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CHAPTER 43. JUNKYARDS ADJACENT TO THE INTERSTATE AND NATIONAL HIGHWAY SYSTEMS

AUTHORITY: N.J.S.A. 27:1A-5, 27:1A-6, and 27:5E-1 et seq., particularly 27:5E-6; and 23 U.S.C. § 136.

Expires on July 28, 2024.

SUBCHAPTER 1. GENERAL PROVISIONS

16:43-1.1 Declaration of policy

The intent of this chapter is to effectuate the purposes of the New Jersey Junkyard Control Act, N.J.S.A. 27:5E-1 et seq., which are to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, and to foster the public policy of the State expressed by that Act, which is to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and national highway systems within the State; further, to ensure New Jersey compliance with section 136 of Title II of the Federal Highway Beautification Act of 1965, and the provisions of Title 23 of the Code of Federal Regulations, Part 751, Junkyard Control and Acquisition.

16:43-1.2 Authority

(a) The Commissioner of Transportation is authorized pursuant to N.J.S.A. 27:5E-4 et seq., to:

1. Promulgate, after public hearing, regulations defining "unzoned industrial areas," as that term is employed in the Junkyard Control Act;
2. Screen junkyards lawfully in existence on the effective date of the Junkyard Control Act (July 24, 1970) which are located within 1,000 feet of, and are visible from, any interstate or national highway system highway, and which are located outside of zoned and unzoned industrial areas, and to acquire such lands, or interests in lands, as may be necessary to provide adequate screening of such junkyards;
3. Promulgate rules and regulations governing the location, planning, construction and maintenance, including the materials used, in screening or fencing required by the Junkyard Control Act;
4. Determine whether the screening of a junkyard is feasible, and where such screening is not feasible, to pursue alternate control measures, including the relocation, removal, or disposal of such junk;
5. Acquire such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards, and to pay for the costs of relocation, removal, or disposal thereof;
6. Apply to the Superior Court, Chancery Division for an injunction to abate public nuisance created by junkyards which do not conform to the requirements of the Junkyard Control Act;
7. Enter into agreements with the United States Secretary of Transportation relating to the control of junkyards in areas adjacent to the interstate and national highway systems, and to take action in the name of the State to comply with the terms of such agreements; and
8. Comply with all applicable rules, regulations and guidelines of the Federal Government or any agency thereof, and more specifically those regulations and guidelines promulgated by the Federal Highway Administration as codified in 23 CFR Part 751, and contained in the Federal-Aid Policy Guide (FAPG), insofar as compliance with said rules, regulations and guidelines is a necessary condition for Federal participation in junkyard control projects authorized under N.J.S.A. 27:5E-1 et seq. 23 CFR Part 751 can be found at <http://ecfr.gpoaccess.gov>. The FWHA's guidance materials that supplement the pertinent regulatory materials can be found at <http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>.

16:43-1.3 Definitions

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

"Automobile graveyard" means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

"Commissioner" means the Commissioner of Transportation of the State of New Jersey.

"Department" means the Department of Transportation of the State of New Jersey.

"Industrial activities" means those permitted only in industrial zones, or in less restricted zones by the nearest zoning authority within the State, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the State, except that none of the following shall be considered industrial activities:

1. Outdoor advertising structures;
2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;
3. Activities normally and regularly in operation less than three months of the year;
4. Transient or temporary activities;
5. Activities not visible from the traffic lanes of the main traveled way;
6. Activities more than 500 feet from the nearest edge of the main traveled way;
7. Activities conducted in building principally used as a residence;
8. Railroad tracks, minor sidings, and passenger depots;
9. Junkyards, as defined in Section 136, Title 23, United States Code.

"Illegal junkyard" means a junkyard which is established in violation of the Junkyard Control Act, N.J.S.A. 27:5E-1 et seq.

"Interstate system" means that portion of the National System of Interstate and Defense Highways located within this State, as officially designated, or as may hereafter be so designated, by the Commissioner of Transportation, and approved by the Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code.

"Junk" means old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

"Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

"National system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the Commissioner of Transportation, and approved by the United States Secretary of Transportation, pursuant to the provisions of Title 23 of the United States Code.

"Nonconforming junkyard" means a junkyard which does not comply with N.J.S.A. 27:5E-4 and which was either:

1. In actual existence on July 24, 1970, as distinguished from a contemplated use, except where a permit or similar specific governmental action was granted for the establishment of the junkyard prior to July 24, 1970, and the junkyard owner in good faith expended funds in reliance thereon, or

2. Lawfully established after July 24, 1970, but later failing to comply with N.J.S.A. 27:5E-1 et seq. because of the construction, widening or relocation of national or interstate highways or other changed conditions not within the junkyard owner's control, including revisions in the applicable zoning ordinances.

"Sanitary fill" means a land disposal site employing an engineered method of disposal of solid waste in a manner that is intended to minimize environmental hazards, including, but not limited to the spreading of the solid waste in thin layers, compacting the waste to the smallest practical volume, and applying cover material at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

"Unzoned industrial area" means the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within 750 feet thereof which is:

1. Located on the same side of the highway as the principal part of said activity;
2. Not predominantly used for residential or commercial purposes; and
3. Not zoned by State or local law, regulation or ordinance.

"Zoned industrial areas" means those districts established by zoning authorities as being most appropriate for manufacturing or heavy industry, regardless of how labeled. The Commissioner of Transportation shall determine whether a local zoning classification in effect establishes a zoned industrial area for the purposes of this chapter, and such determination shall be based upon the compatibility of unscreened junkyards with the land uses permitted under the local zoning classification.

16:43-1.4 County and municipal ordinances; effect

Nothing in this chapter shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution of any county or municipality, which is more restrictive than the provisions of this chapter.

SUBCHAPTER 2. ILLEGAL JUNKYARDS

16:43-2.1 Establishment, operation and maintenance of illegal junkyards

(a) No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any intrastate or national highway, except the following:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the interstate and national highway systems, or otherwise removed from sight;
2. Those located within zoned industrial areas;
3. Those located within unzoned industrial areas; and
4. Those which are not visible from the main-traveled way of the system.

16:43-2.2 Screening and removal of illegal junkyards

(a) The owner or owners of any junkyard, which shall be determined by the Commissioner to be established, operated or maintained in violation of this chapter shall within 90 days of receiving notice of said violation:

1. Relocate, remove, or dispose of the junk in the illegal junkyard in such a manner as to effect compliance with these regulations; or
2. With the prior approval of the Department, construct screening and fencing which conforms to the requirements of subchapter 4 of this chapter. Proposals for such screening or fencing shall be submitted by the junkyard owner to the Department for approval within 30 days of the owner's receiving notice of a violation.

16:43-2.3 Abatement of public nuisances

Junkyards which do not conform to the requirements of this chapter are declared to be public nuisances. The Commissioner may apply to the Superior Court, Chancery Division in the county in which said junkyards may be located for an injunction to abate such nuisance.

SUBCHAPTER 3. NON-CONFORMING JUNKYARDS

16:43-3.1 Screening and removal of non-conforming junkyards

(a) Any junkyard which is determined by the Commissioner to be a nonconforming junkyard under these regulations shall, within a reasonable time from the date said junkyard becomes nonconforming, be screened by the Department in accordance with N.J.A.C. 16:43-4, unless the Commissioner determines that such screening is not feasible.

(b) In all cases in which the screening of a non-conforming junkyard is found to be unfeasible, the Department shall relocate, remove, or dispose of said junkyard.

(c) Situations in which screening of a non-conforming junkyard may be considered unfeasible and in which junk should be removed for disposal or recycling shall include:

1. Junkyards which will be terminated within a five-year period, including junkyards subject to termination clauses in local zoning ordinances, junkyards located in a proposed improvement project, and junkyard operations which the owner intends to abandon.

2. Junkyards which the Commissioner determines may present a hazard to public health or safety.

3. Junkyards for which the Commissioner determines that the benefits of removal far outweigh the benefits of screening, taking into account existing land uses in the area, traffic conditions, aesthetics and community preferences.

4. Junkyards for which adequate screening cannot be accomplished due to the topography of the surrounding land, or for which adequate screening would necessarily obstruct a scenic vista or significant landmark.

16:43-3.2 Acquisition of lands

When the Commissioner of Transportation determines that it is in the best interest of the State he may acquire such lands, or interest in lands, as may be necessary to provide adequate screening of non-conforming junkyards, or when such screening is determined to be unfeasible, to secure the relocation, removal, or disposal thereof.

16:43-3.3 Just compensation and relocation assistance

(a) Just compensation shall be paid to the owner for the relocation, removal, or disposal of junkyards which are lawfully established, operated and maintained pursuant to the provisions of this chapter and which are required to be removed, relocated or disposed of pursuant to N.J.A.C. 16:43-3.1.

(b) No rights to compensation under this section shall accrue until a taking or removal has occurred. The conditions which establish a right to operate and maintain a non-conforming junkyard as provided in N.J.A.C. 16:43-3.4 must pertain at the time of the taking or removal in order to establish a right to just compensation.

(c) Owners of junkyards which are lawfully established, operated and maintained pursuant to the provisions of this chapter and which are required to be removed, relocated, or disposed of pursuant to section 1 of this subchapter may apply for relocation assistance under the provisions of the Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 et seq. and the regulations adopted pursuant thereto, which are codified in N.J.A.C. 16:6.

16:43-3.4 Operation and maintenance of non-conforming junkyards

(a) Any non-conforming junkyard unlawfully operated and maintained after July 24, 1970, shall be deemed an illegal junkyard for the purposes of this chapter. The following requirements for the continued operation and maintenance of a non-conforming junkyard shall apply:

1. There must be existing property rights in the junkyard or junk subject to regulation under this chapter.

2. Worthless junk, or junk having no economic or resale value to the owner thereof, shall be removed, relocated, recycled or otherwise disposed of by the owner.

3. The junkyard may not be extended, enlarged or changed in use. A junkyard shall be considered to have been extended if junk is placed in areas not used for the storage of junk as of the date said junkyard became non-conforming. A junkyard shall be considered to have been enlarged if additional property is acquired for the storage or placement of junk subsequent to the date on which said junkyard became non-conforming. A junkyard shall be considered to have been changed in use when, subsequent to the date on which said junkyard becomes non-conforming, its manner of operation is so altered as to significantly increase the amount of junk visible from the main traveled way.

4. After a non-conforming junkyard has been screened, junk shall not be placed so that it may be seen above or beyond the screen or otherwise become visible from the main traveled way. In all cases in which the owner of the junkyard acquires title to the screen, the owner shall be responsible for the maintenance of the screen in accordance with the requirements of subchapter 4 of this chapter.

5. A non-conforming junkyard may continue only so long as it is not abandoned, destroyed, or voluntarily discontinued. A junkyard shall be considered abandoned when the owner thereof has neither bought nor sold junk within the last calendar year. A junkyard shall be considered to have been destroyed when for any reason the junk stored therein has lost all economic or resale value. A junkyard shall be considered to be voluntarily discontinued when the owner thereof ceases the business of buying and selling junk with the intent not to resume such business.

SUBCHAPTER 4. SCREENING AND FENCING REQUIRED BY THE JUNKYARD CONTROL ACT

16:43-4.1 Location, construction and maintenance of screening

(a) Screening and fencing required by the Junkyard Control Act shall be located, planted, constructed and maintained in the following manner:

1. Where screening or fencing is used, it must, upon completion of the screening project, effectively screen the junkyard from the main-traveled way of the highway on a year-round basis, and be compatible with the surroundings.

2. Screening or fencing may not interfere with the ability of the operator of a motor vehicle to have a clear and unobstructed view of the highway, intersecting streets, or ramps, or approaching, merging, or intersecting traffic, or of official signs, signals or traffic control devices.

3. No junk shall be deposited or placed on the highway side of the screening or fencing.

4. The junkyard entrance on a national highway system must be consistent with the objectives of effective control and N.J.A.C. 16:47-3.5(e). Any gate which provides access to a national system highway shall provide effective control when closed. Such a gate shall be closed when the junkyard entrance is not in use. A junkyard entrance on a national system highway may also be made through a baffle of screening so as to provide effective control. Any junkyard entrance not on a national system highway but visible from the national or interstate system shall be closed when not in use or shall be screened through a baffle.

(b) Screening and fencing may be accomplished by use of natural objects, landscape plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site. Screening and fencing should be relatively maintenance free, and should be as compatible with the general area as possible. Climate, soil conditions, extent of land area available, and the availability of material are pertinent factors. Use of existing "natural" screens should be given high priority. Alternative methods of screening or fencing include the following:

1. Use of plant material: Trees, shrubs, etc., of a sufficient size and density to provide year-round effective screening may be used.

i. Plants should be selected to complement the existing highway and adjacent land use and environmental conditions. Dead trees and shrubs should be replaced in order to provide continuous effective screening.

2. Earth grading: Berms, graded, shaped and recovered with topsoil and planted so as to provide a natural appearance may be used to block visibility. Berms should be constructed to fill material or building demolition fill material of a non-contaminating nature.

3. Architectural barriers: Fences, walls, or other structural elements may be used.

(c) For the purpose of establishing a height from which to determine the effectiveness of screening, the American Association of State Highway and Transportation Officials Standard of three feet nine inches, average is to be used. This standard is to be used at the pavement centerline of the highway.

16:43-4.2 Maintenance of screening on State right-of-way

Screening established on State right-of-way shall be maintained by the Department.

16:43-4.3 Surveillance

The interstate and national highway systems will be surveyed periodically to update the junkyard inventory. Each junkyard on the inventory will be reviewed for compliance with the provisions of the Junkyard Control Act and this chapter.