



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

January 31, 2007

Dear Construction Official:

On January 11, 2007, the Governor signed a bill into law requiring environmental investigations prior to the issuance of a permit or of a certificate of occupancy for child care centers or for schools where certain conditions are met. (P.L. 2007, c. 1) The purpose of the new law is to ensure that buildings and building sites with a history that might include contamination undergo an environmental investigation to ensure that they are safe prior to becoming child care centers or schools. I am writing to inform you of the new law and of how to proceed with the issuance of permits and certificates of occupancy in these cases.

The emergency rules adopted by the Department of Children and Families, which were the subject of my October 27, 2006 letter, are still in force and effect. These rules apply to applications for a license to operate a child care center and to license renewals. The new statute governs new construction, rehabilitation, or changes of use on sites or in buildings with an industrial past that create a new child care center or school. Please note that my October 27, 2006 letter states that clearance of the property and of any existing building for use as a child care center is not a prior approval. With the passage of the new law, this has changed. These environmental clearances are now required prior approvals. (A copy of the October 27, 2006 letter is available on the Division's website at http://www.nj.gov/dca/codes/misc/childcare_providers_emergency_rule/child_care_providers_secondary_page.shtml.)

Under the new statute, the Department of Environmental Protection (DEP) is responsible for determining whether the site is safe for a child care center or for a school. The Department of Health and Senior Services (DHSS) is responsible for making a determination as to whether an existing building (interior) is safe for re-use as a child care center or as a school. Like the emergency rule, the new statute triggers requirements for additional environmental investigation based on the past use(s) of the building or property. The following is an outline for use in determining whether a prior approval pursuant to this statute is needed for a particular project. Please note that, in accordance with the framework of the statute, two separate approvals are required: one for the site and one for the building interior.



BUILDING SITE - A Remedial Action Workplan approved by DEP or a No Further Action Letter from DEP must be obtained prior to the issuance of a permit if one of the three conditions, listed below, is met:

1. The property was the site of one of the following uses:
 - Factory/Industrial (Group F)
 - High Hazard (Group H)
 - Storage (Group S)
 - Nail salon or dry cleaner (Group B)
 - Gasoline station (Group M)

If the use of the property predates the UCC, then the determination should be based on what the group classification would have been had the UCC been in effect.

2. The property is on a list of contaminated sites maintained by the DEP or is subject to the Industrial Site Recovery Act (ISRA). To assist you in determining whether a site is a known contaminated site or a site suspected of contamination, you can review the DEP Site Remediation & Waste Management (SRWM) Program website at <http://www.nj.gov/dep/srp>, specifically the SRWM data resources links.

3. The construction official knows or has been advised by other local officials that the property has been used for dumping or there is some other factual basis for believing that there may be “suspected contamination.”

For construction on properties that fall into any of the above categories, if a Remedial Action Workplan was submitted prior to issuance of a permit, a No Further Action letter from the DEP is required prior to issuance of a certificate of occupancy. If a No Further Action letter was submitted prior to issuance of the permit, then as the name suggests, nothing further is required prior to issuance of the certificate of occupancy.

When the site proposed for re-use has no building on it at the time of application, then the DEP prior approval is the only one required.

BUILDING INTERIOR – A certification from the DHSS that an existing building is safe for re-use as a child care center is required prior to the issuance of a permit or of a certificate of occupancy for a proposed child care center (Group I-4 or Group E) if the building previously housed one of the following uses:

- Factory/Industrial (Group F)
- High Hazard (Group H)
- Storage (Group S)
- Nail salon or dry cleaner (Group B)
- Gasoline stations (Group M)

Again, if the building predates the UCC, then the determination should be based on what the group classification would have been had the UCC been in effect.



Similar to the requirements described above for building sites, if a certification from the DHSS that the building is safe for the proposed use is submitted prior to issuance of the permit, then nothing further is required for issuance of a certificate of occupancy. If additional environmental testing or remedial work is required by the DHSS, the requirements set by the DHSS must be submitted, in writing, with the permit application. If they are, then the permit may be issued. The certificate of occupancy cannot be issued until a written certification from the DHSS that all testing and/or remediation has been properly completed is submitted.

It should be noted that, when a building is proposed for re-use, the prior approval of both the DHSS (for the building) and the DEP (for the site) is required before a permit can be issued.

If remediation work is required, then both the DEP and the DHSS prior approvals will specify the nature of the work. The permit issued will cover both the remedial work (to the extent that the remedial work is work covered by the code and the UCC work needed to construct or alter the building. Inspections to ensure that the remedial work is properly completed are the responsibility of the DEP and the DHSS, not the local enforcing agency. The local enforcing agency's obligation is to make sure they have the written DEP and the DHSS approvals of the remedial work in hand before issuing a Certificate of Occupancy.

The statute calls for the DHSS to develop rules for these interior environmental investigations and gives DHSS a year to put these rules in place. For child care centers, the DHSS already is making these determinations because they are required to do that under the rules adopted by the Department of Children and Families. Accordingly, this prior approval is in effect now for child care centers. For schools (Group E, Grades K through 12), we will have to await adoption of rules by the DHSS. We will notify you when those rules are in place. This directive to wait applies only to building interiors for existing buildings that previously had been one of the above uses that are being converted to schools. The requirement for a prior approval issued by the DEP for the building site for a child care center or for a school should be enforced now. And the requirement for a prior approval issued by the DHSS for the building interior for a proposed child care center also should be enforced now.

Should you have any questions regarding the enforcement of this new law, please feel free to contact the Code Assistance Unit at (609) 984-7607.

Sincerely,

William M. Connolly
Director
Division of Codes and Standards

