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ENVIRONMENTAL PROTECTION

LANDSCAPE IRRIGATION CONTRACTORS EXAMINING BOARD

Landscape Irrigation Contractors

Proposed Readoption with Amendments: N.J.A.C. 7:62

Proposed Recodifications with Amendments: N..A.C. 7:62-4.4 as 6.1 and 4.7 as 3.4

Authorized By: Landscape Irrigation Contractors Examining Board, George McCarthy,
Chairman.

Authority: N.J.S.A. 45:5AA-1 et seq., particularly 45:5AA-6.m and n.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 06-13-09.

Proposal Number: PRN 2013-148.

Submit written comments by December 20, 2013 electronically at

<http://www.nj.gov/dep/rules/comments>.

Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. The Landscape Irrigation Contractor's Examining Board (Board) encourages electronic submittal of comments. In the alternative, comments may be submitted on disk or CD, using Microsoft Word 6.0 or above, as well as on paper to:

Linda Cantwell

Attention: DEP Docket Number 06-13-09

Landscape Irrigation Contractors Examining Board

c/o Department of Environmental Protection, Licensing and Pesticide Operations

PO Box 420

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Mail Code 401-04E

Trenton NJ 08625-0420

This proposed readoption with amendments may be viewed or downloaded from the Board's web site at <http://www.nj.gov/dep/exams/lic.htm>.

The agency proposal follows:

Summary

Pursuant to the Landscape Irrigation Contractor Certification Act, N.J.S.A. 45:5AA-1 et seq. (Act), the Landscape Irrigation Contractors Examining Board (Board) regulates persons who engage in the business of landscape irrigation contracting within the State of New Jersey and is authorized to promulgate and enforce rules, collect fees, and to effectuate the purposes of the Act. The Act was amended effective July 15, 2010 (see P.L. 2009, c. 229).

The rules are set forth at N.J.A.C. 7:62, Landscape Irrigation Contractors, and are commonly known as Chapter 62. The rules were previously amended effective on publication in the December 18, 2006 New Jersey Register (38 N.J.R. 5357(a)) and expire on May 19, 2014, in accordance with N.J.S.A. 52:14B-5.1.c(2).

Set forth below are proposed Board amendments to the rules consistent with the Act and its amendments. They include revising requirements to become and remain certified as a landscape irrigation contractor, to engage in the business of landscape irrigation contracting, and to enforce the Act and the rules. Included are proposed revisions the Board believes will further clarify and update certain rules for the benefit of the regulated community, landscape irrigation contracting, and the public. The Board has reviewed the extent of the proposed rules and has determined they successfully implement the statutory purposes of the Act.

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The proposed amendments are explained in the summaries below by subchapter. In addition to definition amendments, if an amendment is proposed throughout the chapter, it will be indicated the first time it appears and so indicated, to avoid repetitiveness. Technical amendments to correct typographical and grammatical errors are also included.

Subchapter 1. General Provisions

Subchapter 1 contains general regulations, including definitions, words, and phrases, pertaining to the occupation of landscape irrigation contracting operative through the chapter.

N.J.A.C. 7:62-1.4 sets forth the rule definitions. The Board is proposing new and revising existing definitions for certain terms used throughout the chapter.

“Act” is being proposed for inclusion as shorthand reference for substitution to the statute entitled “the Landscape Irrigation Contractor Certification Act of 1991 as amended, N.J.S.A. 45:5AA-1 et seq.,” whenever the statute is cited in the chapter.

The definition for “advertising” is being proposed. N.J.S.A. 45:5AA-3.a includes a person advertising the availability of its landscape irrigation services as engaging in the business of landscape irrigation contracting. Therefore, advertising landscape irrigation contracting is a regulated activity. It is not meant to include general advertisers, for example, a billboard company.

Accordingly, the definition “landscape irrigation contracting” is being proposed for amendment to include the advertising or contracting for such activities to reflect that a person advertising the availability of its landscape irrigation services is engaging in the business of landscape irrigation contracting, and therefore is regulated.

The Board’s mailing address and website address is proposed to be included at the end of the definition of “Board” to be readily available to the regulated community and the general public.

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The definition of “business permit” is being proposed. It was added as an amendment to the Act’s definitions at N.J.S.A. 45:5AA-2, and the term is used throughout the Act. Persons are to apply and obtain a business permit from the Board to engage in any landscape irrigation contracting. This proposed additional permit requirement increases, for the betterment of the consumer and the landscape irrigation contracting community as a whole, the responsibilities, accountability, and reporting requirements to engage in the business of landscape irrigation contracting business. The proposed business permit requirements are set forth in new Subchapter 3, and throughout the chapter as appropriate and necessary, substituting, revising, or incorporating the existing requirements regarding landscape irrigation work in N.J.A.C. 7:62-4.3, Supervision of work, and where they appear throughout the existing chapter, which are presented in the subchapters discussion of proposed amendments below. The holder of a business permit is referred to as either a “permittee” or a “business permit holder.”

The amendment reflects the importance of the amendments to the Act that a certified individual be designated and registered with the Board as fully responsible for inspecting and supervising all landscape irrigation contacting work so that the Board and consumers can readily identify the qualified individual in-charge. Added to the regulatory requirements to incorporate the statutory amendments is the specific requirement that before engaging in the landscaping irrigation contracting business, a business permit must first be secured from the Board.

The word “natural” is proposed to be inserted immediately preceding the word “person” in several definitions, the first being in the definition for “candidate.” The insertion qualifies the meaning of “person” for certain uses in the chapter, reflecting the same amendment to the word “person,” in the Act’s definition to “landscape irrigation contractor,” and in the added definition of

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“person” to the Act. “Natural person” is a human being, as opposed to artificial or fictitious “persons” such as corporations. The phrase “natural person” does not include corporate entities.

Additionally, to clarify the meaning and use of “natural person,” the term is proposed to be added to the definition section as meaning an “individual human being.”

The word “natural” is also being proposed to be inserted immediately before the word “person” in the definitions “certificate holder” and “certified landscape irrigation contractor,” to reflect the change in the term “person” to “natural person” in the amended statutory definition of “landscape irrigation contractor” in N.J.S.A. 45:5AA-2.

The word “natural” is also being proposed to be added before the word “person” in the definition of “duly authorized representative” to clarify that an individual may also perform administrative and/or testing functions for the Board. The phrase “who is designated or” is being proposed to be added to the definition of “duly authorized representative” after “person” to clarify that support staff assigned to the Board may also be included to perform administrative and/or testing functions.

Furthermore, and consistent with the definition and use of the phrase “natural person” in this chapter, the Board proposes the addition of “natural person” to the definition of “certificate” to assure clarity. A “certificate” or “certification” means a certificate issued “to a natural person allowing a natural person to do landscape irrigation contracting, in accordance with the provisions of the Act and this chapter.”

The definition of “candidate” is also being proposed for amendment to indicate a “candidate” for certification may be known as “the applicant.” The two words are used interchangeably in the chapter.

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The acronym “CECs” for “continuing education credits” is being proposed as an addition to the definitions, as that acronym is used in the proposed amendments to N.J.A.C. 7:62-2.6 (and throughout the chapter). Accruing CECs is being proposed for the certification renewal, required by N.J.S.A. 45:5AA-7.1. What qualifies as “CECs” are described in proposed new N.J.A.C. 7:62-2.6 and in the new proposed Appendix to the chapter.

The definition of “examination” is being proposed for amendment to include the term “partial examination,” which is an exam with questions particular for qualifying for certification in New Jersey, given to out-of-State applicants who are landscape irrigation contractors licensed in other states having reciprocity with New Jersey.

The definition of “experience,” which is necessary to qualify as a certified landscape irrigation contractor, is being proposed for amendment. The requirement that applicants need a minimum of three years of experience has not changed, or that experience, with limitation, is acquired in the field or through education. However, to be consistent with N.J.S.A. 45:5AA-4, experience is to have been obtained no earlier than 15 years prior to the date of the application.

Proposed for addition to the “experience” definition is the word “contracting,” to be added after the term “landscape irrigation” where that phrase appears in the definition to be consistent with the Act and this chapter, both of which define the term “landscape irrigation contracting.” The word “sponsored” is being proposed for substitution for the word “offered” to broaden the range of educational instruction that qualifies for education experience. Also proposed for addition is the phrase “a trade school,” which may provide acceptable educational instruction. The word “industrial” is being proposed for elimination to broaden the range of educational instruction that qualifies for education experience.

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The phrase “field experience,” within the definition of “experience,” is being clarified. While field experience in New Jersey is to be performed under the supervision of a New Jersey certified landscape irrigation contractor, experience acquired outside of New Jersey is not required to have been done under such supervision, and the Board could consider that experience for certification, if verified in writing, and submitted in the certification application.

Furthermore, both a reduction in amount of college credits from 12 to six, and a reduction in course hours from 150 to 90 of instruction taken, related to landscape irrigation that qualifies as educational substitution for one year’s field experience, is being proposed in the “experience” definition.

As discussed above, a definition of “natural person” as meaning “an individual human being” is being proposed for inclusion, and ending its definition with the statement emphasizing that a “natural person” . . . “does not include any: corporation, company, partnership, firm, association, or any other business entity.”

A definition for “permittee” is being proposed for addition to reflect the definition of the term in N.J.S.A. 45:5AA-2 and the requirement N.J.S.A. 45:5AA-3.a for permittees to secure a business permit from the Board to engage in any landscape irrigation contracting. As indicated in the definition, the term “permittee” and “business permit holder” are used interchangeably.

A definition for “person” is being proposed for addition to reflect the addition of that definition to N.J.S.A. 45:5AA-2 and in N.J.S.A. 45:5AA-3.a. As proposed, a “person” means any natural person, corporation, company, partnership, firm, association, and any owner or operator of a permittee.

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The defined term “registered certificate holder” is proposed for deletion and replaced with “designated certificate holder,” who is certified as a landscape irrigation contractor and designated by a permittee to be responsible for inspection and supervision of the permittees’ work. The current definition “registered certificate holder” does not include the requirement at N.J.S.A. 45:5AA-3.a that to engage in the business of landscape irrigation contracting, it is necessary for a person to secure a business permit from the Board as well as designate a certificate holder to be responsible for all landscape irrigation contracting of the permittee.

The defined term “registry” is being proposed for addition. The Board is to keep a registry of landscape irrigation certificates pursuant to N.J.S.A. 45:5AA-6.e and business permits pursuant to N.J.S.A. 45:5AA-6.l. The specific information that would be kept and maintained by the Board in a registry is set forth at proposed N.J.A.C. 7:62-5.9, Registry.

The definitions of “revocation” and “suspension” are being proposed for amendment to reflect that under N.J.S.A. 45:5AA-6, 8, and 10, the Board is provided with the authority to revoke or suspend a business permit.

The definition of “water conservation” is being proposed for addition. Courses in water conservation may be eligible for CECs.

Subchapter 2. Certification and Renewal

The heading of Subchapter 2 is being proposed for amendment from “Certification” to “Certification and Renewal” to clarify that the subchapter includes requirements for certification renewal. The heading of N.J.A.C. 7:62-2.1, Application for certification, is being proposed for amendment to “Certification and examination for certification.”

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N.J.A.C. 7:62-2.1(b) sets forth the application process and requirements. Proposed for deletion is the word “must” to be substituted with the word “shall” as to what information is required to be included in the application. The word “shall” is being proposed to replace “must” throughout the chapter so as not to raise questions about whether different meanings are intended for each. The word “shall” means the obligations or prohibitions stated are imperative and mandatory.

As discussed above in the summary for Subchapter 1, General Provisions, at N.J.A.C. 7:62-1.4, concerning proposed amendments to what constitutes acceptable “experience” for applying for certification, N.J.A.C. 7:62-2.1(b) is proposed for amendment to have the applicant refer to the definition of “experience.”

In N.J.A.C. 7:62-2.1(b), in the minimum age provision for an applicant, the phrase “proof that the applicant is 18 years and older” is changed to “proof that the applicant is at least 18 years old.” Proposed for clarification in N.J.A.C. 7:62-2.1(b) is that the applicant is to provide certain business information regarding his or her employer.

Also in N.J.A.C. 7:62-2.1, the word “statement” is proposed for substitution for the word “certification” since “certification” as the term is currently used pertains only to some of the application information that is to be certified. The proposed amendment further requires the applicant to certify to the truth and accuracy of the entire application.

The word “violations” in N.J.A.C. 7:62-2.1(b) is being proposed to be modified with the word “unresolved” to clarify that under N.J.S.A. 45:5AA-4, applicants for certification cannot have unresolved violations of this chapter. The statement: “Also, the applicant shall not have had his or her landscape irrigation contactor’s certificate revoked within one year of the date of the

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application.,” is being proposed for deletion as being subsumed with the proposed amendment that applicants for certification cannot have unresolved violations.

The phrase “the appropriate fee” is proposed for substitution with the phrase “the application fee” in the sentence regarding the submittal of the certificate application fee, so there is no mistake that it is the application fee the applicant is submitting.

Currently, in N.J.A.C. 7:62-2.1(b), only limited information submitted in an application is to be certified by the applicant. Furthermore, no declaration wording is provided. Proposed at N.J.A.C. 7:62-2.1(b) is the requirement that the applicant certify as to the truth and accuracy, under the penalty of law, of all the information submitted in his or her application and proposed N.J.A.C. 7:62-2.1(b) provides the declaration the applicant is to sign and submit with the application.

At N.J.A.C. 7:62-2.1(c), the submission of the form requesting to take the examination has been deleted for clarification. There is no form.

N.J.A.C. 7:62-2.1(d) is proposed to be amended to abbreviate the citation to the entire statute with the word “Act,” as indicated above for inclusion in the definitions at N.J.A.C. 7:62-1.4. This proposed amendment is being proposed throughout the chapter whenever the full statutory citation is given. Furthermore, the term “and this chapter” is provided for addition, to clarify that to be acceptable, the application is to be in compliance with this chapter as well as the Act.

N.J.A.C. 7:62-2.1(f) is proposed to be amended to clarify that a candidate produce the scheduling letter and a valid government issued photo identification “upon check-in at the examination site” so that the examination can begin promptly.

Proposed new N.J.A.C. 7:62-2.1(g) provides that applicants who request to take a computer-based examination will be referred to an approved computer testing center.

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N.J.A.C. 7:62-2.2 pertains to notification to applicants whether they have passed the exam. The proposed amendments clarify that the Board will notify applicants whether they have passed or failed within 60 days following the examination date, by changing the phrase “within 60 days of the date of examination” to “within 60 days after the date of examination.”

N.J.A.C. 7:62-2.3 is proposed to be amended to clarify that candidates who successfully pass the certification examination shall also pay the required certification fee to receive a certificate.

N.J.A.C. 7:62-2.4 is proposed to be amended to delete, after “[a] candidate who has failed the examination shall be sent,” “the date and location of the next exam which they are eligible to take pursuant to N.J.A.C. 7:62-2.5. The candidate shall also be notified of those subject areas in which a passing grade was not achieved.” and replace it with “notification of those subject areas in which a passing grade was not achieved.” Also proposed for inclusion is the sentence: “The dates and location of examinations can be found at www.nj.gov/dep/exams/lic.htm.”

The heading of N.J.A.C. 7:62-2.6, Renewal, is proposed to be amended as, “Certificate renewal and continuing education requirements” to clarify that the section sets forth the process for renewing certificates and includes CECs, which is a new requirement for certificate renewal required by N.J.S.A. 45:5AA-7.1.

N.J.A.C. 7:62-2.6(a) is proposed to be amended to include that each certificate holder shall be sent a renewal fee payment invoice prior to the expiration of his or her certificate. Additionally, the rule is being proposed to include that the certificate holder shall only be issued a renewal certificate if he or she submits a complete renewal application and payment. N.J.A.C. 7:62-2.6(a)1 is being proposed to clarify that the renewal application is available at www.nj.gov/dep/exams/lic.htm. Certificate holders are also to provide changes in address,

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employment, or business or company name in the renewal application. N.J.A.C. 7:62-2.6(a)1 further states that N.J.A.C. 7:62-2.6(b) through (e) specify the process for obtaining CECs.

N.J.A.C. 7:62-2.6(b) is being proposed for amendment and recodification as N.J.A.C. 7:62-2.6(a)2 and 3.

N.J.A.C. 7:62-2.6(a)2 is being proposed for amendment to indicate for clarity that the renewal fee be submitted to the Department of the Treasury. Proposed for deletion is that any change in address, employment, or business or company name be included, as that information would be provided by the certificate holder with his or her renewal application at N.J.A.C. 7:62-2.6(a)1.

N.J.A.C. 7:62-2.6(a)3 is proposed for amendment to clarify that the renewal application and fee must be received no later than 30 days prior to January 31st of the year the certificate will expire. Furthermore, this provision is being proposed for clarification that the renewed certificate shall expire on January 31st of the second calendar year “after it was renewed.”

Proposed new N.J.A.C. 7:62-2.6(b) requires that all certificate holders applying for renewal obtain a minimum of 16 CECs, which is approximately two days of training over a two-year period. The certificate holder may carry a maximum of eight CECs forward to the next renewal period. The CECs are required to assure that the certificate holder stays current with the latest technologies related to landscape irrigation contracting and systems and water conservation practices.

Proposed new N.J.A.C. 7:62-2.6(c) sets forth the types of activities that qualify for CECs. Additionally, N.J.A.C. 7:62-2.6(c) references the subchapter Appendix, which categorizes types of CECs, their credit value, and the maximum amount of CECs in any category that can be eligible towards certificate renewal.

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Proposed new N.J.A.C. 7:62-2.6(d) sets forth the requirements for a person or organization who offers activities, to have those activities pre-approved as CECs. Such requirements benefit the regulated community by providing, in advance, that the activity qualifies for CECs.

Proposed new N.J.A.C. 7:62-2.6(e) sets forth reporting requirements for persons or organizations offering training that qualify for CECs.

Proposed new N.J.A.C. 7:62-2.6(f) relates the circumstances as set forth in N.J.S.A. 45:5AA-7.1.d that qualify to reduce or waive requirements for CECs. Included are: certified illness, undue hardship, disability, retirement, or other good cause. The subsection includes the documentation necessary that a certificate holder shall provide the Board to substantiate a reduction or waiver of CECs. Also provided are the reasons that such request may be denied by the Board.

Proposed N.J.A.C. 7:62-2.6(g), recodified from N.J.A.C. 7:62-2.6(c), is proposed to be amended to include that a certificate holder have “proof of having obtained the required CECs, or CECs waiver request as specified in N.J.A.C. 7:62-2.6(f),” to renew his or her certificate within two years after the certificate’s expiration.

N.J.A.C. 7:62-2.6(h) is a new subsection that provides that the certificate of a certificate holder, who has timely filed a complete renewal application, will remain in effect pending the certificate holder’s receipt of the Board’s decision to renew the certificate.

N.J.A.C. 7:62-2.6(i) is a new subsection that provides that a certificate may be suspended if the certificate holder does not comply with the CEC requirements.

N.J.A.C. 7:62-2.6(j) is a new subsection that provides that a business permit may be suspended if the permittee’s designated certificate holder does not comply with the CEC requirements.

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New N.J.A.C. 7:62-2.6(k) is proposed for addition to reassure certificate holders that CECs acquired on or after July 15, 2010, will be accepted for certificate renewals expiring January 31, 2014, and January 31, 2015.

Subchapter 3. Business Permit

Existing Subchapter 3, Fees, is proposed to be recodified as Subchapter 4. Proposed new Subchapter 3, Business Permit, would replace N.J.A.C. 7:62-4.3, Supervision of work, which did not require a business performing landscape irrigation work to obtain a business permit. New Subchapter 3 is being proposed for addition to reflect the amendments to the Act at N.J.S.A. 45:5AA-3.a requiring receipt of a business permit from the Board prior to engaging in the business of landscape irrigation contracting. Note that as proposed at N.J.A.C. 7:62-3.1(b), businesses currently engaged in landscape irrigation contracting with a Board registered certificate holder have a 90-day period from the effective date of the subchapter to apply for a business permit.

As proposed, N.J.A.C. 7:62-3.1, Requirement for business permit, explains who is required to obtain the permit and the permittee's responsibilities. N.J.A.C. 7:62-3.1(a) would require that prior to engaging in the business of landscape irrigation contracting, a person shall obtain a business permit from the Board. Also, N.J.A.C. 7:62-3.1(a) would require a landscape irrigating contractor to designate an individual who shall be a certificate holder, to be fully responsible for inspection and supervision of all landscape irrigation contracting to be performed by the permittee, who is also known as the business permit holder.

As indicated above, pursuant to proposed N.J.A.C. 7:62-3.1(b), any business currently engaged in landscape irrigation contracting which a registered certificate holder shall apply for a business permit within 90 days after the effective date of this subchapter. Therefore, any such current

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landscape irrigation contractor engaged in the business of landscape irrigation contracting who fails to submit a complete application for a business permit within 90 days after the effective date of this subchapter would be deemed to be in violation of the chapter and the Act.

N.J.A.C. 7:62-3.2, Application for business permit and Board action, sets forth the application process for obtaining a business permit and actions and the grounds for such actions the Board may take against a permittee. N.J.A.C. 7:62-3.3, Business permit renewal, sets forth the business permit renewal process.

The existing regulations at N.J.A.C. 7:62-4.7 allowing the Board to consider the “continuation of business entity upon loss of registered certificate holder” for six months, is proposed for recodification with amendments as N.J.A.C. 7:62-3.4, with the section heading amended as “Continuation of permittee upon the death or disability of the permittee’s designated certificate holder.” Proposed amendments to N.J.A.C. 7:62-3.4 clarify that the Board may allow the permittee to continue its landscape irrigation contracting business upon the death or disability of a certificate holder; to align with the statute, the term “six months” is proposed for change to “180 days”; increasing the allowable time from 10 to 30 business days for notifying the Board of the death or disability of the designated certificate holder; and providing additional actions available to the Board after the 180-day period for failure of the permittee to have a registered designated certificate holder. Proposed new N.J.A.C. 7:62-3.4(b) provides that death or disability of the designated certificate holder be substantiated by the permittee in a signed and certified document.

Subchapter 4. Fee Schedule

The chapter’s fee schedule, currently at Subchapter 3 and proposed for recodification as Subchapter 4, sets forth the fee schedule for landscape irrigation certification, re-application,

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examination, and certification renewal. These fee amounts are not being proposed to be increased. However, the subchapter is being proposed to be amended to include a reduced fee for proposed partial examination and to provide that applicants who desire to take a computer-based testing examination will be referred to an approved computer testing center.

Subchapter 5. Additional Requirements

Existing Subchapter 4, Other Provisions, is proposed to be recodified as Subchapter 5 and the subchapter heading amended as “Additional Requirements.”

N.J.A.C. 7:62-4.1, Identification of certificate, is proposed for recodification as N.J.A.C. 7:62-5.1. Existing N.J.A.C. 7:62-4.1(c), which requires every business entity engaged in the business of landscape contracting to register a certificate holder responsible for the supervision of the work performed by the business entity, is proposed for deletion, as the statutory requirements and responsibilities for such business entities and their certificate holders have been amended at N.J.S.A. 45:5AA-3. The proposed rules to implement N.J.S.A. 45:5AA-3 are at proposed new Subchapter 3. N.J.A.C. 7:62-5.1(b) is amended to clarify that the Board-issued identification card to a certificate holder who fails to submit a timely application to renew its certificate or whose certificate is suspended or revoked, is deemed null and void, and the certificate holder shall immediately return the identification card to the Board or its duly authorized representative.

Proposed new N.J.A.C. 7:62-5.2 concerns business permit number use. Proposed N.J.A.C. 7:62-5.2(a) specifies the documents the permittee’s business permit number is to appear on, and proposed N.J.A.C. 7:62-5.2(b) would require displaying the business number on the permittee’s vehicles.

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Pressure seal requirements for certificate holders at N.J.A.C. 7:62-4.2 is proposed for recodification as N.J.A.C. 7:62-5.3. The section heading is proposed for amendment from “Pressure seal” to “Pressure seal and embossing documents.” To reflect the proposed requirement that a designated certificate holder emboss business permit documents, in proposed N.J.A.C. 7:62-5.3(c), “registered” is replaced with “designated,” and “the permittee’s” is inserted prior to the documents that are to be embossed.

As discussed above, existing N.J.A.C. 7:62-4.3, Supervision of work, is proposed for repeal and replacement by new Subchapter 3, Business Permit.

The existing enforcement rule at N.J.A.C. 7:62-4.4, Enforcement, is proposed to be expanded and recodified as a separate new Subchapter 6, as discussed below.

The existing rule at N.J.A.C. 7:62-4.5, Change of address, requiring certificate holders to notify the Board of any change of address, is proposed for recodification as N.J.A.C. 7:62-5.4 and amendment of the section heading as “Change of address or status.” N.J.A.C. 7:62-5.4(a) is proposed to be expanded to require written notification of the change of address of permittees and designated certificate holders, as well as certificate holders. Proposed for addition is N.J.A.C. 7:62-5.4(b), which would require a new business permit prior to a change of the permittee’s designated certificate holder.

The existing rule at N.J.A.C. 7:62-4.6, Joint ventures, requiring each party forming a joint venture to have a certificate, is proposed for recodification as N.J.A.C. 7:62-5.5, and to be revised and expanded to require both persons forming a joint venture to obtain business permits prior to engaging in the business of landscape irrigation contracting. Also, the phrase “[w]here two or more persons form a joint venture” is proposed for amendment as “[b]efore two or more persons, as

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defined by this chapter, form a joint venture” to clarify the permitting requirement. Lastly, N.J.A.C. 7:62-4.6(b) is proposed for deletion because it sets forth a definition of “person” contrary to the term’s definition in the amendments at N.J.S.A. 45:5AA-2 and to the proposed definition of “person” at N.J.A.C. 7:62-1.4.

Existing N.J.A.C. 7:62-4.7, Continuation of business entity upon loss of registered certificate holder, is proposed for amendment and recodification as N.J.A.C. 7:62-3.4 as previously discussed.

New N.J.A.C. 7:62-5.6, Potable water supply connections, is being proposed to reflect N.J.S.A. 45:5AA-3.c, that if a landscape irrigation system is connected to a potable water supply, the landscape irrigation contractor’s connection is to begin at the downstream side of a properly installed backflow prevention device as required by the Plumbing Subcode of the Uniform Construction Code.

The existing rules at N.J.A.C. 7:62-4.8, Plumbers exemption, is proposed to be amended and recodified as N.J.A.C. 7:62-5.7(a), and expanded to include others exempt from obtaining a certificate and a business permit, listed in N.J.S.A. 45:5AA-3, and, therefore, the section heading is proposed to be amended as “Exemptions.” Proposed N.J.A.C. 7:62-5.7(b) distinguishes those exempt from the certificate requirement and those exempt from the business permit requirement.

Proposed new N.J.A.C. 7:62-5.8, Other laws and regulations, notifies the regulated community that compliance with the Act and this chapter does not release compliance with other statutes and regulations.

Proposed new N.J.A.C. 7:62-5.9, Registry, provides that the Board will maintain a registry of certificate holders and a registry of business permit holders.

Subchapter 6. Enforcement

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Existing N.J.A.C. 7:62-4.4, Enforcement, includes the suspension, or certificate revocation, and assessment of civil administrative penalties for violations of the Act. N.J.S.A. 45:5AA-9 and 10 expand the actions and remedies available to the Board for violations of the chapter and/or the Act. Existing N.J.A.C. 7:62-4.4 is proposed to be amended pursuant to the statutory amendments, and recodified as new Subchapter 6.

Proposed N.J.A.C. 7:62-6.1(a) provides that the Board may take actions and remedies against a certificate holder or business permit permittee pursuant to the Act, such as revocation or suspension of a certificate or business permit, and assessment of civil administrative penalties. Proposed N.J.A.C. 7:62-6.1(b) replaces existing N.J.A.C. 7:62-4.4(a) to include that persons subject to certain enforcement actions are entitled to a hearing. However, as set forth at proposed N.J.A.C. 7:62-7.1(b), hearing requests are to be received by the Board no later than 20 days after the receipt of administrative order or Board decision.

Proposed N.J.A.C. 7:62-6.1(c), currently N.J.A.C. 7:62-4.4(b), provides for Board investigations. Proposed N.J.A.C. 7:62-6.1(d), a relocation of current N.J.A.C. 7:62-4.4(a)1, provides for suspensions, and is proposed for amendment to include suspensions of business permits and a minimum suspension period of 90 days, rather than three months. Proposed N.J.A.C. 7:62-6.1(e), a relocation of current N.J.A.C. 7:62-4.4(a)2, provides for revocation. The subsection is proposed for amendment to include the revocation of business permits, and to delete that revocations may be less than two years because the Board believes revocation for a period less than two years is equivalent to suspension. Proposed N.J.A.C. 7:62-6.1 provides the civil administrative base penalty matrix the Board will use to assess such penalties. Proposed new N.J.A.C. 7:62-6.2 sets forth Board procedures for issuing enforcement documents.

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Subchapter 7. Hearing Requests

Existing N.J.A.C. 7:62-4.4(c) through (g) set forth the current procedures for requesting a hearing to contest Board decisions. The Board is proposing expanded and clarified hearing request procedures in N.J.A.C. 7:62-4.4(c) through (g) to be located in new Subchapter 7, Hearing Requests. Existing N.J.A.C. 7:62-4.4(c), recodified as N.J.A.C. 7:62-7.1(a), is amended to list Board decisions which may be contested, and updates the Board address to submit hearing requests. N.J.A.C. 7:62-7.1(a) is proposed for amendment to list of Board actions from which a person may request an adjudicatory hearing and provides the current address to which a hearing request is to be sent. Existing N.J.A.C. 7:62-4.4(d), recodified as N.J.A.C. 7:62-7.1(b), is amended to clarify that all hearing requests shall be made within 20 days after the date the Board's decision was received, and that such timely requests may be taken as well from Board decisions in N.J.A.C. 7:62-7.1(a). N.J.A.C. 7:62-7.1(c) expands the information that shall be included in all contested case hearing requests, and proposed N.J.A.C. 7:62-7.1(d) provides that the Board may deny the hearing requests if the requestor fails to include all the information required in N.J.A.C. 7:62-7.1(c) in its request. In conformance with the Act, N.J.A.C. 7:62-7.1(e) proposes all adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, as well as the Uniform Administrative Procedure rules. N.J.A.C. 7:62-7.1(g), consistent with the Act, provides the Board discretion to conduct the hearing itself or to refer the contested case to the Office of Administrative Law (OAL) and have an Administrative Law Judge conduct the hearing. N.J.A.C. 7:62-7.1(h) provides that the Board shall inform the requestor in writing whether its request for a hearing was granted, and, if not, why, and whether the Board or OAL will be conducting the hearing. N.J.A.C. 7:62-7.1(i) provides notification that if no hearing is requested for Board decisions from which a

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contested case hearing is provided, the decision becomes a final order on the 21st day following receipt of the Board's action by the person. N.J.A.C. 7:62-7.1(j) notes that the Board action will become final upon withdrawal of the hearing request for which the request was submitted. N.J.A.C. 7:62-7.1(l) provides that a certification or business permit that is suspended, revoked, not renewed, or denied by a final order is not valid during the pendency of the appeal of that order unless the final order has been stayed.

A new chapter Appendix is proposed containing a chart of "Activities that Qualify for Continuing Education Credits" that describe what activities qualify for CECs and their value.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a positive impact on the consumer and landscape irrigation contracting. The rules as amended will benefit certificate holder applicants, certificate holders, and landscape irrigation contracting businesses, by implementing statutory requirements, such as requiring education credits (CECs) to retain certification, the necessity to obtain a business permit to engage in landscape irrigation contracting, and clarifying the existing rules. The rules also have a favorable societal impact by assuring through required testing, certification, and continuing education, that uniform professional standards are met and adhered to by all persons engaged in the business of landscape irrigation contracting. Certificate holders are eligible to join the U.S. Environmental Protection Agency WaterSense partnership program thereby increasing their marketability.

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Economic Impact

The rules proposed for readoption with amendments require that landscape irrigation contractors continue to pay fees to be certified by the Board. The fees are necessary and reasonable to cover administrative and enforcement expenses by the Board. To be certified by the Board, out-of-State licensees can take a partial examination at a reduced fee. Another proposed additional cost to the landscaping irrigation contracting industry is for certificate holders to obtain continuing education credits as a condition for certificate renewal. Many industry manufacturers and distributors sponsor education opportunities at little or no cost. Additionally, trade organizations and educational facilities offer classes at minimal fees. Such a cost is minimal, and the Board believes will be more than offset by the added assurance that the landscape irrigation contracting work is being competently and safely performed. The Board anticipates that its certification requirements will result in the installation of irrigation systems that are more water efficient and that protect water quality. Increased water efficiency will result in direct savings to the consumer, thereby increasing the marketability of licensed landscape irrigation contractors.

Environmental Impact

Required familiarization by applicants with the principles of soil-water-plant relationship, backflow protection requirements, proper irrigation design, and irrigation scheduling, all of which are elements of examination for certification, will be continued by the readoption of these rules as amended. As a result, there will be an environmental benefit through the conservation of water and protection of water quality.

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The proposed amendments to Subchapter 2 requiring CECs will also have a positive environmental impact. Certificate holders will stay up to date with landscape irrigation systems that employ the latest technology for efficient water use.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require that State agencies that adopt, readopt, or amend regulations that exceed any Federal standards or requirements include in the rulemaking document a comparison with Federal law. Rules that exceed Federal standards must include an analysis that explains the reason for imposing such standards. Neither the rules proposed for readoption nor the proposed amendments impose any standard or requirement that exceed the standards or requirements imposed by any applicable Federal Law, as no equivalent Federal standard or requirements exists. Therefore, no Federal standards analysis is necessary.

Jobs Impact

The rules proposed for readoption with amendments should have a positive, but limited, impact on jobs. The requirement for obtaining CECs as a condition of certificate renewal will generate a limited number of new education sessions that will require instructors.

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Board has evaluated this rulemaking to determine the nature and extent of the rules proposed for readoption and amendments' impact on the agriculture industry. The Board found that since the Act exempts "agricultural purposes in the production of harvestable and saleable vegetation and animal products," the rules are inapplicable to this industry and, therefore, have no impact. The exemption is set forth in the rules.

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Regulatory Flexibility Analysis

The rules proposed for re adoption with amendments directly impact upon a class of approximately 600 small businesses engaged in landscape irrigation contracting. The compliance requirements imposed by the rules in implementing the Board's enabling Act call for landscape irrigation contractors to complete requirements and pass an examination for certification. They are also obliged to purchase a pressure seal (approximately \$32.00). Initial compliance costs to the business include the application fee (\$45.00), the examination fee (\$150.00), and the initial two-year certification fee (\$300.00). Thereafter, there is a \$300.00 biennial certificate renewal fee. However, there is no fee for a business permit or its renewal. In order to effectively regulate landscape irrigation contracting, the rules need to operate evenly and uniformly throughout the regulated class, a vast majority of which is composed of small businesses. Therefore, no exceptions are provided based on business size.

The proposed amendments also impose compliance requirements on persons or organizations seeking to have training pre-approved for CECs, some of which organizations may be small businesses. An organization seeking pre-approval must submit specific information to the Board about the training and have attendees sign-in with specified information. The organization must submit the sign-in sheet to the Board. There is no fee for pre-approval. As the Board considers the information on the training and attendees necessary to evaluate the training and verify the CECs earned, no exceptions are provided based on business size.

The Board does not anticipate that landscape irrigation contractors or organizations seeking training pre-approval will require professional services in order to comply with the rules proposed for re adoption with amendments.

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Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Board has evaluated the rules proposed for readoption with amendments for purposes of determining their impact, if any, on the affordability of housing. The Board does not anticipate that the rules proposed for readoption with amendments will have any impact on the affordability of housing units or result in a change in the average costs associated with such housing as the rules regulate persons who engage in the business of landscape irrigation contracting.

Smart Growth Development Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Board has evaluated the rules proposed for readoption with amendments for purposes of determining their impact, if any, on the availability of affordable housing and on new construction in Planning Areas 1 or 2, or within designated centers, under the State Plan. As indicated in the Housing Affordability Impact Analysis, the Board does not anticipate that the rules proposed for readoption with amendments will have any impact on the affordability of housing units or result in a change in the average costs associated with such housing as the rules regulate persons who engage in the business of landscape irrigation contracting. There is some potential that the rules could have a minor positive impact in the conservation of water used in irrigation landscape systems.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:62.

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Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:62-1.1 Scope

Unless otherwise provided by a rule or statute, this chapter shall constitute the rules of the Landscape Irrigation Contractors Examining Board. These rules are promulgated pursuant to **the** [N.J.S.A. 45:5AA-1 et seq.] **Act**.

7:62-1.4 Definitions

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

“Act” means the Landscape Irrigation Contractor Certification Act of 1991 as amended, N.J.S.A. 45:5AA-1 et seq.

“Advertising” means any attempt by a person to induce, directly or indirectly, by publication, print, electronic media, or any other form of communication, another person to purchase or enter into an agreement to purchase landscape irrigation contracting offered by the person in the advertisement.

“Board” means the Landscape Irrigation Contractors Examining Board established pursuant to [N.J.S.A. 45:5AA-5 et seq.] the Act. The Board’s mailing address is Landscape Irrigation Contractors Examining Board, c/o Department of Environmental Protection, Licensing and Pesticide Operations, PO Box 420, Mail Code 401-04E, Trenton, NJ 08625-0420. The website is: www.nj.gov/dep/exams/lic.htm.

[“Business entity” means a business primarily engaged in landscape irrigation contracting.]

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“Business permit” means the permit issued by the Board to a person, allowing the person to engage in the business of landscape irrigation contracting, in accordance with the provisions of the Act and this chapter. A person applying for a business permit is known as “the business permit applicant.” The person to whom the business permit is issued to is known as the “permittee” or the “business permit holder.”

“Candidate” means a natural person who is in the process of obtaining certification[.], and who also may be known as an “applicant.”

“CECs” means continuing education credits as set forth in this chapter.

“Certificate” or “certification” means the certificate issued by the Board pursuant to [N.J.S.A. 45:5AA-6c et seq.] the Act to a natural person allowing the natural person to do landscape irrigation contracting, in accordance with the provisions of the Act and this chapter.

“Certificate holder” means the natural person to whom the Board has issued the certificate.

“Certified landscape irrigation contractor” means a natural person engaged in the construction, repair, maintenance, improvement, and/or alteration of any portion of a landscape irrigation system who has successfully completed the requirements for certification and has a valid current certificate pursuant to [N.J.S.A. 45:5AA-4 and 45:5AA-5a et seq.] the Act and this chapter.

...

“Designated certificate holder” means the natural person, to whom the Board has issued a certificate for landscape irrigation contracting and who has been designated by the permittee, whose designation has been filed and recorded by the Board, as the person

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responsible for supervision and inspection of landscape irrigation contracting work to be performed by the permittee pursuant to N.J.A.C. 7:62-3.

...

“Duly authorized representative” means a **natural** person or company **who is designated or** retained by the Board to perform administrative and/or testing functions.

“Examination” means a comprehensive examination to evaluate the knowledge, ability, and fitness of an applicant to perform as a landscape irrigation contractor, **or a partial examination of an applicant licensed or certified by another state that the Board determines has standards equal or comparable to those of New Jersey, and where New Jersey certified landscape irrigation contractors are granted reciprocity. Partial examinations are limited to testing knowledge necessary for engaging in landscape irrigation contracting in New Jersey.**

“Experience” means [working with the construction, repair, maintenance, improvement, and alteration] **constructing, repairing, maintaining, improving, or altering** of a landscape irrigation system, **while employed under the direct supervision of a New Jersey certified landscape irrigation contractor, except as provided in this definition,** and/or educational experience regarding landscape irrigation systems, which the Board may allow to be substituted for actual landscape irrigation experience. **Pursuant to N.J.S.A. 45:5AA-4,** [Field] experience of at least three years [must be] **shall have been** acquired [while employed under a certified irrigation contractor] **no earlier than 15 years prior to the date of the application. Field experience acquired** after January 1, 1997, the effective date of [N.J.S.A. 45:5AA-3] **the Act, shall be in compliance with the Act. Field experience acquired by the candidate outside New Jersey may be considered by the Board in substitution of New Jersey field experience. Such out-of-State experience shall be in**

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compliance with all landscape irrigation laws and regulations, if any, of the applicable jurisdiction, documented and verified in writing, and submitted with the candidate's application for certification. Educational experience shall be accepted by the Board as a substitute for one year's field experience only. Such educational substitution [must] **shall** consist of a **minimum of [12] six** college credits, or [150] **90** course hours of instruction related to landscape irrigation **contracting** that is [sponsored] **offered** by a trade association, **a trade school**, a college, a manufacturer, or distributor of landscape irrigation **contracting** equipment, or **by a** similar [industrial] source, or by [this] **the** Board. [Credit for educational experience may only be utilized to satisfy a maximum of one year of the three-year experience requirement.]

“Landscape irrigation contracting” means the construction, repair, maintenance, improvement, and alteration of any portion of a landscape irrigation system, or drip irrigation system, including required wiring within the system and connection to the required power supply and the installation and connection to a public or private water supply system under terms and conditions of a contract. **Any such single act or transaction by a person, including the advertising by the person of available services, shall constitute engaging in the business of landscape irrigation contracting.**

“Landscape irrigation system” means any assemblage of components, materials, or special equipment which is designed, constructed, and installed for controlled dispersion of water from any safe and suitable source, including properly treated wastewater, for the purpose of irrigating landscape vegetation, or the control of dust and erosion on landscape areas, including drip irrigation systems, integral pumping systems, or integral control systems for manual, semi-automatic, or automatic control of the operation of these systems.

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“Natural person” means an individual human being and does not include any: corporation, company, partnership, firm, or association.

“Permittee” means a person who has secured a business permit to engage in the business of landscape irrigation contracting, and who also may be known as a “business permit holder.” A person applying for a business permit is known as “the business permit applicant.”

“Person” means any natural person, corporation, company, partnership, firm, or association, and any owner or operator of a permittee.

[“Registered certificate holder” means the person to whom the Board has issued a certificate for landscape irrigation contracting and who has filed and has been recorded by the Board as the person responsible for supervision of landscape irrigation work performed pursuant to N.J.A.C. 7:62-4.3.]

“Registry” means the listing maintained by the Board or its duly authorized representative, of certificate holders and permittees, including each permittee’s designated certificate holder.

“Revocation” means a surrender of a certificate and/or business permit, requiring the certified landscape irrigation contractor and/or the permittee to return the certificate and/or business permit to the Board and formally reapply for the examination and/or a business permit at the end of the stated period of surrender.

“Suspension” means a temporary termination of a certificate and/or business permit, requiring the certified landscape irrigation contractor and/or permittee to request the Board to

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reinstate his or her certificate **and/or business permit** at the end of the period of temporary termination.

“Water conservation” means a reduction in water use by implementing water efficiency measures or management practices.

SUBCHAPTER 2. CERTIFICATION AND RENEWAL -

7:62-2.1 Application **and examination** for certification

(a) Upon request, each candidate shall be furnished with an application for certification by the Board or its duly authorized representative. **Applications are also available at www.nj.gov/dep/exams/lic.htm.**

(b) In order to be considered by the Board or its duly authorized representative, an application [must] **shall** include the applicant’s name, home address, social security number, **and** most recent W-2[,]; **and the applicant’s employer’s:** business address, business trade name, Federal employer identification number, New Jersey sales tax number, insurance company name and policy number for general liability/workmen’s compensation insurance, **if required;** a detailed description of the applicant’s [field] experience, **as defined at N.J.A.C. 7:62-1.4**, of at least three years; [while employed under a certified irrigation contractor after January 1, 1997 – the effective date of N.J.S.A. 45:5AA-3,] proof that the applicant is **at least 18 years old;** [and older,] a [certification] **statement** that the applicant has no [prior] **unresolved** violations of this chapter; and the [appropriate] **application** fee. [Also, the applicant shall not have had his or her landscape irrigation contractor’s certificate revoked within one year of the date of the application.] **Applicants shall sign the Oath of Candidate in the application that states as follows: “I certify under**

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penalty of law that the information provided in this document is true, accurate and complete.

I am aware that there are, or may be, significant civil and criminal penalties, including fines and/or imprisonment, for my knowingly submitting false, inaccurate or incomplete information or statements.” If, at any time, the Board finds that an applicant obtained a landscape irrigation contractor certificate or a business permit under false pretenses, such findings shall be cause for revocation. Additional documentation may be required if the Board deems it necessary to determine whether the applicant meets the above criteria.

(c) The Board or its duly authorized representative shall notify the candidate when his or her application has been deemed complete. Upon such notification, the candidate shall submit to the Board or its duly authorized representative [a completed form requesting to take the examination and] the required examination fee.

(d) If the Board or its duly authorized representative deems the application incomplete or finds that the candidate does not meet the requirements set forth in the [Landscape Irrigation Contractor Certification] Act[, N.J.S.A. 45:5AA-1 et seq.] **and this chapter**, it shall reject the application and notify the candidate of the reasons for rejection. The application fee shall not be [refundable] **refunded**.

(e) (No change.)

(f) To be admitted to take the examination, a candidate shall produce [at the exam] **upon check-in at the examination site**, the scheduling letter and a valid government issued photo identification, such as a driver’s license or a passport.

(g) **Applicants who request to take a computer-based examination will be referred to an approved computer testing center.**

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7:62-2.2 Notification of pass-fail

To receive certification, a candidate is required to obtain a passing score on the examination. The passing score will be set by the Board or its duly authorized representative. The Board or its duly authorized representative shall notify all candidates whether they have passed **or failed** the examination within 60 days [of] **after** the date of examination.

7:62-2.3 Passed candidates

The Board or its duly authorized representative shall issue a certificate to each candidate who successfully passes the examination, **pays the required certification fee**, and otherwise meets the standards and qualifications set forth in the [Landscape Irrigation Contractor Certification] Act [, N.J.S.A. 45:5AA-1 et seq.] **and this chapter**. Each initial certificate issued pursuant to the [act] **Act and this chapter** shall expire on January 31 of the second calendar year following issuance. A candidate who passes the exam shall have one year from the date of notification to complete the certification process and pay the required fees to obtain the certification. Otherwise, the candidate [must] **shall** reapply **as a new candidate** and retake and pass the examination before being eligible to obtain the certificate.

7:62-2.4 Failed candidates

A candidate who has failed the examination shall be sent [the date and location of the next exam which they are eligible to take pursuant to N.J.A.C. 7:62-2.5] **notification of those subject areas in which a passing grade was not achieved**. [The candidate shall also be notified of those subject areas in which a passing grade was not achieved.] **The date and location of examinations can be found at www.nj.gov/dep/exams/lic.htm**.

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7:62-2.6 [Renewal] **Certificate renewal and continuing education requirements**

(a) **Each certificate holder shall be sent a renewal fee payment invoice prior to the expiration of his or her certificate.** The Board or its duly authorized representative shall issue a renewal [of a] certificate pursuant to N.J.S.A. 45:5AA-7.c et seq. **if the certificate holder submits a complete renewal application to the Board and separately submits payment of a bi-annual renewal fee to the Division as follows:**

1. Submit to the Board a completed renewal application and CEC submission form, which are available at www.nj.gov/dep/exams/lic.htm, certifying the certificate holder has successfully obtained the required CECs, as specified in (b) through (e) below and including any change in address, employment, or business or company name;

[(b) Each registered certificate holder shall renew his or her certification by submitting a complete renewal application and]

2. Submit payment of the non-refundable bi-annual renewal fee to the Department of the Treasury, Division[.] of Revenue, P.O. Box 417, Trenton, NJ 08625; and

3. [A renewal application shall include any change in address, employment, or business or company name.] The renewal application shall be received by the Board and the renewal fee [must] shall be received by the Division of Revenue [within] no later than 30 days prior to January 31 of the [expiring] year in which the certificate will expire. Each renewed certificate shall remain valid [for a period of two years and shall expire on] until January 31 of the second calendar year after it was renewed.

(b) To renew a certificate, each certificate holder shall provide on his or her renewal application proof of having successfully obtained a minimum of 16 CECs of which a minimum

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of eight CECs shall be in a training activity related to water conservation. Credit for CECs shall be issued for verified attendance at training activities approved by the Board. CECs shall have been acquired within three years prior to the date of the application for certificate renewal, except that a maximum of eight CECs may be carried forward and applied to the subsequent certificate renewal.

(c) In accordance with the table found in the Appendix to this chapter, incorporated herein by reference, the Board shall approve CECs for the satisfactory completion of any of the following training activities:

- 1. Attending or teaching courses in the design, installation, and maintenance of landscape irrigation systems;**
- 2. Attending or teaching courses in water conservation technologies and procedures;**
- 3. Attending or participating in irrigation demonstration projects;**
- 4. Attending or teaching courses in the application and installation of irrigation products;**
- 5. Attending or teaching courses in business development techniques;**
- 6. Attendance at irrigation and related industry trade shows; or**
- 7. Other activities as deemed appropriate by the Board.**

(d) A person or organization seeking to have training pre-approved for CECs shall submit to the Board the title of the training activity, the outline or syllabus detailing the instruction, the instructor's name and qualifications, and the hours and date of the training activity and shall agree to the procedures set forth in this subsection. If the training activity is

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approved, on the day of the training, the sponsoring person or organization shall require each participant to sign in and provide his or her name, address, phone number, e-mail address, and landscape irrigation contractor certificate number. The sponsoring person or organization shall submit the completed sign-in sheet to the Board and keep a copy on file for five years following the completion date of the training activity.

(e) Certificates of attendance, or other proof of attendance, for each training activity, shall be submitted to the Board by the certificate holder along with the completed CECs submission form. If a training activity has not been preapproved by the Board, the certificate holder shall also include the title of the training activity, the outline or syllabus detailing the instruction, the instructor's name and qualifications, and the hours and dates of the training activity. CEC submissions for attendance at trade shows shall include proof of attendance, such as a copy of either the certificate holder's attendance receipt or name badge.

(f) A certificate holder may request a reduction or waiver of the continuing education requirement if any of the following prevented the certificate holder from satisfactorily completing the continuing education requirement: illness, certified by a physician; undue hardship; disability; military deployment; or other good cause deemed acceptable by the Board.

1. Certificate holders requesting a reduction or waiver of CECs shall provide the following information with his or her certificate renewal application, which the Board will evaluate:

i. A statement as to whether the certificate holder is requesting a waiver of all CECs or setting forth the specific number of CECs requested for reduction;

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ii. The approximate date the certificate holder's hardship began, and the approximate date it ended;

iii. A statement detailing the certificate holder's hardship;

iv. A statement detailing the specific reason why the certificate holder could not satisfactorily complete the training activities specified in (c)1 through 6 above due to the hardship;

v. A statement of the reason why another activity pursuant to (c)7 above of this subchapter was not submitted for consideration by the Board;

vi. A statement that the certificate holder did not directly cause or contribute in any way to the circumstances preventing the satisfactory completion of the education requirement; and

vii. Any additional information that the Board determines is reasonable and necessary to evaluate the waiver request.

2. All waiver requests, and any additional information submitted to the Board in support of the waiver request, shall be submitted with the certificate holder's signed and certified oath set forth at N.J.A.C. 7:62-2.1(b).

3. Waiver requests shall be submitted with the application to renew the certificate and received by the Board no later than 30 days prior to the certificate expiration date.

4. Waiver requests may be denied if:

i. The certificate holder fails to submit any information or documentation specified in (f)1 above and the signed oath specified in (f)2 above;

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ii. The waiver request is not supported by sufficient documentation as determined by the Board;

iii. The waiver request is not submitted with the certificate holder's renewal application;

iv. The certificate holder's renewal application is received later than 30 days prior to the certificate's expiration date;

v. The certificate holder fails to submit additional information requested by the Board; or

vi. The Board determines that a waiver or reduction of the CECs is not merited based upon the information or documentation provided.

5. The Board's reasons for granting or denying the certificate holder's waiver request shall be included in its decision regarding the renewal application.

6. The Board may accept late CEC waiver requests if the certificate holder's hardship caused the delay in submittal.

[(c)](g) If a renewal application **and waiver request, if applicable**, and fee are not received, the certificate shall expire at 12:00 P.M. on January 31 of the expiring year. A certificate holder whose certificate has expired may renew his or her certificate within two years [of] **from** its expiration date upon submittal of a **complete** renewal application, **including proof of having obtained the required CECs, or CECs waiver request as specified in (f) above**, and payment of the renewal fee. A new certificate shall be required of a [person] **certificate holder** who fails to [renew a] **apply for renewal of the** certificate within two years [of] **after** its expiration.

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(h) The certificate of a certificate holder who has timely filed a complete renewal application in compliance with this section will remain in effect pending the certificate holder's receipt of the Board's decision regarding renewal of the certificate.

(i) Certificates may be suspended if the certificate holder does not comply with the continuing education requirements of this section as determined by the Board.

(j) The Board may suspend a business permit if the business permit holder's designated certificate holder does not comply with the continuing education requirements as determined by the Board.

(k) For certificates that are renewed on January 31, 2014, and January 31, 2015, CECs shall have been acquired on or after July 15, 2010, the effective date of the amendments to the Act.

SUBCHAPTER 3. BUSINESS PERMIT

7:62-3.1 Requirement for business permit

(a) Except as provided in (b) below, no person shall advertise, enter into, or engage in the business of landscape irrigation contracting, unless the person has first secured a business permit from the Board, and such person or an officer, partner, or employee who is actively engaged in the business has obtained a landscape irrigation contractor's certificate, and such designated certified landscape irrigation contractor has assumed full responsibility for the inspection and supervision of all landscape irrigation contracting work performed by the person. The person who has secured the business permit is known as the "permittee" or the "business permit holder," and the certified landscape

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irrigation holder responsible for the inspection and supervision of all landscape irrigation contracting performed by the permittee is known as the “designated certificate holder.” To apply for a business permit, the person shall complete and submit a business permit application in accordance with N.J.A.C. 7:62-3.2, including designating a certificate holder to be the permittee’s designated certificate holder. The designated certificate holder shall be a natural person to whom the Board has issued a landscape irrigation contractor certificate, and may be the business permit applicant, or an officer, partner, or employee who is or will be actively engaged in the business of the permittee. The designated certificate holder shall be responsible for the inspection and supervision of all landscape irrigation contracting work to be performed by the permittee.

(b) No later than 90 days after the effective date of this chapter, every business entity engaged in the business of landscape irrigation contracting, including the advertising of such available services, that has registered with the Board a registered certificate holder pursuant to the rules effective December 18, 2006, shall submit a complete application for a business permit, in accordance with N.J.A.C. 7:62-3.2, to the Board. As provided in (a) above, as of the effective date of this chapter, all other persons shall secure a business permit from the Board prior to engaging in the business of landscape irrigation contracting. Nothing in this subsection shall relieve any person from the requirement of obtaining a business permit for entering into, engaging in, or advertising the business of landscape irrigation contracting.

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(c) **If the business permit applicant employs more than one certificate holder, the business permit applicant shall inform the Board which certificate holder will be the permittee's designated certificate holder.**

(d) **A certificate holder shall be the designated certificate holder for only one permittee.**

7:62-3.2 Application for business permit and Board action

(a) **A business permit application may be requested from the Board and is also available at www.nj.gov/dep/exams/lic.htm. Pursuant to N.J.S.A. 45:5AA-7.e, the business permit applicant shall submit to the Board as part of the application:**

- 1. The name, address, and telephone number of the business permit applicant;**
- 2. The trade name and Federal and State tax identification of the business permit applicant;**
- 3. Whether the business permit applicant is a natural person, corporation, company, partnership, firm, or association;**
- 4. The name, address, and telephone number of the designated certificate holder;**
- 5. The name, address, and telephone number of all certified landscape irrigation contractors employed by the business permit applicant;**
- 6. Proof of liability insurance;**
- 7. Proof of worker's compensation insurance, if required by law;**
- 8. The designated certificate holder's signed oath stating the identity of the business permit applicant or permittee and stating as follows: "I certify under penalty of law that I am the designated certified landscape irrigation contractor for the above named**

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applicant and have full responsibility for inspection and supervision of all landscape irrigation work to be performed by the above named applicant or permittee. I am aware that there are, or may be, significant civil and criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or statements.”;
and

9. The signed and certified oath set forth at N.J.A.C. 7:62-2.1(b), of the owner or the operator of the business permit applicant.

(b) A business permit shall remain valid for two years from the date of issuance.

(c) If the Board or its duly authorized representative deems the request for the business permit incomplete, and/or finds that the business permit applicant or business permit holder does not meet the requirements set forth in the Act and this chapter, it shall reject the request for the business permit and notify the business permit applicant of the reasons for the rejection. If the Board or its duly authorized representative determines the application complies with the Act and this chapter, the business permit applicant shall be issued a business permit and number.

(d) A business permit may be suspended, revoked, not renewed, or denied if the permittee’s designated certificate holder does not comply with the continuing education requirements of this chapter as determined by the Board, or fails to renew his or her certificate, or if the designated certificate holder’s certificate has been suspended or revoked, or as provided pursuant to N.J.S.A. 45:5AA-8, 9, and 10. The business permit may be reinstated if a complete application is submitted and approved by the Board.

7:62-3.3 Business permit renewal

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(a) Business permits expire two years from the date of issuance as indicated on the business permit certificate. Each certificate holder shall be mailed a renewal application prior to the expiration of its certificate.

(b) Permit renewal applications shall be sent to the Landscape Irrigation Contractors Examining Board, c/o Department of Environmental Protection, Licensing and Pesticide Operations, PO Box 420, Mail Code 401-04E, Trenton, NJ 08625-0420, and postmarked no later than 30 days prior to the date the certificate expires. The renewal application shall include any change in: the permittee's name and/or trade name; the business street and/or mailing address; the permittee's telephone number; Federal and/or State tax identification numbers; the company name; or the designated certificate holder.

(c) If the Board or its duly authorized representative determines the request for the business permit renewal incomplete, late, or finds the permittee or its designated certificate holder does not meet the requirements set forth in the Act and this chapter, it may reject the request for the business permit renewal, and notify the permittee of the reasons for the rejection. If the Board or its duly authorized representative determines the renewal application complies with the Act and this chapter, the Board shall issue the renewal to the permittee.

(d) The business permit of a business permit holder who has timely filed a complete renewal application in compliance with this subchapter will remain in effect pending the permittee's receipt of the Board's decision regarding the renewal of the business permit.

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(e) **An application for a new business permit shall be required of a permittee:**

1. Within 10 days after it changes or replaces its designated certificate holder, except in the instance of death or disability of the permittee's designated certificate holder in accordance with N.J.A.C. 7:62-3.4; or

2. Who fails to apply for renewal of the business permit within two years after its expiration.

7:62-[4.7]3.4 Continuation of [business entity] **permittee** upon [loss] **the death or disability of the permittee's** [registered] **designated** certificate holder

(a) The Board [shall have the authority to] **may** allow a business [entity] **permit holder** to operate without [civil penalty for failing to have a registered] **a designated** certificate holder for a period of up to [six months] **180 days** from the date of the loss of the [registered] **designated** certificate holder, if that [business entity] **permittee** provides a written request to the Board within [10] **30** business days [of] **after** the [loss] **death or disability** of the [registered] **designated** certificate holder and[:]

[1. Proof] **proof** of the death or disability of the [registered] **designated** certificate holder. [; or

2. Proof of why the registered certificate holder no longer has such authority at the business entity.]

(b) Proof of the death or disability of the designated certificate holder shall be submitted by the permittee to the Board with the signed and certified oath set forth at N.J.A.C. 7:62-2.1(b)1.

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[(b)] (c) At the end of the [six-month] **180-day** period, the Board may assess a civil **administrative** penalty[,] **or take any other action** [in accordance with N.J.A.C. 7:62-4.1(c) and 4.4] **authorized by the Act and this chapter**, for **the business permittee's** failure to have a [registered] **designated** certificate holder.

SUBCHAPTER [3.] **4. FEE[S] SCHEDULE**

7:62-[3.1]**4.1** Fee schedule

(a) The fee schedule is as follows:

1.-2. (No change.)

3. Examination fee 150.00

(\$75.00 for partial examination)

4. Examination re-take fee 150.00

(\$75.00 for partial examination)

5.-6. (No change.)

(b) Applicants who desire to take a computer-based testing examination will be referred to an approved computer testing center.

SUBCHAPTER [4.] **5. [OTHER PROVISIONS] ADDITIONAL REQUIREMENTS**

7:62-[4.1]**5.1** Identification of certificate holders

(a) The Board or its duly authorized representative shall issue to the certificate holder an identification card. The certificate holder shall [carry] **have** the identification card in his or her possession at all times while performing landscape irrigation contracting.

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(b) [Any] **The identification card of any** certificate holder who has failed to **submit a timely application to** renew the certificate or who has had the certificate suspended or revoked for any reason[,] **is deemed null and void and the certificate holder** shall immediately return the identification card to the Board or its duly authorized representative.

[(c) Every business entity engaged in the business of landscape irrigation contracting as defined in N.J.S.A. 45:5AA-2c shall register with the Board a registered certificate holder who shall be responsible for supervision of the work performed by the business entity pursuant to N.J.A.C. 7:62-4.3. A certificate holder shall be entitled to qualify as a registered certificate holder for only one business entity.]

7:62-5.2 Business permit number use

(a) **The permittee's business permit number shall appear on the permittee's business correspondence, stationery, landscape irrigation plans and drawings, contracts, bids, legal documents, and in all advertisements.**

(b) **The permittee's business permit number shall be visibly displayed on both sides of all commercial vehicles utilized in the practice of its landscape irrigation contracting in at least three-inch high characters and shall read "LICBP #" followed by the business permit number. If there are other legally required markings, making strict compliance with the above letter size requirement impractical, the size of the lettering shall be as close to three-inches as practicable.**

7:62-[4.2]5.3 Pressure seal and embossing documents

(a) (No change.)

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(b) No person, other than the certificate holder to whom the seal has been issued, shall have the right to use [aforesaid] **the** seal.

(c) The [registered] **designated** certificate holder shall emboss all **the permittee's** construction applications, construction drawings, and construction contracts with the imprint of his or her seal.

[7:62-4.3 Supervision of work

The registered certificate holder shall assume full responsibility for the inspection, compliance, and supervision of all landscape irrigation work performed by the business entity.]

(**Agency Note:** N.J.A.C. 7:62-4.4 is proposed for recodification with amendments as N.J.A.C. 7:62-6.1.)

7:62-[4.5]**5.4** Change of address **or status**

(a) Each certificate holder, **including a permittee's designated certificate holder, and permittee** shall give **written** notice to the Board or its duly authorized representative of any address change within 10 days [of] **after** such change.

(b) **A new business permit is required prior to a change of the designated certificate holder.**

7:62-[4.6]**5.5** Joint ventures

[(a) Where] **Before** two or more persons form a joint venture for the purpose of [contracting] **entering into, engaging in, or advertising the business of** landscape irrigation [work] **contracting** in New Jersey, each party to the joint venture shall [hold] **obtain** a valid [certificate to engage in landscape irrigation contracting in New Jersey] **business permit pursuant to N.J.A.C. 7:62-3.1.**

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[(b) The term “persons,” as used in (a) above, is defined to mean individuals, corporations, partnerships, or other business entities.]

(Agency Note: N.J.A.C. 7:62-4.7 is proposed for recodification with amendments as N.J.A.C. 7:62-3.4.)

7:62-5.6 Potable water supply connections

If a landscape irrigation system is connected to a potable water supply, the certified landscape irrigation contractor’s connection is to begin at the downstream side of a properly installed backflow prevention device as required by the Plumbing Subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.15.

7:62-[4.8]5.7 [Plumbers exemption] Exemptions

(a) The following are exempt from obtaining a certificate and a business permit pursuant to N.J.S.A. 45:5AA-3.c:

1. Licensed plumbing contractors, as defined in N.J.S.A. 45:14C-2, are exempt from having to obtain a landscape irrigation contractor certificate and a business permit pursuant to [N.J.S.A. 45:5AA] the Act if they are installing landscape irrigation systems as part of their plumbing contracting business. The existence of a licensed plumber or plumbing contractor on staff or payroll of a business does not exempt [a landscape irrigation contractor] it from having to obtain [certification] a business permit and designate a certificate holder in order to advertise, enter into, or engage in the business of landscape irrigation contracting. A landscape irrigation contractor, who may be the owner or an employee of the business engaged in landscape irrigation

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contracting, [must] shall obtain certification pursuant to the provisions of [N.J.S.A. 45:5AA-1 et seq.] **the Act and this chapter;**

2. Officers, employees, and authorized representatives of the United States, the State, or any political subdivision thereof performing work on the property of the public entity;

3. Vendors of landscape irrigation components, materials, or equipment who perform only such functions as delivery, rendering of advice or assistance in installation, normal warranty service, or exchange of defective or damaged goods;

4. Contractors engaged in the design, fabrication, installation, or construction of irrigation apparatus, or irrigation equipment of any type which is to be used solely for agricultural purposes in the production of harvestable and saleable vegetative or animal products;

5. Employees engaged in landscape irrigation contracting for a permittee which has a designated certified landscape irrigation contractor;

6. Golf course employees performing work on landscape irrigation systems on the golf course where they are currently employed; and

7. Landscape contractors when replacing sprinkler heads damaged during lawn mowing or grounds maintenance or when making minor incidental repairs to sprinkler piping damaged during landscape construction, except that this exemption shall not apply to the installation of automatic controllers, electric or hydraulic control valves, drip irrigation systems and micro-irrigation systems, or to the performance of irrigation system service or maintenance.

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(b) A business permit is not required for landscape irrigation contracting performed by employees of community associations for the community association’s landscape irrigation system. “Community association” as used in this subchapter means a condominium, homeowner association, or fee simple, cooperative, or other community association.

1. Any person, including employees of a community association, shall obtain a landscape irrigation contractor certificate to perform landscape irrigation contracting for a community association.

2. Any person performing landscape irrigation contracting for a community association, other than an employee of a community association, shall obtain a business permit to perform landscape irrigation contracting for a community association.

7:62-5.8 Other laws and rules

(a) Nothing in this chapter or the Act shall be construed to release any permittee or certificate holder, or any other person, from:

- 1. Complying with the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 13:45A;**
- 2. Complying with any other applicable State laws and/or rules;**
- 3. Obtaining any business licenses, paying permit fees, and obtaining such other standard licenses and paying associated fees, as may be required of any person doing business in the municipality, county, or other political subdivision of the State in which they are to engage in landscape irrigation contracting, and complying with any applicable code, rule, or regulation of any such jurisdiction, except that no other examination or special license shall be**

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required of a permittee or a certificate holder to advertise, enter into, or engage in landscape irrigation contracting.

(b) Nothing in this chapter or the Act shall be construed to prevent persons licensed or certified in this State under any other law or rule from engaging in the profession for which they are licensed or certified.

7:62-5.9 Registry

(a) The Board or its duly authorized representative shall maintain a registry of certified landscape irrigation contractors that will include the certificate holder's name, address, certificate number, and the date the certificate was issued and expiration date. The registry shall indicate each certificate holder who is a designated certificate holder for a business permit holder.

(b) The Board or its duly authorized representative shall maintain a registry of business permit holders, including each permittee's: name, trade name, street and mailing address, phone number, business permit number, and Federal and State tax identification numbers; the permittee's designated certificate holder's name and certification number, street address and mailing address, and phone number; the date the business permit was issued and renewed; and any unresolved violations with the Board.

(c) The registry of certified landscape irrigation contractors and the registry of business permit holders are available at the Department's web site at www.nj.gov/dep/exams/lic.htm.

SUBCHAPTER 6. ENFORCEMENT

7:62-[4.4]6.1 [Enforcement] Board actions; remedies

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(a) [Pursuant] **The Board may take any and all actions authorized pursuant** to N.J.S.A. 45:5AA-8, [and] 9, **and 10.** [the Board suspend or revoke a certificate and may assess civil penalties for violations of the Landscape Irrigation Contractor Certification Act. Persons whose certificates have been suspended or revoked are entitled to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1.]

(b) **A person whose application for a certificate or business permit has been denied, or whose certificate or business permit has been suspended or revoked, or against whom a civil administrative penalty has been assessed, or who has been issued any other order by the Board, is entitled to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1, the Act, and this chapter.**

(c) **Should the Board have cause to believe that any person is in violation of any provision of the Act or rules promulgated pursuant thereto, the Board may initiate an investigation. If, upon investigation, the Board determines that there has been a violation, the Board may take any and all actions authorized pursuant to N.J.S.A. 45:5AA-8, 9, and 10. Failure by an applicant for a certificate or a business permit, a certificate holder, or a permittee to respond to a written request from the Board or its duly authorized representative for information or to provide necessary information in connection with an investigation by the Board shall be grounds for denial, suspension, revocation, or refusal to renew a certificate or business permit as determined by the Board.**

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[1.] **(d)** The minimum period of suspension **of a certificate or business permit** shall be [three months] **90 days**. The suspension shall terminate and the certificate **or business permit** be reinstated only when:

[i.] **1.** The suspension period has [lapsed] **ended**;

[ii.] **2.** The certificate holder **or permittee** has satisfactorily [addressed all the items upon which] **remedied all causes for** the suspension [had been based by providing] **and has provided** written proof thereof **and any other proof determined necessary by the Board**; [and]

[iii.] **3.** The certificate holder **or permittee** has submitted a request in writing to the Board to have his or her certificate **or business permit** reinstated **with his or her signed and certified oath, as set forth at N.J.A.C. 7:62-2.1(b)1**; and

4. The certificate holder or permittee shall submit a request for reinstatement no later than **90 days after the end of the suspension period. If a request for re-instatement is not timely submitted, the certificate holder or permittee shall reapply as a new applicant for a certificate or a business permit.**

[2.] **(e)** The minimum period of revocation **of a certificate or business permit** shall be two years[, but may be less if the reason(s) for revocation have been addressed to the Board's satisfaction]. At the end of the revocation period, the [landscape irrigation contractor] **person** whose certificate **or business permit** has been revoked may apply as a new [candidate] **applicant for certification or business permit** pursuant to N.J.S.A. 45:5AA-4 **and this chapter**.

[(b) Should the Board have cause to believe that any person is in violation of any provision of the Act or rules promulgated pursuant there to, the Board may initiate an investigation. If, upon

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investigation, the Board determines that there has been a violation, the Board shall be authorized to order such violation to cease, to revoke or suspend a certificate and take such steps necessary to enforce the statute.]

(f) Civil administrative penalties are determined by the level of violation, that is, first, second, third, or subsequent violation. The amount of the penalty shall be as shown in the following Civil Administrative Base Penalty Matrix unless adjusted by the Board.

Civil Administrative Base Penalty Matrix

<u>Type of Violation</u>	<u>First Violation</u>	<u>Second Violation</u>	<u>Third and Subsequent Violation</u>
Performing landscape irrigation system maintenance or repair without having obtained a certificate and/or a business permit	\$500	\$1,500	\$3,000
Installing a landscape irrigation system without	\$1,000	\$2,000	\$4,000

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having obtained a certificate

and/or a business permit

Advertising landscape	\$1,000	\$2,000	\$4,000
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irrigation contracting without

having obtained a certificate

and/or a business permit

Failure to use seal as required	\$250	\$500	\$1,000
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Other	Up to \$1,000	Up to \$2,500	Up to \$5,000
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1. The Board shall consider each violation of each provision of the Act or this chapter as a separate and distinct violation. If the violation is of a continuing nature, each day during which a violation continues shall constitute an additional, separate, and distinct violation subjecting the violator to the penalty amount set forth in the Civil Administrative Base Penalty Matrix above.

2. The Board may treat a violation as a first violation solely for the purpose of determining the civil administrative penalty if the violator has not committed the same violation in the preceding three years.

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3. The Board may, in its discretion, adjust the penalty amount listed in the Civil Administrative Base Penalty Matrix above on the basis of any factor or combination of factors listed in (f)3i through vii below. No such factor constitutes a defense to any violation.

- i. The compliance history of the violator;**
- ii. The number, frequency, and severity of the violations;**
- iii. The measures taken by the violator to mitigate the violation or to prevent future violations;**
- iv. The deterrent effect of the penalty;**
- v. The cooperation of the violator in correcting the violation and ensuring the violation does not occur again;**
- vi. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and/or**
- vii. Any other extenuating, mitigating, or aggravating circumstances.**

7:62-6.2 Procedures

(a) Any order, notice of civil administrative penalty, or notice of revocation, suspension, denial, or non-renewal of a certification or a business permit will:

- 1. Be served by certified mail, return receipt requested, and first class mail, or by personal service upon the person or persons who are subject of the order or notice;**
- 2. Identify the person or persons subject to the order, notice, denial, penalty assessment, or other action;**

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- 3. Set forth a concise statement of the facts alleged to constitute a violation;**
- 4. Identify the specific provisions of the Act, chapter, certification, business permit, or order which has been violated;**
- 5. Describe the remedial or other action which shall be implemented, or caused to be implemented, by the violator, and the time periods within which such implementation shall commence and be completed;**
- 6. In the case of a civil administrative penalty assessment, specify the amount of the civil administrative penalty to be imposed in accordance with the Civil Administrative Base Penalty Matrix at N.J.A.C. 7:62-6.1(f);**
- 7. If a civil administrative penalty is assessed against more than one person for the same violation or violations, each shall be jointly and severally liable for the penalty assessed;**
- 8. In the case of a denial, suspension, revocation, or non-renewal of a certification or business permit, a description of the specific grounds for the denial, suspension or revocation, or non-renewal;**
- 9. In the case of a suspension of a certification or business permit, the length of time the suspension shall remain in effect; and**
- 10. Notify the person or persons named in the denial, non-renewal, suspension, revocation, civil administrative penalty assessment, or other**

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order, of the right to request an adjudicatory hearing pursuant to the provisions of N.J.A.C. 7:62-7.

SUBCHAPTER 7. HEARING REQUESTS

7:62-7.1 Procedures to request an adjudicatory hearing

[(c)] (a) Subject to the limitation on third party hearing rights specified in N.J.S.A. 52:14B-3.1 through 3.3, a person [or entity] aggrieved by a decision made by the Board **including: an assessment of civil administrative penalty; notice of denial, non-renewal, suspension, or revocation of a certificate or business permit; or any other Board decision from which a contested case hearing is to be provided pursuant to Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.,** may request a hearing. The written request for a hearing shall be submitted to:

Landscape Irrigation Contractors Examining Board

c/o Department of Environmental Protection

[Exams &] **Licensing and Pesticide Operations**

PO Box [441]**420**

Mail Code 401-04E

Trenton, NJ 08625-**0420**

[(d)] (b) All [hearing] requests for a contested case hearing [must] **shall** be received by the Board [within] **no later than** 20 days [of] **after** the date [upon with] the Administrative Order **or any decision in (a) above** was received by the petitioner. **The order or decision shall be presumed to have been received three days after it was mailed by regular mail, unless it was returned to the Board as undeliverable.**

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[(e)] (c) All requests for a contested case hearing shall be submitted in writing to the Board in accordance with [(d)] (b) above and shall contain:

1. (No change.)
2. [A statement of legal authority and jurisdiction under which the hearing request is made] **A copy of the document being contested;**
3. A brief and clear statement of [specific facts describing the Board's decision being appealed, as well as the nature and scope of] the **requester's** interest [of the requesters] in such decision; [and]
4. A statement of all facts alleged to be at issue and their relevance to the Board's decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue [must] **shall** also be included[.];
- 5. An admission or denial of each of the Board's findings of fact;**
- 6. A description of the facts and/or issues which the person believes constitute a defense to the allegations made by the Board;**
- 7. Information and documentation supporting the hearing request and specific reference to, or copies of, other written documents relied upon to support the request;**
- 8. An estimate of the time required for the hearing (in days or hours); and**
- 9. A request, if necessary, for a barrier-free hearing location for physically disabled persons.**

(d) If the request for a hearing fails to provide all the information required by (c) above, the Board may deny the hearing request.

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(e) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) (No change.)

(g) If the Board determines a hearing should be granted, the Board shall determine whether to conduct the hearing itself or refer the matter to the Office of Administrative Law (OAL) for an Administrative Law Judge (ALJ) to conduct the hearing. If the matter is referred to the OAL, the Board shall affirm, reject, or modify the decision within 45 days after its receipt of the ALJ's initial decision by issuing its own final decision. The Board's action shall be considered the final agency action for the purposes of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and shall be subject only to judicial review as provided by the Rules of the Court.

(h) The Board shall inform the person or persons who requested the hearing in writing whether the request for a hearing was granted and, if so, whether the Board will be conducting the hearing or the matter is being transmitted to the OAL for a hearing. If the Board determines not to grant a hearing, it shall provide the reason for the denial in writing.

(i) If no hearing is requested, the assessment of civil administrative penalty; notice of denial, non-renewal, suspension, or revocation of a certificate or business permit; or any other Board decision from which a contested case hearing is to be provided pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., becomes a final order on the 21st day following receipt of the notice by the person.

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(j) If the hearing request submitted is subsequently withdrawn, the Board action for which the hearing request was requested becomes a final order upon such withdrawal.

[(g)] **(k)** (No change in text.)

(l) No certification or business permit, which is the subject of a final order of suspension, revocation, non-renewal, or denial, shall be valid during the pendency of any action on appeal to a court of competent jurisdiction from that order, unless a stay of the final order has been granted.

APPENDIX

**New Jersey Certified Landscape Irrigation Contractor
Activities that Qualify for Continuing Education Credits (CECs)**

Irrigation Association Certifications

CAP	No cap (maximum) on the number of CECs per period in this category.
QUALIFYING ACTIVITY	20 CECs earned for obtaining first Irrigation Association Certified Irrigation Designer (CID) specialty.
	10 CECs earned for each additional Irrigation Association CID specialty.
	10 CECs earned for obtaining each of the following Irrigation Association Certifications: Certified Landscape Irrigation Auditor (CLIA), Certified Golf Irrigation Auditor (CGIA), Certified Agricultural Irrigation Specialist (CAIS), Certified Landscape Water Manager (CLWM).

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Irrigation Educational Content Developer

CAP	No cap (maximum) on the number of CECs per period in this category.
	CECs in this category are earned at the rate of two CECs per article/book chapter/session.
QUALIFYING ACTIVITY	Writing reference material or irrigation books.
	Presenting irrigation related technical papers.
	Writing articles for an irrigation publication.

Irrigation Training - TIER 1

CAP	No cap (maximum) on the number of CECs per period in this category.
	CECs in this category are earned at the rate of one CEC per hour of instruction.
QUALIFYING ACTIVITY	Attending irrigation education courses or seminars.
	Teaching irrigation education courses or seminars or conducting demonstration projects.
TRAINING	Irrigation educational courses and seminars sponsored by trade associations, trade schools, educational institutions, professional instructors, or manufacturers. If the course or seminar is sponsored by a distributor or manufacturer, the course shall be taught by an Irrigation Association Licensed Provider, college or university staff, or other approved professional

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DEFINITION	instructor. The subject matter shall be related to irrigation and cannot be product specific.
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Irrigation Training - TIER 2

CAP	No cap (maximum) on the number of CECs per period in this category.
	CECs in this category are earned at the rate of .5 CECs per hour of instruction.
QUALIFYING ACTIVITY	Attending irrigation education courses or seminars.
	Teaching irrigation education courses or seminars.
	Attending an irrigation demonstration project.
	Irrigation educational courses and seminars sponsored by a distributor or manufacturer and taught by someone other than an Irrigation Association Licensed Provider, college or university staff, or approved professional

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	<p>instructor. The subject matter shall be directly related to irrigation and may or may not be product specific.</p>
<p>TRAINING DEFINITION</p>	<p>Irrigation educational courses and seminars that do not fall under the TIER 1 training definition. The subject can be product specific.</p>

Irrigation Training - TIER 3

<p>CAP</p>	<p>A maximum of five CECs per period can be earned in this category.</p>
	<p>CECs in this category are earned at the rate of .25 CECs per hour of attendance.</p>
<p>QUALIFYING ACTIVITY</p>	<p>Attending irrigation or green industry trade shows.</p> <p>Attending or teaching green industry courses or seminars that are not irrigation specific.</p> <p>Attending or teaching business related courses or seminars.</p>
<p>TRAINING</p>	<p>Irrigation or green industry trade show attendance is considered for walking the trade show floor and attending on floor education sessions.</p>

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DEFINITION	Green industry courses or seminars relating to subjects that are indirectly related to irrigation and can be product specific.
	Business courses and seminars relating to subject matter directly related to the business of landscape irrigation contracting.

Water Conservation (WC) Designation

CAP	No cap (maximum) on the number of CECs per period in this category.
TRAINING DEFINITION	Irrigation courses, seminars, or training in a subject related to water conservation (WC) shall be given a WC designation. All CECs earned for obtaining Irrigation Association Certifications shall carry a WC designation. WC credits may be from any tier.

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	WC designation. WC credits may be from any tier.
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