-8.19(c)4. The contingency plan in N.J.A.C. 5:23-8.19(c)5 shall be followed if test results indicate that this is necessary.

(c) Post abatement visual inspections and air monitoring shall comply with the following procedures:

1. Within 48 hours after clean-up for post-removal air testing, and before the removal of critical barriers, a thorough and complete visual inspection and a subsequent final air test shall be performed. This test is required to establish safe conditions for the removal of critical barriers and to permit the beginning of reconstruction activity, if required. Sufficient time following clean-up activities shall be allowed so that all surfaces shall be dry during monitoring. Air pressure differential filtration units shall be in use during this monitoring. Post removal testing shall begin when all work area surfaces are completely dry.

2. Aggressive air sampling shall be employed using propeller-type fans and leaf blowers as follows:

i. The fans shall be placed in each room to be sampled so as to cause settled fibers to rise and enter the air.

ii. Prior to air monitoring, floors, ceilings, and walls shall be swept with the exhaust of a one-horsepower leaf blower. The areas which would be subject to dead-air conditions shall be swept clean.

iii. The fans used shall be capable of creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type.

iv. The sampling pump and sampling media shall be placed in the abatement area on a random basis to provide unbiased and representative samples. Stationary fans shall be placed in locations which will not interfere with air monitoring equipment. Fan air shall be directed toward the ceiling.

v. One fan shall be used for each 10,000 cubic feet of the work area.

vi. The leaf blower and its use must meet the criteria set forth in EPA document 560/5-85-024, "Guidance for Controlling Asbestos-Containing Materials in Buildings," appendix section M.1.5, or any replacement criteria set forth by the EPA. Their use should be restricted to general occupancy areas that are contained, and they should not be used in any space with an open dirt, sand or gravel floor.

vii. The work site shall be kept free of non-asbestos abatement debris that would render aggressive air sampling impractical.