

41 N.J.R. 3249(a)

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## **RULE ADOPTIONS**

**HEALTH AND SENIOR SERVICES  
PUBLIC HEALTH SERVICES BRANCH  
DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH  
CONSUMER AND ENVIRONMENTAL HEALTH SERVICES**

41 N.J.R. 3249(a)

### **Adopted New Rules: N.J.A.C. 8:50**

#### **Standards for Indoor Environment Certification and for Licensure of Indoor Environmental Consultants**

Proposed: November 3, 2008 at 40 N.J.R. 6294(a) (see also Notice of Location of Public Hearing, 40 N.J.R. 6721(a) (December 1, 2008)).

Adopted: June 10, 2009 by Heather Howard, Commissioner, Department of Health and Senior Services.

Filed: August 14, 2009 as R.2009 d.275, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2007, c. 1 (approved January 11, 2007), particularly at §§1 and 2, N.J.S.A. 52:27D-130.4 and 130.5.

Effective Date: September 8, 2009.

Expiration Date: September 8, 2014.

#### **Summary** of Hearing Officer's Recommendations and Agency Responses:

The Department of Health and Senior Services (Department) convened a public hearing on the proposed new rules on December 16, 2008 at the Health and Agriculture Building, Trenton, New Jersey. Joseph D. Eldridge, Director, Consumer and Environmental Health Services, New Jersey Department of Health and Senior Services, served as hearing officer. The hearing officer recommended that the Department proceed to adoption of the proposed new rules. Persons wishing to review the record of public hearing should contact:

#### **Director**

#### **Consumer and Environmental Health Services**

#### **New Jersey Department of Health and Senior Services**

**3635 Quakerbridge Road**

**PO Box 369**

**Trenton, NJ 08625-0369**

**(609) 588-7864**

**Summary** of Public Comments and Agency Responses:

The Department received timely comments from following:

1. Sue Arlia, Owner/Director, Jack In The Box Early Learning Centers, Closter, Alpine, and Tenafly, NJ
2. Lynne Baka, Owner and Operator, First Step Learning Center, Inc., and The Fairmount School, Inc., Whitehouse Station, NJ
3. Jana J. Balke, Regional Director for Early Childhood, Catapult Learning, Philadelphia, PA
4. Donny Banerji, Owner, Sunny Fields Learning Center, Whippany, NJ, and Stepping Stone Learning Center, River Edge, NJ
5. Melinda Bartman, Daycare Director, Nazarene Acres Christian School, Bridgeton, NJ
6. George S. Bell, Owner and Director, The King's Kids Learning Center, National Park, NJ
7. Amanda Blagman, Senior Policy Analyst, Association for Children of New Jersey, Newark, NJ
8. Amy M. Callahan, Vice President of Sales and Operations, Brightest Beginnings, LLC, Lumberton, NJ
9. Julissa Campusano, Director, St. Paul's Centenary United Methodist Church Daycare Center, Newark, NJ
10. Victoria Caracciolo, Director, St. Cecilia's Little Angels Preschool and Childcare, Pennsauken, NJ
11. William Coleman, President, Kiddie Cottage Pre-School, Rochelle Park, NJ
- [page=3250] 12. Lorraine Cooke, Ed. D., Vice President for Public Policy, New Jersey Association for the Education of Young Children, Monmouth Junction, NJ
13. John Daab, CFE, PhD, MBA, MA, MPS, MA, Owner, West Windsor Day School and Edinburg Day School, West Windsor and Hamilton, NJ
14. Tom D'Antonio, Director of Facilities -- East, Knowledge Learning Corporation, Cherry Hill, NJ
15. Cindy Davis, Administrative Director, Palisades Country Day School, Closter, NJ
16. Mary DeMarco, Director, and Johanna Kimberlin, Owner/Head Teacher, So Big Child Development Center LLC, Riverdale, NJ

17. Laura Dolan, Director, Joyful Noise Christian School, Marlton, NJ
18. Rosemary Dzwonkowski, Owner and Director, Early Years Preschool, Little Silver, NJ
19. Jane A. Egan, Executive Director, Meadowlands Area YMCA, North Arlington and Rutherford, NJ
20. Gwen E. Forte, Director, Ocean County Office, The Children's Home Society of New Jersey, Toms River, NJ
21. James W. Frisbee, CIH, Operations Manager, Environmental Connection, Inc., Trenton, NJ
22. Valerie Frost-Lewis, Owner and Director, Peppermint Tree Child Development Center, Toms River, NJ
23. Elaine Geiger, Vice President for Childcare and Camps, YMCA of Western Monmouth County, Freehold, NJ
24. Jill Glossner, Director, The Grace Place, Tabernacle, NJ
25. Christian A. Gwynne, Director, Reformed Church Nursery School, Oradell, NJ
26. Christine V. Harris, Executive Director, Jack In The Box Early Learning Centers, Closter, Alpine, and Tenafly, NJ
27. Tara Hendricks, Director, Precious Moments Nursery School/Day Care, Gloucester, NJ
28. Mary Innocenzi, Executive Director, The Village Learning Center, Pennington, NJ
29. Sally Ann Kelly, Directory, Laurel Day Care doing business as Play N' Learn, Upper Montclair, NJ
30. Shari Klena, Owner/Director, Learning Steps Children's School, New Egypt, NJ
31. Linda Kraut, Director, Catholic Youth Organization Preschool, Hollowbrook Community Center, Ewing, NJ
32. Peggy Jane Kudla, Director/Owner, Dover Country Day School, Toms River, NJ
33. Linda M. LaRocca, Director, A Step Ahead Preschool, Inc., Marlboro and Wickatunk, NJ
34. Debora Lemmen, After School Center Director, New City Kids After School Center, Jersey City, NJ
35. Jill Lipoti, PhD, Director, Division of Environmental Safety and Health, NJ Department of Environmental Protection, Trenton, NJ
36. Breeta Littlefield, Regional Manager, KLC School Partnerships, Knowledge Learning Corporation, Delanco, NJ
37. William Lovett, President, New Jersey State Alliance of YMCAs, Medford, NJ
38. Susan MacDonald, Director, Future Scholars Early Learning Center, Hainesport, NJ
39. Margie Marcucci, Owner, Right At Home Daycare, Lebanon, NJ

40. Diany Martinez, Owner, Kiddie Academy, Wantage, NJ
41. Caitlin McGee, Assistant Project Manager, Environmental Consulting Division, TTI Environmental, Inc., Moorestown, NJ
42. Michael McGuinness, CIH, CET, CIAQP, Building Pathologist, RK Occupational and Environmental Analysis, Inc., Phillipsburg, NJ
43. Virginia Micai, Director/Owner, Kids Corner Child Day Care, Hamilton Square, NJ
44. Shelly J. Mills, Owner, Country Playhouse Childcare Center, Cape May Court House, NJ
45. Michelle Newman-Keenan, Director/Owner, and Justina A. Newman, Sponsor/Owner, Beachwood Nursery School, Beachwood, NJ
46. Peter O'Neil, CAE, Executive Director, American Industrial Hygiene Association, Fairfax, VA
47. Carol A Presley, Executive Director, Neighborhood House, Plainfield, NJ
48. Mary Lou Rodriguez, Co-Director and Patricia Jameson, Co-Director, Children's Learning Center, Inc., Fairview, NJ
49. June T. Rossolillo, Owner, Bloomingdale Daycare and Nursery School, Inc., Bloomingdale, NJ
50. Dorothy C. Rowe, Director, Calvary Baptist Community Center, Inc., Paterson, NJ
51. Frances Schultz, P.G., Associate Principal and Vice President, GZA GeoEnvironmental, Inc., Fairfield, NJ
52. Pahaka September, Director, Upper Saddle River After School Program, Cavallini School, Upper Saddle River, NJ
53. Steven Temes, Consultant, Indoor Air Quality, AirWays Environmental Services, Red Bank, NJ
54. Cindy Terebush, Director, Temple Shalom Nursery School, Aberdeen, NJ
55. Barbara Timpani, Director, Kiddie Academy of Mount Olive, Child Care Learning Centers, Flanders, NJ
56. Nancy C. Thomson, President, New Jersey Association of Child Care Resource and Referral Agencies, Trenton, NJ
57. Michael A. Vrancik, Director of Governmental Relations, New Jersey School Boards Association, Trenton, NJ
58. Janet Wallach, Assistant Chief Executive Officer, Kids Educational Enrichment Program, Sparta, NJ
59. Shirley Watson, Director, Holly Day School, Riverside, NJ
60. Roger Wood, Director and Owner, and Barbara Wood, Director and Owner, Magic Years Pre-School Learning Center, Inc., West Paterson, NJ

61. SungJae Yi, Owner and Director, New Christian Academy, Palisades Park, NJ

62. Thomas E. Zsiga, Chief Operations Officer, North Jersey Community Coordinated Child Care Agency, Inc., Paterson, NJ

The number in parentheses following each comment below corresponds to the commenter number above.

1. COMMENT: "I am a small Home operated Day Care. Testing the air quality is another New Jersey scam, on the hard working people in the Day Care industry. I don't have the income to pay for this foolish plan. I am imploring you, to come to your [senses] and give the day care business a break. Let us do our job giving quality care to our students. Where is the [stimulus] package for the Day Care Industry. Please help us out!"

The commenter encloses a copy of a list of "key talking points" objecting to the proposed new rules prepared by the New Jersey Association of Child Care Resource and Referral Agencies. The following text is from the talking points:

"A brief summary of the proposed regulations is below:

Indoor air quality sampling will be required at most child care centers;

The projected cost of conducting the air quality sampling will vary greatly as many have learned from the preliminary assessments; estimates start in the thousands of dollars for an average size center;

A \$ 1,500 fee is proposed to file the results of your initial test with [the Department];

A \$ 450 fee is proposed for renewal if there are no changes in you building or any of your neighbors;

The \$ 1,500 fee applies if there are changes, and the testing must be done again;

The [Economic Impact] only addresses the filing fee, not the costs of conducting the tests;

The [Jobs Impact] only addresses the centers that might close and the staff at those centers, not how the families who use those centers might be impacted.

The New Jersey Association of Child Care Resource and Referral Agencies (NJACCRRA) has identified the following key talking points. If you share any of these concerns, please include them in your comments to the Department . . .

Reduce the cost to the centers to file the test results with [the Department];

Determine an appropriate length of time for re-certification of indoor air quality (if it is tied to the renewal of the child care center license, currently every three years; there is proposed legislation to shorten that time period to one year);

[page=3251] It is not feasible for centers serving subsidized or low income families to pass the increased costs to the families they serve, increasing the likelihood that [these] centers will be forced to close;

Child care subsidy reimbursements did not include a cost of living increase last year in spite of the increase in operational costs,

The preliminary assessments have added thousands of dollars in expenses to many centers;

this will compound those costs;

If these regulations are to protect children, do not set a standard for children in schools that differs from those that govern children in child care centers (the proposed regulations only apply to schools if the school applies for a construction or renovation permit). Imposing this requirement on centers operating in schools that are not required to do the testing sets up an inappropriate double standard, [that is,] children attend during the regular school day, but the after-school program is prohibited from operating in the same building unless it meets air quality standards." (29)

2. COMMENT: "Children should be protected by regulations that limit their exposure to harmful indoor contaminants; however, this costly mandate, which expands the testing to facilities with no history of high-risk tenants, appears to be overkill. The \$ 1,500 cost that child care centers will have to pay to the Department . . . will be cost prohibitive for center operators. The proposed regulations do not mention the exorbitant price of the actual testing, which will far exceed the application fee and may cost thousands of dollars. In most cases, centers will not be able to pass these increased costs on to consumers of their services, particularly the parents of low-income children who rely on State-subsidy programs to assist them in paying for their child care. Centers currently serving low-income children will most likely have to lower their standards of quality or close due to the hardship that this financial burden would inflict.

Similarly, the \$ 450 fee to file a renewal of a Certificate of Safe Building Interior by certifying that conditions have not changed is also excessive. If a certified consultant is required to submit this renewal, the financial impact to the center increases. Instead of requiring the fee every time a center license is renewed, the Certificate of Safe Building Interior should be submitted every five years and the cost should be significantly reduced.

The [Jobs] Impact . . . only addresses the potential impact to the staff at a child care center that closes as a result of the new regulations. It does not address the impact on families who use these centers. As impacted centers begin to close, licensed centers will be less accessible to parents and may result in either children being placed in unsafe child care or parents losing their jobs because they do not have a stable child care arrangement.

Children are in child care centers for the early years of their lives; they are in public school facilities for twelve years. Yet the regulations do not pertain to these buildings. If children are at risk while in privately run child care centers, they are equally or more at risk in the aging public school facilities. There should be consistent and equal standards.

In order to implement these regulations, there must be financial supports to assist the small business owners who run the child care programs. Child care centers are not a source of pollution; asking child care centers to remediate environmental pollution caused by other industries is unfair and will force many of these businesses to close. Regulations need to be developed to tax the polluters, not the child care industry.

I . . . submit the following recommendations:

- (1) Significantly reduce the cost or require the industries that have caused the pollution to pay for the cost of the certification and testing fees.
- (2) Only require indoor testing if a building has an actual high-risk usage or neighbor.
- (3) Certification requirements should be the same for both child care centers and public school facilities." (56)

3. COMMENT: "[The commenter writes on behalf of a non-profit entity (entity) that is] the

largest [provider] of daycare in the State, serving 45,000 children a day. While many of these children receive this care with significant [Federal and State] government subsidies a significant number of [the entity's facilities] also provide subsidies for child care through their own financial assistance. For example, 30 percent of the children in [one of the entity's facility's] after school child care program received ... financial assistance [from the entity] and the funds to support this were raised through the [entity's] annual ... campaign. Many of the [entity's facilities Statewide] do the same.

The affordable, availability of child care is critical to the gainful employment of our residents. In 'Benefits for All: The Economic Impact of the New Jersey Child Care Industry', 2006, cites that the child care industry supported more than 65,300 full time jobs in New Jersey, including those employed in the field and those needing child care in order to be gainfully employed. Therefore, the implementation of any rules governing their operation will have a wide-ranging impact on the services, the children and the families who receive those services . . .

[The entity is] not opposed to the implementation of rules to improve the quality of the air in our daycare centers. In fact, part of the [entity's] mission is to ensure all children are healthy in mind, body and spirit. Yet, we believe that while the goals of the [Department] are to ensure a level of air quality that is 'healthy' the downsides of the manners in which the [Department] is attempting to achieve this goal will do serious harm. That harm would force families to lose their child care, children lose their educational programs and our staffs and the children's parents be threatened with the loss of their respective employment . . .

No justification is given for the fee to be charged by the Department. The fees charged to smaller day care centers and those operated by non-profit organizations will be a major financial burden on the centers and their clients, many of whom are already stressed by the downturn in the national economy. A fee of \$ 1,500 is to be required for application for an initial certification of a safe building interior, \$ 450 for renewal of the certificate and a biennial fee of \$ 2,000 for initial and renewal licensure of indoor environmental consultants.

It is only appropriate that at a minimum, the Department should describe capital needs, staffing and operational costs for the program. This should include anticipated titles of individuals who will perform the work and the approximate amount of time necessary to perform the functions necessary to certify and license as it proposes. Otherwise how is the Department able to accurately determine the true costs of this program?

Has the Department determined that sufficient qualified individuals will seek licensure as indoor environmental consultants? Also, is there enough certified laboratory capacity for the necessary testing currently to handle the anticipated workload of applications by 1,400 day care centers and 350 educational facilities annually? How many licensed consultant and certified laboratories will be needed to handle the anticipated workload?

Costs of compliance with this program by the regulated community are not adequately addressed. The proposed regulated community should be given some sense of what the costs of compliance with this program are likely to be. The Department notes that it has supplied advice and guidance to consultants and school construction officials. The costs of various sampling and analytical techniques are available from consultants and certified laboratories. It should therefore be possible to provide a range of anticipated costs for small to large environmental evaluations, or at the very least, typical ones based on experience. For example, the current cost of a TO-15 analysis is approximately \$ 350 and the cost of a technician to collect the sample is approximately \$ 450. If two samples are taken at a single location by one technician, the cost of the sampling and analysis would be approximately \$ 1,150. This type information should be provided so that the regulatory community may have some reasonable expectation of the costs to be incurred. Without this type of information it will be difficult to develop operational budgets.

The economic/health value of the 'anticipated benefits' are not adequately explained. The Department states that it anticipates an overall societal and economic benefit due to the reduction in disease and improved health of workers and clients. What specific diseases does the Department expect to be eliminated or reduced by this program? What is the current incidence of each these diseases and the reduction in incidence in each if the program is implemented? How will the [Department] possibly measure the 'success' of the rules without specific disease identification?

Why does the requirement for certification of public educational facilities not constitute an unfunded mandate by State government? The public schools have been exempted from the [Department of [page=3252] Environmental Protection (DEP)] rules developed as a result of this same law that mandates the [Department] to develop the rules being discussed herein. This decision was based on the rules of the unfunded mandated law.

The definition of 'Lifetime Excess Cancer Risk' (the product of the calculated daily exposure and the cancer risk) is different from the equation used to calculate it. The difference (apparently the inclusion of environmental and weighting factors in the formula) should be explained.

Does the lifetime excess cancer risk of exposure to radon at the stated MCL of four pCi// exceed the one in 10,000 risk of cancer threshold for certification of a safe interior? The Radon Rules of the Department of Environmental Protection cite the four pCi// concentration of radon in air as a guidance level at which remediation should be considered. The proposed rule cites this level as a Maximum Contaminant Level (MCL). What is the significance of this difference in terminology? Will the Department of Environmental Protection propose four pCi// as an MCL if this rule is promulgated?

What specific Cancer Slope Factors will the Department use to calculate the Lifetime Excess Exposure Risk? Different studies of cancer causing agents have produced different slope factors. If there is no tabulation of the slope factors to be used in the scientific literature, the Department should publish the list of factors it intends to use.

Some day care centers and educational facilities seeking certification are likely to test positive for some cancer causing substances but at concentration creating a risk less than the one in 10,000 threshold. Parents and workers will likely question why any concentration of these substances is acceptable. Has the Department developed guidance for how day care centers and educational facilities should address this problem with their clients? If not, how does the Department recommend that day care centers and educational facilities respond?

In 'Jobs Impact' the Department states 'it does not anticipate that the proposed new rules would have any impact on the number of jobs in the State. The Department has not fully explored and stated the true impact on jobs as a result of these rules. Their jobs assumption blatantly ignores the facts as stated in the study previously cited in this comment letter identifying thousands of individuals in need of child care in order to maintain their gainful employment. The Department has acknowledged that the cost of these rules may put child care centers out of business. It follows that if childcare centers are closed then the families of these children would have fewer opportunities to find adequate childcare. It is a logical assumption to make that if centers close parents who need childcare will seek other means of care including leaving them alone or with unqualified individuals, and or be forced to quit their jobs, thereby endangering the health and well being of their respective families.

The Department should perform a pilot study to determine the scope of the problem of contaminants present in day care centers and educational facilities. The example cited by the Department of a day care center being housed in a former mercury thermometer factory is probably unique. One only needs to consider the number of mercury thermometer factories

located in New Jersey; the probability that the title of one would be transferred without the buyer knowing that the facility was once a thermometer factory and the probability that the business to be housed would be a day care center or educational facility to realize that the example given is highly unusual.

It would seem prudent given these issues that a [Statewide] pilot study would offer the opportunity to assess the magnitude of the problem in New Jersey facilities, test the methodologies to be employed in addressing the problem, and provide reasonable estimates of the costs to be incurred in implementing the program both by the State and the regulated community.

The [entity] takes very seriously its mission to serve the children and facilities of our State. We strongly believe that our children and our staffs deserve to work in environmentally safe buildings. However, we strongly believe these proposed rules as written will not achieve the goals of the legislation's original intent.

We ask the Department to . . . consider . . . the societal impact in terms of the availability of child care. These rules will surely result in the closure, even if temporarily, in day-care facilities.

Closure will result in the displacement of potentially thousands of children while the [provider of child care services] searches for alternative locations, if a facility is determined to need mitigation. And we are assuming even these alternative buildings would have to be tested before the children would be permitted to attend.

In terms of the health impact, the health values of these anticipated benefits are not adequately explained. The Department states that it anticipates an overall societal and economic benefit due to the reduction in disease and improved health of workers and clients; yet, these rules don't specify the specific diseases.

We are committed to improving the health of our children, but the Department fails to identify the health concerns that would be resolved by the implementation of these rules. This creates false expectations to the parents of our children about the true health benefits of this rule. They do not identify specific health issues that they are trying to prevent or remediate.

Finally, there is no justification for the fees that are charged by the Department. The fees charged to smaller day-care centers, and those operated by nonprofit organizations, constitute a major financial burden for the centers of clients, many of whom are already being impacted by the downturn of the economy.

Given the fee of \$ 1,500, plus the \$ 450, plus the biennial fee of \$ 2,000, plus the actual cost of hiring someone to do it, we think that for [the facilities operated by the entity on behalf of which the commenter comments], we are looking at a price tag of 4 to \$ 7 million . . .

We are not asking you to compromise the safety of our children, but we do think that there are some things that ought to be done. [We] would like you to convene an interagency task force to make sure that the regulations achieve the legislation's stated goals." (37)

4. COMMENT: "As correctly stated, the proposed rules would annually affect approximately one-third of the more than 4,200 licensed child care centers applying for tri-annual renewal of their operating license with the Department of Children and Families (DCF). What is inaccurate, however, is the ease with which centers may pass on the cost of fees associated with this inspection and application for certification to the consumers of their services. Most programs already function on extremely tight budgets and the amount of discretionary funds available is often minimal.

Parents of children who attend child care are already paying significant amounts of their family income to cover the cost of early care and education so that they may work. Parents who cannot afford tuition increases may be forced into seeking more affordable and possibly substandard and/or unregulated child care, thus increasing the risk to the health and safety of their children.

Centers whose families cannot afford increased tuition expense will have to absorb the additional expense. Currently TANF and NJCK funds are used primarily to purchase vouchers for the payment of child care services for the state's neediest children. These services are vitally important at a time when so many of New Jersey's youngest citizens are in need of quality child care. In the instances of the 155 [State-subsidized] centers serving more than 9,000 children of low income and moderate income whose parents are working, attending a training or education program, or under the supervision of the Division of Youth and Families Services (DYFS) including foster care, the costs will actually be passed back to the [State] through the Center Based Contracts with the Department of Human Services, Division of Family Development. If the application fee cannot be charged to the [State] contract, then the provider will have to reduce program expenses, resulting in a reduction in program quality and a commensurate reduction in the educational experiences of the children in attendance. Studies such as the Perry Preschool Project and Abecedarian have found conclusively that low quality child care has a negative impact on the growth and development of children, especially on children of low-income.

Centers that are unable to meet the requirements or the expense of the proposed new rules might, as suggested, elect or be forced to discontinue operations or to relocate. This will result not only in a loss of income and/or incurrence of transactional and moving expenses to the program, but also a loss of tax revenue to the [State] as operators of small businesses cease to make associated tax payments. Employees of these businesses, both for profit and not-for-profit, who will be unemployed as a result of the business closing, will no longer be making [Federal] and [page=3253] [State] income tax payments, and may indeed be eligible to collect unemployment . . .

The fees that are imposed by these regulations are significantly high and will be added to the already existing costs of licensing renewal and environmental inspection adopted in January 2007. It would appear that [the Department] is setting up a costly regulatory process separate from licensing. While [the commenter] agrees that these health and safety concerns need to be addressed, the processes and resulting fees may be duplicative. There must be a way for the responsible departments to communicate with one another and append one set of regulations that can encompass all of the requirements, and charge one reasonable fee." (7)

5. COMMENT: "[A commenter comments on behalf of] the largest professional association for early care and education in the [State, and on behalf of] a private, non-profit child care center providing . . . early care and education to NJ children since 1890.

[The commenter] supports healthy environments for all children, whether in a private child care center or a public school. Recent regulations have exempted public schools from ensuring that environments are safe and healthy for children. [The commenter] supports the inclusion of all learning environments to ensure safety for all learners.

While the premise of the new rule is endorsed, the fundamentals are unsettling. Specifically, the financial burden placed upon program operations is injudicious. In addition, once again, the private organization has a more enduring obligation than its public counterpart. The State must sustain its commitment to ALL children by ensuring that rules are imposed uniformly regardless of where they are served.

Private educational programs, specifically child care centers, are supported by parent fees. While the [Federal] government does provide subsidies to a small proportion of eligible families, the subsidies do not cover the cost of care. The fees that burden families can amount to 30 percent of their income. Families depending upon child care are young and just starting out in their careers. Their discretionary income is very limited. Child care programs do not have the luxury of charging the actual cost of care to families in recognition of the huge burden placed on young families. Studies have found that young families bear a larger cost for child care than for a college education. To preserve solvency, child care centers must reduce the quality of their programs, usually off the backs of a poorly paid workforce. To absorb the exorbitant costs of the studies [the Department] recommends would be impossible for the program.

'Benefits for All: The Economic Impact of the New Jersey Child Care Industry' indicates that in 2006, the child care industry supported more than 65,300 full time jobs in New Jersey, including those employed in the field and those needing child care in order to be gainfully employed. The industry generated \$ 2.55 billion in gross receipts. Imposing costs on programs that have little support beyond parent fees will cripple an entire industry. In addition to the daily costs of running a child care program, the following is a sample of the existing compulsory costs absorbed by my child care program:

Child Care Licensing Renewal fee: \$ 880

Indoor Environmental Health Assessment fees: \$ 3,000

Accreditation Annual Report fee: \$ 400

These mandatory fees impacted the amount of supplies, facility upgrades, and other program essentials that could have been procured. Items such as classroom libraries, art supplies, new cots and linens, staff training, outdoor play items, upgrades in lighting, and so on were not obtainable. Increasing these mandatory costs by the amounts identified in the new rules will virtually obliterate all quality program necessities.

Despite the fact that private child care programs prepare children for success in elementary school and beyond, these programs are not considered as part of a continuum of education. To provide public schools with taxpayers' support to conduct the environmental studies in addition to their existing funding from taxes is a blatant denunciation of private programs. In addition, the circumstances under which the public schools are mandated to perform the studies are so limited they are effectively exempt from the order. This is clear in the proclamation stating that if child care centers are unable to meet the requirements 'might elect to discontinue operations.' Where are the children going to go? Where will the staff of these programs go to work? The magnitude of the consequences of this autocratic decree has not been considered. These costs to the economy eclipse the [Department's] anticipated public benefit to the economy. Decimating an industry to 'help the Department to offset increased costs' is unjust. Displacing child care workers in order to reinforce staff in the Department is abhorrent. Loss of child care workers links with loss of child care correlated to loss of employment among the general public for families who need child care in order to work. Loss of quality child care will render a population of 'unready' children who demand more from the school system yielding significant cost increases to schools, thus taxpayers and the [State].

[The commenter] supports the provision of a safe facility for all children. Hence, the rules must apply in the same way to ALL educational facilities. Adequate funding must be provided to ensure that private programs are not annihilated while State agencies and public schools flourish. [The] funding must cover the entire cost of examination and remediation. Under no circumstances should families be forced to lose their child care, children be forced to lose their program, parents or child care staff be forced to lose their employment.

[The commenter] recommends that the [Department convene] a workgroup, representative of the [commenter's] membership, to develop a strategy to equitably meet the needs of all affected entities." (12)

6. COMMENT: "I . . . protest the proposed indoor air quality regulations on child care centers. [The] new proposed regulations will have a truly negative impact on our centers and many others.

The environmental testing that was mandated in 2007 at a minimum cost to each center of \$ 1,500 had a negative financial impact on us with our three small centers. Many other centers within our area were forced to close. This year in particular, the economy has hit all of us and yet you want to mandate yet another regulation that in my opinion is unfair and unnecessary. It is also a fact that many state public schools do not have to follow the same regulations as childcare centers. This seems to be a highly discriminatory practice. The preliminary assessment fees that were supposed to be reimbursed by the grants we sent in have yet to materialize and you want to hit us with yet another financial burden.

[The] only people benefiting from this regulation would be the testing firms, not the children. Air quality in centers is mostly recirculated by fresh air, or air conditioners. If centers such as ours uphold and exceed the [State] standards on cleanliness, health and safety codes there is absolutely no reason for this regulation. Ours is a business of nurturing families and children, please remember that and do not pass this regulation." (1, 26)

7. COMMENT: "I am owner/operator of a small daycare center. In light of the economy and the other required DEP testing for re-licensing I feel this is a bad time to add more financial burden to the small business owner. This will add more financial burden to the small business owner. There is little money available for the DEP testing for re-licensing. Is there any assistance with the proposed indoor testing? Are you requiring this of public schools? Home day care?

The current economic status of our country is bad enough. How many individuals may be out of work if the expenses keep mounting? What about the loss of quality daycare due to expenses--never mind the possible results! We need to protect our economy!!!!!" (2)

8. COMMENT: "With the state of the economy already affecting our childcare centers and the families of our staff and childcare children, it is very unfortunate that the [Department] has proposed these new regulations. It is our hope that you reconsider your proposals to help families with children instead of making things more difficult. If these regulations are to protect children, then the standard for children in schools should not differ from those that govern children in daycare centers. If these regulations continue to be a financial burden, there will be many centers closing and you will have no need to perform these tests." (5)

9. COMMENT: "I am the owner of a private center in south jersey located in the poorest town in Gloucester County. Our center serves predominately the poor working people of our area, most being single parents. We do not have corporate sponsoring nor are we one of the franchise centers. We are small and serve approximately 30 children. Having reviewed the proposals, I wish to register my concerns.

(1) Please reduce the cost to the center to file the results with [the Department]. \$ 1,500 is unfair and punitive.

[page=3254] (2) Please tie the recertification time to the recertification of the school with the Office of Licensing [in the Department of Human Services (DHS)] (every three years). This will avoid expensive paperwork for [the Department] plus permit centers to save money by having the entire recertification process completed at once using the same consultants.

(3) . . . I cannot pass along these fees to my families because they can not afford anything more. They will be forced to leave the state looking for more affordable arrangements and I and the other small schools across the state who serve the poor and low income will be forced out of business.

(4) Even those families whose child care is partially subsidized must pay fees for child care as [subsidies] do not include cost of living increases for operational cost increases due to the burden of the licensing [fees].

(5) Preliminary assessments have already burdened my center and all of the others. We have had to [bear] the costs of added thousands of dollars. We cannot simply print more money! These proposals will add thousands of dollars more.

(6) The proposed indoor monitoring and fees will add thousands more dollars at a time in our economy when we can hardly keep our head above water as it is.

(7) If the intentions are to protect children then we need to make these rules unilateral and include all elementary, Middle and High Schools plus all of the colleges in the state.

(8) Please consider making the centers, which have already passed the . . . stringent licensing requirements [of the Department, the DEP, and the DHS] exempt from further monitoring. Why not, instead, focus [the Department's] energies where they are most needed, [that is], in the licensing of new centers, new construction, those seeking to remodel, as well as those centers already having 'failed' to gain the No Further Action letter from the DEP. Those centers are the ones which have raised issues requiring a 'second look' as it were, not those centers which have already been fined and found to be without issues for concern." (6)

10. COMMENT: "As an administrator for an experienced inner-city child care center located in Newark, New Jersey, I oppose these new regulations. Implementing these standards and provisions would make a hardship on organizations that have strived for excellence at the grass roots and have been very responsible and cooperative with the already existing environmental regulations. This past year, our center invested nearly \$ 2,000.00 for an environmental assessment in order to obtain a 'No Further Action Letter' which we are still waiting for. Moreover, this assessment produced adequate results indicating that there were no hazardous conditions or need for further assessment.

To my knowledge, the State of New Jersey is not making provisions to make it easier and reward organizations that are being responsible with their organization in assuring that the children's safety and welfare is priority. Sure, information regarding grants for the reimbursement . . . may have been disbursed[;] who received this information? If the State of New Jersey decides to implement the regulations, they should only be enforced to those centers which have a history of environmental problems and which continue to pose a threat of an environmental problem after the first environmental assessment.

Let's not allow these implementations to be another money-making idea. Let's put the children and the community centers that are trying to solve the communities' problems first." (9)

11. COMMENT: "This center's license was up for renewal at the start of the new requirements for a preliminary assessment. . . .

Didn't we just do this? Don't we have radon tests now and carbon monoxide detectors?

Is this another knee jerk reaction to an isolated case?

Although I strongly agree that we must protect the children, making it impossible for childcare writers to function at costs affordable to parents is not exactly protecting them. If these tests are necessary to protect our children [then] the standards should be the same to protect them everywhere--in childcare, at school, and at home? (Are you aware of the quality of air that our children are breathing in Camden City?)

[The center the commenter directs] is a not for profit center operated by [a Roman Catholic] Church. We . . . provide affordable, quality care for a diverse group of children primarily from low income families. This center spent thousands of dollars to have the preliminary assessment and then a follow up assessment completed. All to prove that a building housed in a residential area that formerly housed a convent was safe! The law that was put into place put the childcare centers in very vulnerable positions to be the victims of mongers (including it seemed our own government) out to make a profit.

I apologize if this letter seems angry but the truth is I am angry. I know that there has to be some way to make our centers safe for our children that can be more cost effective. It is not realistic to test annually when centers already have a schedule for renewal every three years.

Wouldn't it be more suitable to tie recertification in within this process?

We will also need help to find people that that will not take us for every penny they can get. Finally, [the Department] needs to reduce costs to childcare centers for filing fees. We, the child care community just cannot afford it." (10)

"[It] concerns me when the [State] is requiring new regulations that affect the finance of schools. Just 15 moths ago I had to pay close to [\$ 2,000] to receive a No Further Action letter. Less than two years later a new regulation is being proposed that is again close to [\$ 2,000]. I was told by a [State] representative that there would be a reimbursement for the No Further Action Letter; I have yet to receive any payment. With the economy being as it is and less people are using child care due to lay-offs. It would be a help if the [State] could assist with the cost or mandate the providers to lower their cost. [Many schools have so much debt]. It would be appreciated by all if the [State] would reconsider the regulation or pay for the test. I hope that the State is [conscious] of how new regulations have a financial burden on small businesses, the [effect] is long-lasting which affects the children and certainly the community." (10)

12. COMMENT: "[A commenter owns two] licensed preschools in New Jersey [and has] been operating preschools in NJ for over 23 years . . .

The present economic environment has been described as the worst crisis America has faced in 30 years. Unemployment has reached unprecedented levels, banks are not lending money, housing prices are decreasing, housing sales are going nowhere, and NJ [State] revenue is expecting a shortfall of three billion dollars. At the same time [the Department] is about to institute new regulations requiring preschools to spend approximately \$ 1,000 per student to have another indoor environmental assessment take place on top of the ones performed recently and over the last few years. Additionally, [the Department] plans to hire new staff to monitor the implementation of the new regulations. The present economic environment is not the environment the planners of the new regulations had in mind when the laws were developed . . .

The focus of the new regulations is supposedly preschools in harm's way. Children should not be exposed to interior or exterior contaminants. Yet, It seems that preschools which have NFA status and have been signed off as indoor hazard free must still engage the indoor assessment process at a [State] fee of \$ 1,500 to cover the cost new employees, data storage, records, and so on. The [State] should have provided a clear set of guidelines as to

what if not all preschools are required to undergo ad infinitum assessments and fees. One [Department representative] stated that the new regulation places the Divisions of Licensing at the helm and if their analysis provides a trigger to [the Department] an assessment will be needed. What exactly is a trigger? Are all preschools required to assess? What exactly determines assessments? The DEP review cost is \$ 750 for an environmental assessment. Why is it \$ 1,500 for [the Department]? The lack of clarity fosters a perception of risk for the business owner. Business owners will not spend money on their facilities if they sense that there will not be money in the future to carry out changes, if there appears to be a significant risk of loss, or if the loss is not identified and balanced against the revenue. It does not help that [the Department] is asserting that they expect that some preschools will close. Governor Corzine's wish to push business investment in the [State] will not take place via new and questionable environmental regulations which have unidentified and probably excessive assessment and remediation costs . . .

New air cleaners exist standardized by Universities which could clean up an indoor facility quickly. Why is it not the case that rather than spend thousands to support reports, why not just install air cleaners? . . .

[page=3255] According to the new regulations a new and more stringent standard will be applied in the new indoor air assessment process. The only rationale for implementing a new standard is that there exists evidence that the old regulation has failed to provide a clean environment for preschool children. [The Department] has not provided any evidence that there is a genuine need to move into a different standard. Yes, those schools operating in a potentially unhealthy environment should be assessed, remediated or closed down.

Requiring all schools[,] even those [that] have been cleared and clean[,] to undergo another assessment and hiring additional staff to do so is a waste of time and money. The requirement that each school pay a fee every three years to ensure that the indoor is still clean since outside areas might change places an unnecessary cost on innocent parties. If the surrounding environment changes, it should not be the responsibility of innocent parties to pay for changes others have caused. The cost burden should be on those instituting the change . . .

[The Department] argues that the new laws will not result in loss of jobs. This statement is blatantly and intuitively false. [The Department] accepts that some schools will have to go out of business. If the schools shut down how would it not be the case that the jobs would be lost? No school no jobs! Some environmental firms estimate that as many as 500 schools would be forced to shut down. This would result in as many as 3,000 employees out of work collecting unemployment, a decrease in employment taxes, and municipal revenue. As a business owner with a PhD In business administration, and having to deal with a \$ 12,000 DEP bill, there is no way I would pay additional and questionable new costs to keep the schools operating . . .

(1) The new regulations based on a new standard are not grounded on evidence requiring such regulations to be implemented[. The Department] has not presented evidence that all preschools are potentially hazardous and as such require new regulations to assess and clean up the schools. The new regulations are a wish list not a necessity.

(2) The new regulations are ambiguous: Their existence is founded upon contamination, but seem to require that even non-contamination must be reassessed again for the third time in a few years. Yet the Department] is vocalizing that only those preschools with an assessed trigger will be assessed.

(3) The new regulations had as their economic basis a rosy environment to carry out implementation. The rose has withered and died. The new environment identified by Governor Corzine is one of an economy in a tailspin with no end in sight. The consequence

for NJ today is a three billion dollar shortfall in revenue. Carrying out the new standard will result in a further deterioration of the negative economy.

(4) As a result of the announcement of the new regulations the specter of increasing costs and decreasing revenue is currently holding back any type of investment in the preschool system's schools. The current environmental attack on the preschool system is not conducive to investment. The risk of increasing and unknown costs situated next to decreasing revenue is not a proper venue to invest.

(5) The pronouncement by the [Department] that they expect little in job losses from the new regulations is a myopic analysis indicative that the [Department] really has no expertise in economic analysis. The preface to the 'no job loss' was that it is expected that some schools will close. This statement is clearly illogical. Preschools are driven by individuals with jobs and if the schools shut down there will be less jobs. The resulting job losses are not only applicable to preschool teaching jobs, but will trickle down to jobs actualized by the teaching payroll lost. From the store clerk to the vendor cleaning the school. Further, the [State] will have to pay unemployment benefits to the teachers, and the variegated individuals affected by the lost teaching jobs. In point, there will not be revenue increases, but an increasing spiral of decreasing revenue.

(6) 80 percent of Business [executives] noted recently that NJ is not a good [State in which] to do business . . . Increasing poorly devised and carried out environmental regulations will increase the current level of negativity regarding NJ as a good business [State] . . .

[The Department] should revisit the economic model driving the implementation of the new standard.

An analysis should be made of the necessity of the new regulations.

A clear and concise summary of the new law should be undertaken to make it understandable to the public, and the preschool system.

Rather than focusing on assessing all preschools, the new regulation should focus on those in harm's way not those who have already been assessed and found to be environmentally clean.

Preschools should not bear the burden clean up of outside sources of contamination. The source should be made to provide remediation and any and all costs associated with the hazards they created.

An analysis by a non-beneficial outside agency should be made to address job losses not only per school but [Statewide].

New technologies are available to provide clean indoor environments. [The Department] should investigate these new technologies first before mandating costly report gathering and increases in the [State] payroll.

Assessment costs should be reviewed in terms of real costs." (13)

13. COMMENT: "As a result of our country's recession and serious economic woes, the school where I am employed--a small, private, for profit school, is suffering much lower student enrollment than in past years.

We fulfilled our obligation to have our exterior grounds inspected and deemed safe for young children. The cost to conduct this inspection was not cheap. We applied for a grant, but as of now, have never heard back.

We are inspected yearly by our local Board of Health, fire department, alarm company, sprinkler alarm company, fire extinguisher company, elevator company, etc., etc. Our camp is licensed by the NJ State Camp agency. They too are inspected by [the Department] in addition to our local Board of Health, etc.

While I am all in favor of keeping our children safe - where does the 'buck stop'? These initiatives are great, but couldn't the State help fund these projects? I am certain that we are not the only school to feel the brunt of these licenses and inspections." (15)

14. COMMENT: "Our Primary concern relating to the Subchapter on General Provisions standards for assessment is timely resolution of acceptance of compliance. Secondly, to swiftly inform the [State] licensing board and the daycare centers which have met the qualifications so that permanent licensing will be established without repeated telephoning and faxing of documents." (16)

15. COMMENT: "Our understanding of the proposal is that there will be a \$ 1,500 fee to file the results of the initial testing with the [Department], and then there will be a \$ 450 fee for renewal if there are no changes in the building thereafter . . . We are a non-profit center that is completely funded by tuition. We have just completed the renewal of our license with the State of New Jersey. This renewal has already been a costly venture between the renewal fee, the CARI fees and the Preliminary Site Assessment/Indoor Environmental Health Assessment, which we were required to pay an engineering company to complete. We do not believe that we should set a standard for children in child care centers that is not required in regular elementary, middle and high schools unless these schools are under construction/renovation. If we must have this testing done in child care centers, we would ask that you seriously consider reducing the cost to centers to file these test results and only require this testing to be done every three years at the time of renewal. Since the economy is suffering, many of our families are already struggling just to keep their children in our center. With increasing costs from the [the Department], we would be forced to pass on these costs to our families increasing the likelihood that our center may lose enrollment and be forced to close. Many other centers that are tuition funded will be forced to close as well. The closing of these centers not only impacts the families served, but the staff that is employed." (17)

16. COMMENT: "When will the [State] realize all the rules and regulations with their costly fees put small nursery schools out of business. And do tell, how does that benefit children who now have no place to go. I have been at my school since 1981 and all the staff has been with me at least five years and many employees much longer [and no one] has become sick from breathing the air. I have alumnae returning with their children, all quite healthy. Testing the air as a requirement for opening a new child care center might have some merit, but for the long established school I find it just another nail in the coffin and the ringing of the death knell for many a school." (18)

17. COMMENT: "[The commenter comments on behalf of an entity that] provides Day Care services to over 1,000 children at 23 different [page=3256] locations in Bergen, Passaic and Morris Counties. [22] of our locations are in public Schools . . .

If these regulations are to protect children, do not set a standard for children in schools that differs from those that govern children in child care centers. Imposing this requirement on centers operating in schools that are not required to do the testing sets up an inappropriate double standard, [that is], children attend the same school facility during the regular school day, but the after school program is prohibited from operating In the same building unless it meets air quality standards.

The cost to the centers to file the test results with [the Department] as well as the cost to

conduct the testing is very expensive. It is not feasible for our centers to be able to pass the increased costs to the families that we serve. We may be forced to close some of our centers. Additionally, Child Care subsidies did not include a cost of living increase last year despite the fact that [the entity on behalf of which the commenter comments] incurred increased operating expenses. We will continue to fall behind in balancing our budget.

The preliminary assessments have added thousands of dollars in expenses to many centers; these new regulations would compound those costs.

The proposed time line of one year to obtain the certification of indoor air quality could be very difficult in which to comply for most of our centers.

The [entity on behalf of which the commenter comments] believes in the goal to develop rules that protect the health of our children and the staffs that occupy these buildings. However, it should be a goal that is obtainable and required for all groups that provide programming for children." (19)

18. COMMENT: "The [entity on behalf of which the commenter comments] is the child care resource and referral agency for Ocean County. As such, we interact with our child care centers on a regular basis through our subsidy programs and the many early childhood trainings we provide.

Our directors were concerned about the costs involved in the new DEP regulations, but they complied. [The proposed new rules] will have even more serious consequences.

Most of our centers are privately owned. They are 'mom and pop' operations. Their profit margins are minimal. Imposing N.J.A.C. 8:50 on them with the excessive costs involved is unfair and unnecessary. They do not want to pass these increases on to their parents since most are working families struggling to make ends meet.

We all want children to be safe, but if centers are forced to pay these unanticipated extra costs, many will have to close their doors, or worse yet, good quality early care and education will suffer, and who will pay the price? The children will; those who we are supposedly trying to protect.

Please consider the impact to all those who will be affected, and look for options that will help alleviate the exorbitant cost of this proposed regulation. Let us keep our centers open and contributing to the economy of New Jersey and the well-being of our children." (20)

19. COMMENT: "What type of indoor air testing will be required?

Why is there a fee assessed with filing the tests results with [the Department]?

If we've already been through the process of the No Further Action Letter and have received our NFA letter, why is further indoor air testing necessary?

Why are we hearing about these proposed regulations days before the closing of the public hearing? Our licensing agency should have sent us written notification of the public hearing dates.

We are against the proposed fees to file the results, the proposed renewal fees, and the economic impact of complying with another set of regulations at the present time. Please do not use children as an excuse to raise money for [the Department] due to budget cuts. We strongly object to the indoor air quality regulations proposed by [the Department] due to the following:

There should not be any cost to file test results with [the Department]. The results should be posted for parents and licensing inspectors. We now post test results for Radon; updated every five years.

The proposed fee of \$ 1,500 for each center is an unreasonable cost for the reading and recording of test results for approximately 4,400 licensed centers.

The regulations should pertain only to those child care centers/sites located in a building that has ever housed, pursuant to the Uniform Construction Code (UCC) at N.J.A.C. 5:23: Nail salon/dry cleaner (group B), J Storage (group S), High Hazard (group H), J Factory/industrial (group F).

Imposing this requirement on centers operating in schools that are not required to do the testing sets up an inappropriate double standard, [that is] children attend during the regular school day, but the afterschool program which is operated by a licensed child care center is prohibited from operating in the same building unless it meets air quality standards.

The job loss for our parents is only now beginning to hit our center as parents decrease their hours for childcare or withdraw their children entirely. It is predicted that the worst is yet to come in 2009 as more people lose jobs.

This is not the time to impose more costly regulations when many schools/centers just finished paying for the environmental 'No Further Action Letters' with their license renewals. Many environmental firms actually took advantage of child care directors by charging higher fees due to the mandatory requirement. Just compare the costs of these fees based on bills submitted to the [State] for reimbursement from the Hazardous Waste Fund. Let [the Department] negotiate a standard cost for air quality testing so people in North Jersey do not pay a higher cost [than] people in South Jersey or vice versa.

Finally, these costs cannot be passed on to parents through tuition increases. It is unfair to our working families.

Please realize the situation that many child care centers are facing. We are faced with preschool expansion in the public school and the possible loss of enrollment; new costly regulations to comply with playground safety and environmental issues; and stricter educational requirements." (22, 34, 45)

20. COMMENT: "The \$ 1,500 fee to file the initial results is an economic hardship for many centers. Please reduce the cost to file the results. The \$ 450 renewal fee is also a hardship. Please reduce the cost to renew.

It is not feasible to pass on the additional cost to parents who are subsidized by the [entity on behalf of which the commenter comments] or are low income families.

If these regulations are to protect children, do not set a standard for children who are in school that differs from those that govern children in child care centers and in afterschool care programs.

Imposing this requirement on centers operating in schools that are not required to do the testing creates a double standard. Children can breathe the indoor air during the regular school day, but the afterschool care program is prohibited from operating in the same building unless it meets air quality standards is wrong. Schools should be held to the same standards.

Determine an appropriate length of time for re-certification of indoor air quality. Please tie it to the re-licensing of the centers which is every three years." (23)

21. COMMENT: Our facility is located in a church and the building in which we house our preschool is only three years old. Since we are new, we've already had to have a preliminary assessment done which was not planned for. Already for next year our license will be up and another preliminary assessment will have to be done. The additional expense for renewal fees puts a strain on our school's budget in addition to adding another expense for air quality testing and renewal fees.

My justification is that we are located in a church. They are exempt from all of this testing, yet we are not as a preschool. Wouldn't there be the same concerns for the children and adults in the church??? Also, public schools do not have these regulations. How is that fair? There seems to be a double standard here.

While I certainly am in favor of making sure children are safe in building where they spend most of their time, I implore [the Department] to look for other avenues to do so." (24)

22. COMMENT: "[I am outraged] at the proposed fees for indoor air quality testing for child care centers in the [State and] that not ALL children are being protected by these proposals as the requirements are [page=3257] not across the board for ALL child care facilities. This double standard is simply unacceptable if the goal is to keep all our children safe.

Having just begun the licensing process yet again after [25] years of doing so, my center has incurred ridiculously high fees for site history, DEP, lead, radon and the list goes on. Many companies are receiving large sums of money for repetitive inspections as well. [The] estimates for original site inspections for the DEP at our center ranged from \$ 2,000 to \$ 6,000 just for the preliminary report!

Just getting estimates and the research required expended hours of time typically spent as a teacher/director working directly with staff and children. My small nursery school is housed in a church, verified by our town construction official to meet all requirements, as has been the case since the late 1800's when the facility was built. Each of us who works with young children, each and every day, want them to be safe, above all. For [25] years, my husband I have worked tirelessly and with great joy for our cherubs. Now, the stress and financial burden placed upon non-profit centers such as ours, to meet these new and complicated procedures requiring the help of environmental agencies to work the system, will surely put us out of business. Then, how safe will those children losing their schools really be? Many, many families will be adversely affected by these proposals in Bergen County alone. Having just completed the first stage of the process, I am told that the paper work will sit on someone's desk at the DEP for at least six months, possibly a year. How does that keep our children safe? And, will the process begin again, even sooner than the three year process currently in place, with even greater expenditures as a result of these delays? Having worked in the field of early childhood education for over [30] years, I feel I will no longer be able to continue, a story I have been hearing from many other center directors in Bergen County. Sadly, I have recently learned of some wonderful centers, always in compliance, [which] have been unable to meet the financial burdens and have been forced to close their doors. At the very least, I urge common sense to prevail in the [State]. Sadly, a center was somehow allowed to be built in an unsafe location in Somerset County, and, as a result, we are all being forced to seriously consider closing. We cannot pass this burden on to our families, as many are already in grave financial crisis already. Perhaps the agencies within Somerset County and the [State] who allowed this to happen should incur the expenses that we who tirelessly work toward keeping children safe are now being forced to pay, both in expenses and time spent from the work we are trained and love to do." (25)

23. COMMENT: "I am very displeased with the cost analysis for this project. My business is still trying to recover from the events of the preliminary assessment and the upgrade to a new playground system all mandated by the [State] over the last two years. My Nursery

School is in the middle of an Abbott District and we have been slow over the last [four] years due to the free program placed at Cold Springs School in Gloucester City. Again, this free program was put in place with no regards to businesses like mine who have given exceptional child care for over the last 20 years. I feel that this is extremely unfair to school owners that depend on this income as their career. If something is not done with the costs for this testing, I fear that I may have to close [my] Nursery School. We have been in business for 24 years and it has always been family run. It is sad that the economic strain on daycare owners keeps getting greater as the economy and business is getting worse. If the testing is mandatory, then the money should come from the [Department]. Most daycare establishments are small and cannot afford these costs." (27)

24. COMMENT: "I am concerned that these regulations will increase the cost of child care tuition so high that many families will not be able to afford sending their child. This will force the families to go to [in-home] care where there are no regulations, thus defeating your purpose. If these regulations are to protect children, do not set a standard for children in schools and home care that differs from those that govern children in child care centers. Imposing this requirement on centers operating in schools that are not required to do the testing sets up an inappropriate double standard.

I as a child care center owner understand the budget of child care and how extremely tight it is, especially in this year of 'budget crisis.' There is no way that I could raise the tuition to help off set the cost. I had to take a loan out to cover the cost of the past regulation for the environmental review requiring a letter of No Further Action and now we will have to do the same. The centers are struggling to stay afloat with all of these regulations including the [State] providing funding for public schools to provide education to [three to four-year-olds]. Taking our clients away and imposing regulations that are extremely expensive is sure to close many child care centers. Doing away with small businesses will affect the [State's] economy as well as the unemployment. And consider how this will affect the working family using the center that is forced to close?

Please rethink this new regulation. Will there be grants available to child care centers? Some type of assistance is needed. It is wonderful to always have the children as the number [one] priority, however, child care centers are much more than taking care of children, they are a small business and everyone needs to realize that." (28)

25. COMMENT: "I am having a difficult time understanding why it is necessary to charge astronomical fees for this. With all the fees that are already in place it just isn't fair to require this as well. I am the owner of a preschool and [two] before and after school programs, and I am barely able to pay my staff. We try to keep costs down to help the families that require our services, and get absolutely no support from the [State]. Instead we keep receiving notices about the fees and the changes.

I have been told that [these] regulations are in effect to protect children. Does that mean the only children that matter are those whose parents pay for child care? Well apparently that is the case. I run [two] after school programs in [two] districts and the schools aren't [required] to do even a portion of what child care centers are. When I ask the question why is it ok for these children to be in school for [six and one-half] hours a day drinking the water, playing on the soil, breathing the air, possibly being exposed to lead, pesticides or whatever else [you're] looking for I am told because that's the way it is.

Instead of focusing on how we can make the most money, let's focus on keeping all New Jersey Children safe. Let's come up with programs to help offset these costs, and programs to require any facility housing children to have to meet the same criteria." (30)

26. COMMENT: I am for any regulation that will keep children safe and healthy. However, by passing this regulation that comes with high fees for tests, filing reports, and costs of

implementation and monitoring child care centers will be forced to pay thousands of dollars. As a director of a non-profit center I can attest that we do not have the monetary resources to absorb these costs. I am sure that private child care centers will increase fees that many parents already struggle to pay. As a result parents will be forced to find babysitting in private homes that often do not follow standards.

Is the State . . . really trying to keep our youngest citizens safe? Or since the proposed regulations [do] not apply to public schools, is the State . . . trying to put all preschoolers in the public schools and eliminate community based early childhood centers? State funded community based child care centers are barely surviving at this time. Teachers are underpaid often with no benefits because after paying higher costs for rent, electricity, heat, and liability insurance, there is not much left in their budgets. They are currently funded 50 [percent] less than Abbott centers. They have no way to increase fees and donations from corporations and foundations are down. Centers across New Jersey will be forced to close their doors.

After The State . . . rushed to pass the last round of regulations for environmental testing, it was admitted that they did not realize the impact the costs would make on centers. Thus, monies were allocated (\$ 1,500) to help pay for the preliminary assessments. Now you want to charge \$ 1,500 to file results for this new test. Truly the people who are making these proposals have their heads stuck in the sand somewhere on the Jersey shore. Headlines scream out recession, depression, budget deficits, loss of jobs, loss of tax revenue, and high cost of living. What are you thinking? Our center is located in a building owed by Ewing Township--they could not afford air quality testing when we asked for it? If government cannot afford it, how do you think the small business owners of child care centers can? Wake up and scratch this regulation off your wish list of do good for the benefit of children! This will not benefit children. It will only help the testing businesses ready to come in." (31)

27. COMMENT: "I have owned and operated [a preschool] for the last 23 years. I am not a day care center, but run a fun loving academic [nine] [page=3258] to [three] program for [children of ages three through six]. I am very small--25 children on the roster. Most attend a [half-]day session. I have just completed my 'No Further Action' requirements. This was very costly to me. Now you're looking to impose more requirements and fees. How is a small business like mine supposed to stay in business??"

The children's well being is of utmost importance. With economy - families here losing jobs and homes it is impossible to impact parents with additional fees to help the school remain in operation.

The fees for these new requirements are astronomical! Along with rent utilities, insurance etc how will I be able to remain in business and provide quality education?

Hope you will reconsider these fees." (33)

28. COMMENT: "I direct an after school program in Jersey City, New Jersey. We are located in an impoverished neighborhood, serving at-risk and high need children. I believe that high safety standards are imperative and feel deeply responsible for the well-being of every child that comes to our center. However, I am concerned about the increased governmental requirements for environmental standards. If costly testing and assessment measures are required, there must be financial assistance available through government grants or credits. In light of the economic downturn, the financial requirements of any legislation must be considered, especially for non-profit organizations serving clients in struggling communities. We need incentives to support the children we serve. Please thoughtfully consider all of the ramifications for the organizations working on the ground to help children in low-income communities." (34)

29. COMMENT: "We are concerned that the costs of the additional testing will have to be passed to parents who budgets are already stretched during these tough economic times. Also, we have concerns that air quality is not being tested in all schools where children are being educated. We are sure New Jersey is committed to clean air for all children and would hope the [State] would consider testing in public schools where the vast majority of children are, instead of privately owned day care centers. Families pay high taxes for the public schools." (38)

30. COMMENT: "If the plan is for the State . . . to provide the list of consultants and pay them for the dictated testing was done a few years ago when lead testing became mandatory, you need read no further. If the State requires the testing and is willing to pay for it, we welcome the procedure.

Now, our concern is that, once again, it appears the State Powers That Be are going to put our little quality child care centers at financial risk. The recent outdoor environmental assessments levied huge costs to operators with a small \$ 1,500 grant compensation for preliminary tests than ran up charges into the thousands of dollars at our expense. If this is the course this indoor certification is headed, we must strongly object to the planned procedure. This is not to say we object to reasonable precautions for monitoring and insuring a safe indoor environment for [the children who attend our daycare center] as well as children in child care centers throughout New Jersey. We had been advised that in addition to our mandatory radon testing, each center was going to be obligated to install carbon monoxide detectors in vulnerable areas. At [the commenter's facility], although the requirement was not made official, we believed it to be a functionally sound requirement. We immediately began the installation of such monitoring devices because it made sense. We began by installing the first one in our boiler room and have been adding them to rooms where children sleep and other appropriate locations throughout our building in accordance with the original State of New Jersey suggested guidelines published when that viable plan was put out there for us to review. Such a plan for environmental safeguarding is reasonable both in implementation as well as from a financial prospective. To begin yet another program that will again place a large financial burden with little monetary assistance on our little centers by making us employ companies designated by the State and paying them big bucks to tell us what any good center operator already knows: that we keep our children safe and healthy, is a great disservice to both the center and our families. We do believe there should be safeguards for air and environmental quality but there are more holistic ways to do it that are monetarily feasible for our small businesses to absorb.

The recent environmental assessment insisted upon by the State . . . put great financial burdens on small centers like ours just to confirm that we keep our children in safe environments. [The commenter's facility] passed all the environmental assessments and conformed, no matter how unnecessary, to any suggestions made by the assessment and we are still operating under a temporary license because the paperwork down at the State offices can't seem to catch up with itself. This may seem like nothing to you but, in case you overlooked it, there is a statute stating that a center cannot operate more than 18 months on a temporary license. We see no reason and provided proof in writing with copies of State written documents that [the commenter's facility] should be issued its permanent license and we still have not received it and so are operating under our THIRD temporary license. You must understand that these rules you propose don't just end with the assessments being done. The paperwork trail through your system causes more delays. Our little center doesn't have the personpower to spend following up on all the paperwork your plans often initiate-- done to tell little guys like us that all is well.

[The commenter's facility] is a small family run [daycare] center in Lebanon, New Jersey. We are part of the Federal Government's groundbreaking Strengthening Families Initiative to reduce child abuse in the United States. We strongly believe in the true meaning of the statement 'no child left behind.' In addition to our regular paying families, we work with

NORWESCAP to provide quality child care to families in the NJCK and TANF programs without taking excess fees, we have a CBC contract with the State of New Jersey and, for families who can't seem to qualify for these programs but still can't pay our published rates, we arrange rate agreements that they can afford. Why tell this to you? You must gain the understanding that many owners of small child care centers are in this business because we are dedicated to giving our area children a place to spend the majority of their day in a safe, healthy environment-for some children, we provide a more uplifting environment with better nutrition, supervision and physical activities than they may have at home. You are probably saying: 'Yea, yea, yea but what has all this got to do with the new rules for indoor environmental certification-after all, that's what we are striving to do: make sure children are in a safe indoor environment.' Yes, but the way you plan to do it is going to be another big financial burden on little centers like [the commenter's facility, which] already provide many of our children with a safe indoor environment. You will just be adding 'ka-ching' to the State coffers when they are ways to have us put in safeguards to watchdog our indoor environments without making us hire and pay big ticket companies to produce a report and then charging us more money to file and have the State review the report.

A possible plan for indoor environmental monitoring:

Centers must continue the already in place mandatory radon testing.

Centers must install carbon monoxide detectors in accordance with original guidelines proposed by the State of New Jersey.

Any other reasonable environmental monitoring aid that may be deemed advisable would be implemented.

Monitoring of conformance to these regulations would be added to the 18 month monitoring and [three-]year licensing inspections done by the DCF Division of Licensing.

We do not live in a perfect universe and fully understand that everything comes with a cost. Increase the licensing fee to pay for this additional inspection item. Raise the inspection renewal fee by half or even double it-it is easier for us to budget out that kind of expected fee every three years than pay large sums for outside consultant testing that in most cases merely ends up providing we already provide safe environments. Add an 'inspection fee' to the already existing three-year center renewal fee-such as the bus inspection fee we pay for at each bus inspection. Additionally, charge all centers a yearly licensing renewal fee-similar to how you pay for a yearly dog licensing fee. These fees would increase income to the State without any large outlay from the State. Increasing these fees while increase our obligations to self monitor our indoor environment in manners which can be recorded by our [Department of Labor and Workforce Development] State inspectors would make more monetary sense for the State . . . and for dedicated operators of quality child care facilities. Such a plan would greatly reduce the paperwork ('Bless the paperwork reduction act,') put the responsibility for reviewing the environmental monitoring devices back [page=3259] into the hands of the [Department of Labor and Workforce Development] inspectors so no other department would have to be developed to review the environmental reports adding cost to the State instead of a little revenue. Yes, we understand, you are planning to pass this indoor environmental ruling for the health and safety of our child BUT let's be real: it would bring in revenue to the State. Our plan does it all: puts environmental monitors in place in every center, puts a lesser burden on the State outside of the [Department of Labor and Workforce Development] inspectors and puts a more viable financial burden obligation on small dedicated child center operators. Everyone get what they need and, above all, the health and safety of our children will be better protected.

We beg you, PLEASE DON'T DO IT TO US AGAIN! Don't add more financial burdens on good dedicated centers like [the commenter's that] genuinely care about the families and the

children we serve in our centers. Another program like the recent DEP Environmental Assessment program that cost us all a chunk of money, delays our licenses and will put some quality child care centers out of business especially in this economy, must be rethought. There isn't anybody writing government legislation to 'bail us out' and adding this financial burden for us would be a turn in the opposite downward direction. Instead of protecting our children, this ruling, unless completely financed by the State, will cause quality centers with truly safe indoor environments, who cannot afford the major costs this program will put in motion, to close their doors, thus taking away places where the children of New Jersey can spend their days in caring, safe and healthy environments." (39)

31. COMMENT: "The safety and protection of children is a priority for all of us. I can appreciate the [Department] protecting children by testing the air quality, but I also believe that before these regulations are put in place it should be considered how they can benefit the children without jeopardizing those child care centers that are struggling or trying to get established. I ask that the initial fee and the re-certification fees be reviewed as they will add to the burden of what is already an expensive business to maintain with the rising cost of insurance, rent, taxes, employee benefits, supplies, and all other operational costs. The initial fee of \$ 1,500 and the annual renewal fee of \$ 450--\$ 1,500 are quite steep and the only way to offset that is by raising tuition. This is a time when many parents are faced with job loss or reduced salaries and low income families or subsidized families can barely provide the out of pocket expense. It would be unfair to parents to raise the tuition and it would result in loss of enrollment. This isn't taking into account the cost of improvements should the air quality prove unacceptable. The financial impact of changes is often overlooked and left for the child care providers to figure out on their own. Last year child care subsidy reimbursements did not include a cost of living increase in spite of the increase in operational costs. That along with the cost of certification or improvement of air and water quality is overwhelming.

I am unsure if the re-certification period will be tied to the renewal of the child center license. Currently, the license renewal is every three years. Would you be kind enough confirm those details? The frequency of the fees is something that should also be considered.

The regulations are meant to protect all children so I suppose that all buildings that are occupied by children will be affected. That would include public schools whether or not they are scheduled for renovations or construction. Is this correct?" (42)

32. COMMENT: "[The] proposed indoor air quality regulations . . . will have an impact at my center. Having some major concern as the Director and Owner of the Business, I feel financially the cost will be detrimental. Due to the economy, I am down clients and struggling now. When my license was up for renewal, I spent approximately three thousand dollars for the preliminary assessment. The indoor air quality regulation will compound my expenses.

These regulations are to protect children. Are Licensed Family Day Care providers, and schools, complying with these regulations? There seems to be an inappropriate double standard.

It is not feasible for my center that serves subsidized and low-income families to pass increased cost to the families that are not subsidized. This increases the likelihood that I will be forced to close. Consequently impacting the staff and the families of Children that attend my Center." (43)

33. COMMENT: "I am sure you are already aware that we and other childcare centers have just gone through a battery of tests mandated from Governor Corzine. These Preliminary Assessment tests were supposed to only cost us about \$ 1,500 dollars but after all the tests were said and done we spent a total of \$ 6,000. Taking this amount of money out of our small budget has really put a hardship on the business, as I am sure you can imagine. We

also did not raise our costs to parents this year due to the way the economy is. Everyone is suffering.

After reading the new proposed regulations it sickens me to think that we are going to have to go through this expense again. As part of our licensing requirement we are required to have an air quality test done every [five] years. I do not understand why this new air quality regulation is being required of us and not public schools or home daycares. Everyone that houses children should be treated equally. To think that we will have to spend \$ 1,500 just to file the results with the [Department] is outrageous. Not to mention hiring a company to do the testing, which will result in additional fees.

We are in this business because of the children and we love what we do. So why are people making it so hard for us? Our center offers a well-rounded personalized program not only for Preschoolers but for children that need childcare as well. We bond with our children and parents and care deeply about how and what the children are learning. We consider ourselves just as good as, if not better than the public system preschool.

. . . We have survived all these years without all this testing and each and every child that has come out of our school is well equipped to move to the next step.

Let's not forget that there are a lot of lively hoods involved in our business." (44)

34. COMMENT: "The last licensing requirements imposed on childcare facilities mandated a certified inspection report, at a considerable cost, to be submitted to the [DEP] by an outside consultant agency. I believe these new rules will help regulate guidelines for consultants hired to submit an air quality report for your approval.

My comments relate to the current grant process established to reimburse and ease the additional cost burden for agencies. The process is extremely slow, however, it is available. Please make the same available for any additional fees that will accompany new requirements. Our funding is very restrictive, additional fees often result in shortfalls in other areas of service.

In addition, it would be thoughtful if coordination between [the Department] and [the] DEP could occur to prevent existing licensed childcare facilities from paying duplicate fees." (47)

35. COMMENT: "The [commenter's facility] has served Hudson and South Bergen Counties since 1979. We accept children from birth to Pre-Kindergarten. Of our total enrollment of 36 children all except [five] are [State-]funded families . . .

We cannot state strongly enough how financially draining these proposed regulations and fees would be to our Center, quite possibly to the point that a small, private center like ours would not be able to continue. We are up for re-licensing this year and are facing the high cost of the no further action letter. Even with the [State] help that will be available, we must make the payments first and then wait for reimbursement. The current economic situation has drained our finances. This past summer we were forced to stop our food program. Parents must now provide meals for their child. With almost all of our families on [State] assistance program it is not possible to spread rising costs amongst all families. Add to this equation that the [State] subsidy rates do not even come close to the prevailing market rate and cost of living increases are minimal or non-existent.

Small private centers like ours are being squeezed from both ends. Do we want safe centers? Yes! Will these additional exorbitant fees make our survival uncertain? Again, yes! A reasonable solution must be found. The [commenter's facility] has provided the surrounding communities with high quality child care for almost 30 years. Most of our staff have been with us over 15 years and had their own children attend our school. We have been a church

sponsored school, a parent cooperative school and now a private center. We are one of the few Centers that offer Infant care in our area. We are now seeing the children we cared for come back with their children. The perks of working in child care are not always evident, [page=3260] but hearing someone say, 'Hi, Ms. Mary Lou, Remember me? I came to enroll my child,' is one of the greatest.

Would our Center be missed? I truly believe in my heart it would be so. We have survived full day Kindergarten and free Pre-Kindergarten. Looming ahead of us is free public three year old classes and exorbitant new fees to meet new regulations. We offer quality care and education in a home like setting for our families. We are unique and well established. We are truly one of a kind. We hope that like the dinosaurs of old that we will not be extinct soon. It is ironic that should the [commenter's facility] and centers like us, no longer be available to the families in our communities that the children that these proposed regulations are meant to protect will end up in school settings that are not mandated to comply with the same regulations. Our area supports few licensed centers, yet there are many unlicensed babysitters working out of their homes or store fronts. Needless to say, the face of child care for many of our parents would not be the same without the 'small private center.'

It is our hope that this letter help the [Department] see the incredible impact the proposed regulation would have not only on our own center but all small private centers. We are a vital part of our communities, the loss of which would be sorely felt. We need a 'bail out,' too. Please put our name on that list!" (48)

36. COMMENT: "As a daycare struggling to get through every payroll, I don't know how we can get through the new environmental regulations. We have been here for 28 years have never seen the turnover as bad due to our economy. Our staff is searching for jobs that pay more money, and parents are losing jobs. How can anyone, especially our great State put this burden on our daycares? In our opinion, this is the most unfair proposal that has happened to daycares, not to mention the timing.

I have borrowed money from my own home, to keep the daycare going. I plead for you help before the equity on my house runs out.

Our staff and administration feels that you should reconsider your proposal and make more grants available to share the burden." (49)

37. COMMENT: "I am writing this letter out of concern for the impact the proposed indoor air quality regulations will have on child care centers. We do not oppose having good air quality in child care centers, as good health standards should be a prime concern of all. [The] requirements for air quality testing and filing will be an undue financial burden on child centers.

The proposed regulations for air testing will economically, negatively impact centers. Our center, as most centers, operate on a 'bear bones' budget. The proposed costs for air testing, the proposed fee for filing the results with [the Department] and the proposed renewal fee will be economically crippling. These fees can possibly reach a few thousand dollars. We have no budget line where we can have such a fee absorbed. We get no cost of living increase in our budget from our funding sources.

How will the proposed air quality testing requirements affect centers? There is a strong possibility that some centers will have to close because of the air testing requirements. Since most centers serve children of working parents, the closing of centers will impact parents' ability to have child care while they work. It could mean parents will be forced to leave the work force to care for their children.

Our center services subsidized or low income families. It is not feasible to pass on the costs

of air testing, filing and renewals on to families.

Budgets are set by funding agencies. Child care subsidy reimbursements did not include a cost of living increase in spite of the increase in operational costs. We suggest removal or reducing of the cost to centers to file the test results in [the Department].

There needs to be a more logical length of time for re-certification of indoor air quality. Should it be attached to the renewal of license? We suggest requiring air quality testing and filing to be done concurrent with license renewal, not annually.

Please know that the requirements for air quality testing and filing will be an undue financial burden on child centers. We ask you to reconsider some of the requirement to relieve some of the burden." (50)

38. COMMENT: "I have read that a \$ 1,500 fee is proposed in addition to the cost of the air testing. This seems totally unreasonable! Our after school program is a small non-profit organization serving 38 children a day. We don't have thousands of extra dollars! A child care center with say 100 kids will have far less economic impact than one with 38 if you have to divide the cost up between the families you serve.

Also, we are in a public school. If the air is good enough for the children during the school day[,] it should be good enough after school in the same building! There is an unreasonable double standard there.

We are headed into rough economic times, it is not a good idea to place huge fees on top of already strapped child care centers. One of the markers of quality program is to provide affordable child care. All of your proposed fees will have to be passed on to the working parents[;] most of them are already struggling. Maybe those of you in government jobs are comfortable and can afford extra costs[,] but in NJ with health insurance going up constantly and high care insurance and heat costs going up and high costs of living in general[,] there is a breaking point where people just can't afford to live anymore. We don't want to see people sending their kids home alone after school because we can no longer offer them affordable child care. Find some other way to make it a profit[;] NOT off the backs of working parents.

Don't let governmental greed possibly force child care centers to close, staff to be out of a job, or children to be sent home alone when their parents can no longer afford the cost of quality care." (52)

39. COMMENT: "I am the director of . . . a non-profit preschool which serves approximately 65 families each year. [The commenter's facility] has offered an early childhood education program since 1991. We provide the residents of Aberdeen and the surrounding communities with the opportunity to provide their children with a high quality early childhood education at a reasonable rate to tuition . . .

I was distressed to learn that the new regulations will cost thousands of dollars for the testing itself as well as a \$ 1,500 filing fee. It is also my understanding that centers will be charged a renewal fee of \$ 450 even if there are no changes to our building or any of our neighbors. As you know, early childhood education centers do not typically have extra funds in their budgets. This is especially true for non-profit centers. Paying the new preliminary assessments as well as this new indoor air quality testing will directly affect the affordability of my program as well as my ability to provide the children with programming and supplies. I will be forced to raise tuition as well as cut budget line items that directly impact the experiences that our children thrive from in our center.

I agree that we must ensure a safe environment for our children. The burden of providing this environment should not, however, be placed on the centers trying to provide a quality

level of early childhood education. I believe that the [State] must provide funding for testing or, at least, a grant to qualified environmental agency. The proposed fees for submission of the testing results need to be reconsidered as they are exorbitant and will have a huge economic impact on centers such as mine and our families. I also believe that an appropriate length of time for re-certification of indoor air quality needs to be determined. That length of time should not be less than the child care license renewal requirement of three . . . years." (54)

40. COMMENT: "I am concerned about a \$ 1,500 filing fee which will take away from the money we use to provide quality equipment and supplies for the children. With a tough economy already impacting our center, it disturbs me to have a costly fee added to our financials.

I do not understand why this fee is so high. I also do not understand the \$ 450 additional fee that will apply for renewal if there are no changes in our building, or the additional \$ 1,500 if there are changes. This just seems like a large amount of money, not mention the additional costs of conducting the tests.

Please explain to me if this testing is going to happen and how we are supposed to afford such expensive regulations." (55)

41. COMMENT: "[The commenter writes on behalf of] the oldest and largest nonprofit childcare provider in Sussex County. We are quite proud of our record of success, from serving every family in need regardless of their ability to pay to being the first and only New Jersey After Three grantee in Sussex County. We have a relatively small operating budget, are not affiliated with a national organization and receive less than .015 percent of our income from government sources. As a result, we are extremely conscious of every expense. Last year we struggled mightily to keep our agency afloat, in large part, due to [State] regulations and policies that cost us thousands of dollars.

[page=3261] Those dollars could be used to fund more staff, more supplies and more programs directly for our children and families in need. And I fear, that the new proposed regulations requiring indoor air inspection for child care centers will mean thousands more dollars that will not help children enrolled in our programs.

[The entity on behalf of which the commenter writes] has always responded to the needs of the community and the families we serve. In 2006, we broke ground for a new facility that would enable us to provide childcare services throughout the year and for longer and more varied hours as well as in a location that would be easily accessible to commuting parents. Our new building was completed in June, 2007 and without a capital campaign or a single government dollar.

However, the new childcare regulations requiring the DEP to issue a 'No Further Action' letter, required an investment of \$ 1,500 to an environmental engineering company as well as a \$ 250 payment for processing to the DEP. As I'm sure you are aware, Sussex County is one of the most pristine areas of New Jersey. Our building site was located on land that had not been used in 50 years and then only as farmland. Because of this, the DEP required soil testing which cost approximately \$ 2,000 to the environmental engineers and then another \$ 500 payment to the DEP, and this, only after the DEP mislaid our original paperwork, costing us severely in delaying our opening. While we objected strenuously to the DEP charging these 'processing' fees as part of their policies, not mandated by law, and even had our [State] representative attempt to intervene, we had no choice but to pay or forfeit our ability to be licensed. While [the entity on behalf of which the commenter writes] in no way disputes the importance of these regulations, the implementation has certainly harmed us financially." (58)

42. COMMENT: "The regulations now being proposed, not only will cost us a minimum of \$ 1,500 per center (and we have 15 operating in public schools), but there is no exemption for centers in schools. How is it possible to mandate testing of indoor air quality for programs serving children for three hours per day in the same facility that houses them for 6 hours each day? And how can we remedy a situation where we are essentially visitors to the school's building -- no different than Boys Scouts, or recreational basketball leagues, or cheerleaders?

Our families, just like our agency, are struggling in this economy. In good conscience, we cannot pass these new costs on to the needy families we serve, nor can we afford them ourselves.

I sincerely hope that these regulations in their current form are not adopted as they will create tremendous hardship for many, many childcare centers and countless families." (59)

43. COMMENT: "I am the owner of [a] School, a family business, which has been serving this area for 51 years. We are a small school, certified to have 36 children in the building per day. We pride ourselves in the fact that we are 'small' and therefore, provide a very home-like, loving atmosphere for our children, (which may not be always true when it comes to the much larger centers).

These proposed regulations and the horrendous ongoing fees would surely put us out of business. We have not raised our fees for several years-this proposal would necessitate a huge raise in tuition. We currently serve several families who are subsidized by local agencies. These agencies have limits on the amount of reimbursement they will provide to the centers. These low income families will certainly be impacted by the rise in rates and/or the closing of centers such as ours.

It is not fair that there is a double-standard regarding child care centers and public/private schools. Our Center has been financially impacted by the already enacted environmental testing. Yet there are many more schools (and children) in the public and private school system who are subject to a different environmental standard than is required of child care centers; centers who must struggle to keep their rates affordable for parents and pay their teachers the wages they deserve.

We are deeply concerned about the proposed regulations. If centers have passed their environmental testing and have received their 'No Further Action' letter, is this not enough?

The economic impact of this proposal needs to be addressed, particularly in light of the present recession this country is experiencing. Do we need more business closing, more unemployment, and families who can no longer receive childcare subsidies or pay for childcare services?" (59)

44. COMMENT: "We are concerned about a clean working and educational environment, but there must be reasonable time frames and expenses involved with the regulation. Our center serves blue collar communities. With our last re-licensing, the expenses incurred with hiring an environmental consultant, the tests involved, having the DEP read the report, and the fee to the State . . . could not be passed along to our customers. In this current economic environment, people are losing jobs and facing cuts in hours and pay. We cannot ask more from them. Our staff is stable and has been with us for years and they need increases to meet their bills and cost of living expenses. We offer a small health insurance plan. The money only goes so far. What the State . . . reimbursed for the NFA letter did not come close to off setting the expense. Whether a center is profit or nonprofit, payroll must be met and services provided and paid for. We cannot be burdened with additional regulations that are also tied to neighbors that we have no control over. We feel that we are being used to pay down the State debt.

. . . We have already been part of the first group with the NFA letter as the DEP struggled to apply industrial standards to a totally different business environment. Our center was never in a nail or dry cleaners old space, but we paid dearly for the fall out of the State licensing a center in those buildings. Please do not add more inappropriate and unreasonable regulations without first carefully assessing the need, impact and expense involved especially in these economic times when everyone is hanging on and stretching budgets and helping parents keep their children in quality care." (60)

45. COMMENT: "We . . . are outraged with the proposed registration fee schedule.

It is understandable for everyone to be concerned about the indoor air quality and ongoing testing, but the magnitude of the required fees associated with the test registration is not understandable. From the [Summary] it can be determined that the [State] is merely keeping track of the test results. This process can be achieved with minimal investment in infrastructure and ongoing staff.

If the [Department] is genuinely concerned about the indoor air quality the children breathe in daily basis, it should be providing incentives and guidelines to the child care center to work towards the best quality indoor air. Contrarily, the enormous magnitude of the registration fee adds nothing toward improving the indoor air quality. If anything, it prevents the child care centers from working towards the goal of better indoor air quality by redirecting the limited financial resources to satisfying the registration fee rather than investing in air quality improvement equipment.

The amount of \$ 1,500 for the initial registration and \$ 450 for subsequent renewal appear to be nothing more than for the [State] to raise its revenue in the guise of concerns for children's health with the air quality.

Please work with the child care centers in designing and implementing the clean indoor air quality program, but do not force them into situations where they have to choose between simply registering the test results and providing a safe care and instructions for children." (61)

46. COMMENT: "It is clear that the proposed regulations are designed to protect children. However, I believe that the Economic Impact . . . and the [Jobs] Impact . . . both severely understate the potential impact to child care centers and the families who rely on the services provided by those centers.

The Economic Impact . . . only addresses the cost of filing the results of the indoor air sampling with the Department . . . While it may be argued that \$ 1,500 to review the test results is excessive; the fact remains that the cost of actually conducting indoor air quality samplings can run into the tens of thousands of dollars, as we have seen at [a facility] in Paterson. Re-sampling and remediation costs are not even part of my position at this point, hoping that the need for this remains few and far between, impacting only a small number of centers.

As proposed, the \$ 1,500, plus the cost of conducting the sampling will impact almost every child care center. This financial impact is potentially more severe in many of our urban cities where it is not feasible for centers serving low income and subsidized families to pass the increased costs along to the families they serve, increasing the likelihood that these centers will be forced to close.

[page=3262] The regulations call for a \$ 450 fee to file a renewal of a certificate of safe building interior by certifying that conditions have not changed. Once again the excessiveness of the fee can be argued. It is unclear how a center director would know or

certify that there are no changes to conditions adjacent or proximate to the child care center. If a certified consultant is required to submit this renewal the financial impact to the center increases.

The Economic Impact . . . estimates 1,400 child care facilities annually will be impacted by these regulations. Advocacy from National Child Care Organizations and local New Jersey Media have resulted in proposed legislation to change the child care center license renewal requirement from every three years to an annual renewal. This change would raise the 1,400 centers to about 4,000 annually.

If the proposed legislation to change the license renewal time frame becomes law, the \$ 1,500 or \$ 450 fees become annual rather than once every three years. I would propose changing the need to file for a renewal of a certificate of safe building interior so it is not based solely on the renewal of the child care center license.

Some child care centers have closed due to the increased costs of the preliminary assessments required since June 2007. This additional financial burden will result in more closures.

The [Jobs] Impact . . . only addresses the potential impact to the staff a child care center that closes as a result of the new regulations. It does not address the impact on families who use these centers. The loss of child care will result in minimally a short time job impact for parents who can find alternate care for their children. In other cases, where alternate care is not available or not accessible, parents will be forced to choose between losing their jobs or leaving their children in a potentially unsafe situation.

As I stated initially, these regulations are designed to protect children. Based on that I must question why they only protect some children. The existing law and these regulations set a different standard for children in child care centers than those attending school. Schools are only impacted by these regulations if they file for a construction permit. Many schools could go years if not indefinitely without ever being tested for indoor air quality. This also creates a double standard where children attend during the regular school day, but the after school program is prohibited from operating in the same building. Safety for children should not matter who provides the program.

There is no question to the intent or technical/scientific aspects of this proposal. However, to achieve the goal of protecting children, some changes and financial relief must be included for the child care centers. If implemented as proposed, child care centers will close and children will be placed in unsafe situations." (62)

47. COMMENT: "With 58 centers, more than 2,000 employees, and serving more than 4,000 children in New Jersey, [the entity on behalf of which the commenter comments] plays an important role in the lives of New Jersey families.

We . . . commend the Department for focusing on environmental health issues in child-care centers. The health and safety of children and employees is our top priority, and we think that is a standard that should be applied wherever children receive care. That is why we applied a rigorous internal system for ensuring the safety of our facility.

And it's with our children and employees in mind that we recommend adjustments to the proposed new rules. We think that the adoption of these recommendations will strengthen the rules, enhancing the benefits of the citizens of New Jersey and their families.

We recommend the following: The Department's proposal does not recognize the full cost of compliance. The proposal only includes the \$ 450 to \$ 1,500 required to receive the Certificate of Safe Building Interior. Absent is the \$ 3,000 to \$ 10,000 that providers would

have to pay consultants for analysis and testing that the proposed new rules would require.

Also absent is any mention of the current \$ 3,000 to \$ 10,000 cost of compliance that we now pay. We recommend that the revised proposal should include mention of the full cost the child-care providers would bear as a result of the implementation of the proposed new rules.

Furthermore, to maintain the viability of the child-care business in New Jersey, a full reimbursement of the cost of compliance should be granted to child-care centers that successfully comply.

We also recognize that the New Jersey Department of Environmental Protection currently charges \$ 375 for a level of review that is similar to the \$ 450 to \$ 1,500 that the proposed new rule would charge. We inquired as to the reasoning behind the disparity and cost for what is seemingly a similar service.

The Department predicts that the new rules would provide an economic benefit to the public, but at no point does the Department mention how many child-care centers would be forced to close, because they could not afford the cost of testing.

It is thus clear that the Department's position on the economic benefit to the public does not take into account the full cost the citizens of New Jersey would incur as a consequence of the implementation of the proposed new rules. It is thus imprudent to predict the next benefit.

We recommend that the Department strengthen its position by basing it on comprehensive economic analysis that takes into account the number of child-care centers that would cease to operate, and the geographic areas that would lose access to child-care, the number of child-care employees that would lose their jobs, the number of parents that would not be able to work, because they have to care for the children as a result of child-care centers closing, moving, or increasing rates prohibitively, and the downstream social cost endured by the State.

The Department's proposal only addresses the compliance requirements, and the results of noncompliance. We recommend that the proposal also include methods for remediation, so as to increase compliance and maintain the viability of a child-care business in New Jersey.

Remediation methods should include the time frame following a first failed test, within which the centers must become compliant. The proposed new rules required child-care centers to duplicate efforts. Some of the proposed actions required to be in compliance with DHSS are already included in the preliminary assessment that the New Jersey DEP requires. Where the DEP and DHSS requirements would be duplicated, said departments should share information so as to avoid excessively burdening child-care providers.

Additionally, peripheral requirements, such as licensing requirements for consultants and engineers, should be aligned between agencies so as not to excessively burden providers, taxpayers, or State agencies.

Finally, the proposed new rules include a number of ambiguous guidelines and vague definitions. In order to foster an environmental predictability and stability in regulatory definitions, they should be made unambiguous, and guidelines should be clearly delineated." (14)

48. COMMENT: "I am a child-care facility provider. [It] is very difficult when you are dealing with the Office of Licensing, the Department of Environmental Protection, and also Health, and Human Services.

It seems like if you are all members of the State . . . , in an aspect, why can't we get together

and develop one test? I've spent \$ 9,000 in the past nine months on environmental testing, . . . receiving a letter of no further action . . .

That \$ 9,000--I have written three or four separate checks to the State . . . just for them to read these results. Daycare centers, if you contact the Office of Licensing, are closing. This is a great hardship having so many different tests. If it is all environmental, in an aspect, indoor, outdoor quality, soil sampling, everything, why can we not combine all of this into one specific test, especially if the environmental engineers are going to be completing each aspect of it?

This is a great financial hardship on your child-care facilities, many of which are State funded. They do not have this kind of money. As I said, I am a private for-profit organization; we are the only one in the State . . .

\$ 9,000 for me to obtain my license--also, how often are we going to have to do this test? The DEP is referring every three years, which I believe is unjustified in many aspects.

Different assessments. What in the long run are we looking at? Am I going to be able to continue to operate, or am I going to displace 110 children, 87 families without child care . . . I think that in many different aspects, the State . . . needs to get onboard and develop one test.

One test to test everything outdoor and indoor, and allow the engineers to complete these tests. Give them a reasonable time frame, but also a time frame that the State is going to hold up on its end, because I know [page=3263] the DEP has had my test for over nine months, and I still don't have my letter." (8)

49. COMMENT: "[The entity on behalf of which the commenter comments operates] before and after school child-care programs in elementary schools across the country . . .

Since the enactment of the bill [that] made changes to the Industrial Site Recovery Act in 2006, our company has invested about \$ 3,000 per site, to ensure that our programs comply with the State's new environmental standards.

This includes the preliminary assessment, which results in the No Further Action Letter and . . . the radon test to ensure that the space is safe. If additional testing is required by the State, costs can escalate dramatically, and can even double or triple. While we are reimbursed for the \$ 1,500 by the State for these expenses, the up-front expenditure has been costly for us.

The new air quality regulation would add another \$ 4,500 in expenditures for the initial investigation, and possibly up to \$ 10,000, or more, depending upon the results of the test. While we normally would have no qualms about making additional investments in our programs, especially on things that stand to impact the health of our students that we serve, we are not sure why we are responsible for these particular investments, since we operate in the same schools that our students attend during the school day.

What's more, we were notified last year that nonprofit child-care providers in public schools are exempt from the law thanks to legislation passed in 2000, Bill S192, which exempts certain child-care centers and public school buildings from environmental testing, and also from adhering to the physical plant requirements, according to the [DCF's] child-care licensing regulations.

If the State is concerned about the health and safety of children, it should apply its standards to all providers, public, private, nonprofit, and faith-based. And the responsibility for conducting the test should be placed on the entity that owns the facility.

If a school needs to be safe from 3:00 p.m. to 6:00 p.m., it is also understood to be safe from 8:00 a.m. to 3:00 p.m. And it must be safe regardless of who operates the facility. We do not own or maintain the sites at which we operate, public school systems own them.

If these sites pose a risk between 3:00 p.m. and 6:00 p.m., they pose an even greater risk during the regular school day, which is longer and has more children in attendance. Children need to be safe at all times, not just some of the time." (36)

50. COMMENT: "I'm opposed to the bill, and I was opposed to the snow ball that started this avalanche in the year 2007; and let me explain why. The bill in 2007 was introduced because of one incident. The incident of finding high levels of mercury in a center, which, lo and behold, was licensed in a thermometer factory. It didn't take a nuclear physicist to figure out that it would test positive.

The correct decision to shut that center, I have no quarrel with. It's after that we came to a fork in the road where [the] Department and I went in different directions, and I submit a lot of the other owners went in different directions.

The correct thing at that point--or the logical thing would have been to ask each of us to get a letter from the local building department, that was required for the NFA anyway, to assess if we were in high risk locations or not. And then only get the NFA letter on all the subsequent amendments for those locations.

And I [am] well aware of the fact that it's still possible to test positive even though our site was never located on a high-risk facility, but laws of probability, which I'll come to shortly, should apply.

The second objection I had to that was that you threw us under the proverbial bus in terms of costs. All of the scare tactics started, and we started getting letters from environmentalists saying if you don't use them--they were Mother Teresa, everybody else was a crook, my grandmother would go to jail, and things would get polluted more than they were to start with, and so on.

I know, personally, and I'm sure the costs vary differently--the cost of obtaining the NFA vary between \$ 2,900 to \$ 12,000. Just the NFA letter, forget about the licensing and everything else. In an industry [that] is often struggling to survive in this economy, it's unthinkable that that would happen.

. . . I understand why the civil servant can't recommend, but you should have picked a bunch of vendors, so we weren't thrown under the proverbial bus.

The third thing: . . . starting a business is somewhat like child birth. In other words, the initial euphoria of excitement when someone expects a child, and then you start writing the checks, and that's when the labor pains and the morning sickness comes in.

By the time of delivery, by the time we get the certificate of occupancy, we have bled silly, because all we have seen is checks and leaving of revenue at the end. The only one consistent factor was the cost of licensing. And the cost of licensing, we roughly had an idea, because we went in front of planning boards and boards of adjustments and got our certificate of occupancy.

And anything beyond that was grandfathered for the most part. And grandfathering, I'm sure everybody is aware, was done because there is a sort of unwritten contract between the occupants and the licensing authorities saying, you know what, anything else can vary in terms of costs of licensing, the cost of licensing we'll tell you up-front.

You . . . changed the terms of that engagement, but without specific cause. Because of one center, you changed the licensing requirements and asked us to bear unforgivable terms of money in terms of licensing . . .

. . . I question the bill of 2007 brushing the entire industry based on one center . . . But after that--my centers, for instance, have already undergone radon, lead, the NFA letter, and asbestos, which some of these people haven't gone through, but we have. After that, some laws of probability have to apply, and you have to establish the probability of the center testing positive is as probable as lightning striking the center. And we can't cover--we'd live a very paranoid life if we tried to cover every risk conceivable to men.

You should exclude centers that have tested clean on the first four or five that we have already gone through. You should bear the cost of assessing whether there is risk in the first place, and we will gladly bear the cost of remediation.

You should refund the cost to centers that have come out clean of what we have already bore. And you should negotiate a price--prenegotiate a price with vendors, so that we are not thrown under the bus again with this particular one.

You are jeopardizing the very fabric of our industry's existence by making us bear an unbearable cost. You are brushing us with a broad brush, because of one incident. One of the reasons you do it, we are everybody's stepchild. If you ask the educators, we are nothing better than your babysitters. You ask the planning boards, they will say all of the right things as long as it's not in their backyard.

It's easier to get a license for a go-go bar or adult shop than it is our centers. It is unfortunately a fact, don't laugh. I have been in front of eight planning boards, and each one of them is the same.

Let me provide you to who we actually are . . . We have 4,000 centers in New Jersey, alone. We employ 30,000 people in New Jersey, alone; about 600,000 nationally. We are the frontline support for first-time parents, sometimes the only family they know.

The children stay with us longer than they do with their own families. You are jeopardizing the very fabric of our existence. We already have 17 percent of New Jersey's children in unlicensed facilities. The present economic downturn will increase that number, and the cost of licensing.

The additional cost of licensing will increase that number; we are five percent higher than the nation as it is. Please hold yourself as accountable as us before you ask us to bear unbearable costs in the worst economy I have seen in 52 years of my life." (4)

51. COMMENT: [The entity on behalf of which the commenter comments (entity)] is a leading national provider of education services to students in public and private schools [and] one of the leading providers of these services in the State . . .

[The entity] supports the elements of P.L. 2007, Chapter 1, which establishes standards for buildings to be used as child-care centers and educational facilities. However, the new law, which amended the Industrial Site Recovery Act, has required us to invest additional funds per site to cover costs for preliminary assessments, radon testing, and other additional tests. Under these new proposed regulations, the air quality testing would increase our cost by approximately \$ 3,000 or more, should there be a need for remediation.

[page=3264] [The entity] supports the policy to ensure safe environments for students of all ages; however, we are concerned with the disparity in the law adopted in 2000, and

perpetuated through these regulations that nonprofit day-care providers from having to perform these tests when the licensed day-care center is located in a public school.

Consequently, for-profit providers, like [the entity], have to perform these environmental tests when the day-care center is in a public school . . .

Why does the law discriminate between for-profit and not for-profit day-care centers? Why would environmental tests need to be conducted in a school already inhabited by students during the normal school day? With the large number of preschool and afterschool programs necessary to meet the demands, how can for-profit companies competent when they are subject to these extra requirements? . . .

We urge the Department to consider subjecting all providers to the same requirements when it comes to day-care centers in public schools. Consistent and fair regulations will ensure that there are enough suppliers to meet the capacity needs for preschool programs." (3)

RESPONSE TO COMMENTS 1 THROUGH 51:

### **Duplicative sampling ("testing") requirements**

It appears that the commenters have been misinformed as to the operation of the proposed new rules with respect to the duplication of sampling and consultant activities as between the DEP and the Department. In most cases, the proposed new rules will impose limited burdens upon the regulated community, viewed in the context of the existing regulatory scheme.

Facilities subject to proposed new N.J.A.C. 8:50 are also subject to the existing Industrial Site Recovery Act rules of the New Jersey Department of Environmental Protection (DEP) at N.J.A.C. 7:26B. Those rules require facilities to undergo a preliminary site assessment to ascertain the presence of possible contamination issues relating to the site, including the performance of sampling as indicated in the professional judgment of the consultant. The DEP process requires a facility to file the preliminary assessment with the DEP with a request for an approval letter, formerly referred to as a "no further action" (NFA) letter.

For those facilities subject to N.J.A.C. 8:50, the Department receives a copy of the preliminary assessment when the facility operator files the original with the DEP. The Department conducts a preliminary screening of the assessment to ascertain the existence of obvious problems relating to the indoor environment at the facility that require immediate action. See proposed new N.J.A.C. 8:50-5.3 addressing "imminent hazard." Generally, absent immediate concerns, the Department takes no action on the preliminary assessment until conclusion of the DEP's review and issuance of an approval letter for the site.

Once the DEP concludes its process, proposed new N.J.A.C. 8:50 would require facilities to submit to the Department the IEHA data in the manner prescribed in the form at proposed new N.J.A.C. 8:50 Appendix B. Thus, contrary to the commenters' suggestions, facilities need not retain consultants to conduct a second assessment of the premises or to conduct additional sampling. They only need to have their consultants present to the Department the data they already will have collected in performing the preliminary assessment to comply with the DEP rules, albeit in a format designed to permit the Department to review for concerns relating to the indoor environment of the premises.

Upon receipt of this submission, the Department conducts a site visit to confirm that submission accurately represents the conditions at the premises and the assessment activities performed there. Assuming the IEHA accurately reflects conditions at the facility, the Department requires the performance of no additional air, bulk, or dust sampling activities (also referred to by some commenters as "testing") unless the former or current uses of the premises or a co-located use fall within the class of activities N.J.S.A. 52:27D-

130.5 identifies as suggesting the potential for a problem with the indoor environment or if another agency's rules require sampling. For example, the Department might require appropriate sampling if the DEP's review were to indicate a problem. For another example, the Manual of Requirements for Child Care Centers of the Department of Children and Families requires air sampling if a proposed child care center is co-located with a dry cleaner or a nail salon. N.J.A.C. 10:122-5.2.

### **Department fees**

P.L. 2001, c. 1, §1b (N.J.S.A. 52:27D-130.4) requires the Department to establish by rule a fee schedule for the issuance of a certificate of safe building interior that reflects "the costs of reviewing and processing the application," and requires the Department to use fees it collects to administer and enforce that law. The Department proposes a fee of \$ 1,500 for an application initial certification and \$ 450 for renewal of certification if the applicant certifies that there has been no change in conditions at the facility and at co-located uses since initial certification.

As indicated above, in addition to reviewing the submission filed with the DEP and the IEHA files with the Department, upon an initial application, Department staff members conduct a site visit for every facility. In routine cases, the review of an IEHA and its supporting data, and the conduct of a site visit cumulatively take approximately three business days by one staff member, extending over weeks or even months. An application for renewal of a certification requires staff members to review all past documentation relating to the facility, and to conduct another site inspection to ensure that no relevant changes have occurred at the facility and at co-located uses.

The Department has been conducting reviews of facilities and associated documentation in compliance with the mandate of the Act since January 2007. The Department has evaluated the cost of implementing the program over the last two years and has determined that the cost to the Department for each initial review averages over \$ 1,500 in expenses that include labor, equipment, laboratory fees, vehicle and fuel costs, and other related operating expenses. If, after the site visit, the Department determines that there has been a change in conditions or uses, then the Department would treat the application as a new application and the applicant would need to submit a new IEHA for consideration by the Department. The fee for review of the application would increase from \$ 450 to \$ 1,500, to reflect the additional labor costs for evaluation of new applications.

Therefore, the initial filing fee of \$ 1,500 and the recertification fee of \$ 450 are reasonable, and perhaps low, as the Department expects that the cost to implement this program will increase over time. Moreover, the Department has had to absorb the cost of implementing the program over the last two years inasmuch as it has charged no fees during the development of rulemaking to implement the statute. Thus, the Department begins the implementation of this program operating at a loss to the taxpayers.

### **Consultant fees**

As indicated above, facilities subject to proposed new N.J.A.C. 8:50 are also subject to N.J.A.C. 7:26B. Compliance with the proposed new rules generally requires consultants to restate a portion of the data (the IEHA) they will have already collected to assist facilities to comply with N.J.A.C. 7:26B. Thus, assuming that a facility has no indoor environment problems, facilities necessarily will have already incurred most of the consultant expenses associated with compliance with this chapter.

P.L. 2007, c. 1 mandates that the Department implement this program. The Department is without authority to waive compliance with that law through rulemaking.

The Department has no control over consultant fees and is without authority to negotiate, or to require consultants to agree to, a particular fee structure on behalf of the regulated community. Consultant fees would vary depending on such factors as the size, age, and the historical and intended uses of the facility and co-located uses.

### **Disparate treatment of schools and child care centers**

P.L. 2007, c. 1, §2 (N.J.S.A. 52:27D-130.5) mandates what facilities must comply with the law, and what events trigger compliance. An application for a construction permit or a certificate of occupancy for a school or a child care center triggers the responsibility to obtain a certificate of safe building indoor environment, if the facility housed a use identified at P.L. 2007, c. 1, §2a(1) (N.J.S.A. 52:27D-130.5a(1)).

N.J.A.C. 10:122-5.2 establishes child care center licensure requirements that require applicants for initial, and renewal of, licensure to certify as to whether the facility housed one of the uses that N.J.S.A. 52:27D-130.5 identifies. If the facility housed one or more of these uses, then the licensure applicant must satisfy the DEP ISRA requirements and [page=3265] obtain a certificate of safe building interior from the Department. In contrast, educational facilities need only obtain a certificate of safe building if and when they apply to a local construction official for a construction permit.

Proposed new N.J.A.C. 8:50 would not establish any requirements relating to which facilities must undergo IEHA. Therefore, inasmuch as the enabling legislation and child care center licensure rules establish triggering events for compliance with the chapter, the commenters' objections to disparate treatment of schools and child care centers exceed the scope of the rulemaking. The Department is without authority to modify by rule the statutory triggering events.

### **Disparate treatment of public versus private child care centers**

The commenters object to disparate treatment of for-profit versus non-profit child care centers operated in public school facilities and assert that the latter types of centers are exempt from compliance with the proposed new rules. The Department believes the commenters are referring to P.L. 2000, c. 122, §5g (approved September 14, 2000) (N.J.S.A. 30:5B-5), which provides that "rules and regulations adopted by the [Department of Human Services] pursuant to [N.J.S.A. 30:5B-5] prescribing standards governing the safety and adequacy of the physical plant or facilities of child care centers shall not apply to a child care center operated by a nonprofit organization in a public school building used as a public school."

The exemption at N.J.S.A. 30:5B-5g expressly applies only to rules promulgated by the Department of Human Services pursuant to the rulemaking authority contained in that law. The Department is proposing the proposed new rules pursuant to its authority at N.J.S.A. 52:27D-130.4 and 130.5. Therefore, the exemption does not apply to the proposed new rules.

### **Child care center closures; adequacy of Jobs Impact**

As stated above, the Department does not have discretion to ignore the statutory mandate to implement this program. Nonetheless, the Department believes that the proposed new rules would neither result in a large number of child care facility closures nor cause the attendant job losses and family hardships the commenters suggest.

Since late 2006, when the incident that triggered the development of the enabling legislation occurred (the discovery that a child care center was formerly used as a mercury thermometer processing plant and that children were testing positive for the presence of

mercury in their systems), through March 2009, the Department has conducted reviews of over 2,400 child care centers. Of these, only four have been required to cease operations due to the presence of indoor environment issues that posed a hazard to children and staff, and of these, two reopened shortly thereafter by conducting remediation activities. In the interim between closure and reopening, these facilities were able to find alternate accommodations for the child care needs of the families whose children were displaced by the closures.

Thus, the commenters appear to overstate the likelihood of facility closures associated with implementation of the proposed new rules. Moreover, facility closures would be as a consequence of the presence of an indoor environmental hazard to children, and as most of the commenters acknowledge a desire to protect children from harm, the Department believes that the need for closure to protect children would outweigh the burden of inconvenience to families and staff from displacement.

Finally, the commenters misconstrue the purpose of the Jobs Impact. The Department correctly meets its obligation under the Administrative Procedures Act at N.J.S.A. 52:14B-4 (a)(2) and the Rules for Agency Rulemaking at N.J.A.C. 1:30-5.1(c)5 in stating whether the proposed new rules would result in the increase or decrease in the number of jobs in the State. The Department is not obliged to address in the Jobs Impact whether the proposed new rules would inconvenience families displaced by facility closures.

### **Adequacy of Economic Impact; Unfunded mandate**

The Department disagrees with the assertion of some commenters that the Economic Impact is insufficient. Some commenters assert that the Department has failed to undertake a cost-benefit analysis of the proposed new rules. The Administrative Procedures Act at N.J.S.A. 52:14B and the Rules for Agency Rulemaking at N.J.A.C. 1:30-5.1(c)3 do not require the Department to conduct a cost-to-benefit analysis of the economic merits of the proposed rules. These laws only require the Department to identify the anticipated costs and revenues and the affected entities.

The Economic Impact appropriately identifies: the types, and estimates the number, of entities likely to realize an economic impact from the proposed new rules; the fees the Department proposes to charge for initial and renewal certifications; costs to the Department; record retention costs; ancillary costs of compliance, such as consultant fees, closure and relocation expenses; and costs of remediation upon the discovery of contamination triggered by other laws and rules; and identifies economic benefits associated with compliance, such as the potential savings realized from the avoidance of illnesses and diseases associated with exposure to contaminants in indoor environments.

The commenters appear to request that the Department undertake to justify the economic wisdom of the enabling legislation rather than to describe the economic impact of the proposed new rules. This objection is misdirected and exceeds the scope of the proposed rulemaking. N.J.S.A. 52:27D-130.4 requires the Department to develop rulemaking to implement the program. The Department is not required to justify the economic merits of P.L. 2007, c. 1. Likewise, the Department is without authority to address whether P.L. 2007, c. 1 imposes an "unfunded mandate."

### **Reimbursement programs**

The enabling legislation does not authorize the Department to conduct a grant or rebate program to assist regulated entities in complying with the program requirements. Moreover, the Department has received no appropriation to implement grants or rebates. The Department has no jurisdiction with respect to TANF and NJCK funding. The commenters' concerns relating to the adequacy of grants and rebate programs offered by other State agencies and the efficiency with which those agencies administer those programs exceed the

scope of the proposed rulemaking.

### **Adequacy of air conditioners, air filtering machines, and open windows**

Some commenters assert that keeping their air conditioners or air filtering machines on or opening windows should be sufficient to ensure the safety of the indoor environment, and that the proposed new rules are unnecessary, because they have never known an incident of a child becoming ill due to environmental contaminants.

The Department has researched many types of air cleaners and filtering devices and found that in most cases they are ineffective. However, the Department will continue to evaluate these products as they become available. Should the Department determine these devices to be effective, the Department would consider authorizing their use. Opening windows can improve indoor air quality through circulation, but opening windows does not abate the source of, or remove, contaminants.

The health effects of exposure to some contaminants can go undetected and unreported because they can be confused with other common health outcomes such as colds and allergies. Other more serious health effects of exposure, such as cancer, may go undetected by facility operators due to the length of time it takes for the disease to occur and manifest itself.

A safe indoor environment involves consideration of more than just air quality. It also requires consideration of other potentially harmful substances such as bulk materials and dust, and other contaminants such as lead-based paint, asbestos, mercury and radon.

### **Timely review and determination**

The Department agrees that prompt and timely processing of applications is critical to the functioning of child care centers and schools subject to the proposed new rules. The Department is committed to ensuring that its reviews of applications do not impede the orderly opening or continued operation of these facilities, assuming the facilities themselves proceed in an equally timely and responsive manner.

52. COMMENT: "I agree with, and am in support of, the intent of the proposed new rules to expand the scope of existing rules to provide an assessment for additional potential contaminants within buildings that house child-care centers throughout the State . . . , with the goal of [page=3266] ensuring a healthy environment for children within these child-care centers.

[The] proposed new rules . . . do not provide a standardized assessment protocol, standardized Maximum Contaminant Levels (MCLs), nor do they effectively address the potential negative economic impact upon the child care industry in the [State], nor does it identify sources of public funding assistance that could offset the potential negative economic impacts . . .

[With respect to] the requirement [at N.J.A.C.] 8:50-4.1 for the Department to determine [MCLs] on a site by site basis, calculating both cancer and non-cancer risks using specific risk assessment formulae and then using these [MCLs] as a basis for certification of safe building interior . . . :

(a) The formulae proposed to assess potential cancer health effects include the variable of contaminant concentration, that for air contaminants, are constantly changing, based on numerous factors such as, but not limited to, natural climatic variations including temperature, relative humidity barometric pressure, wind speed, precipitation and season of measurement. Activities of potential contaminant sources, such as road traffic,

manufacturing facilities, businesses surrounding a child care center and other constantly changing environmental conditions influence exterior ambient contaminant levels.

Interior contaminant variations may include exterior influences by contaminant migration through the building envelope, windows, doors, Heating Ventilating and Air Conditioning Systems (HVAC), as well as by numerous activities that occur within a building (such as vocational technical shops, art rooms, photographic arts laboratories, etc within educational facilities that house child care centers) that may also impact levels of air contaminants. It is highly likely that airborne contaminant concentrations will fluctuate significantly. Reducing known contaminant concentrations below [MCLs] or to 'background' levels as identified N.J.A.C. 8:50-4.2 may be impractical and pose difficulty as the contaminant background levels will change with time.

In many urban environments, exterior ambient air contaminants may be present at concentrations that would exceed the defined acceptable risks identified in [N.J.A.C.] 8:50-4.1(a)1, 'the risk for cancer shall be less than one (1) in 10,000' and [N.J.A.C.] 8:50-4.1(a)2, 'the risk for non-cancer health effects shall be a target hazard quotient of less than one.' This also presents a potential for the indoor environment to exceed the defined acceptable risks, and potentially be a 'non-attainment' scenario. Polycyclic Aromatic Hydrocarbons (PAH) commonly associated with diesel fuel decomposition may constitute levels below a calculated MCL on one . . . day, and above a calculated MCL the next day. Further, concentrations of ozone, particulates and fluorocarbons, for example, measured in the winter may differ from concentrations measured in the summer, These contaminants, although not necessarily sourced from within the building, may impact the indoor air quality of the building. Many of these contaminants are known contributors to asthma, currently documented in children at a high incidence rate. Mitigation measures may be required, such as high efficiency filters and carbon filters on fresh air intakes and installation of other engineered contaminant control systems just to maintain contaminants at, or below, fluctuating 'background' concentrations. Initiating ongoing monitoring programs as identified in [N.J.A.C.] 8:50-4.2 represent further costs that must be absorbed by the child care centers.

[A] building may be issued a certificate as having a 'Safe Building Interior' based on calculated MCLs in air, surface and/or water samples collected under one . . . set of environmental conditions that inevitably change with the dynamics described above. The potential variations and economic impact do not appear to be effectively addressed by the proposed new rule. This also may lead to significant reduction of child care centers especially in urban settings where ambient contaminant levels are typically the highest, and costs to provide for a safe building interior certificate may also be the highest.

[The 'Social Impact' . . . states that 'among the contaminants that may be present at a child care center or educational facility, there are no national standards against which the [Department] is to measure collected data in determining MCLs, except for asbestos, lead-based paint and radon.' Although there may not be national standards that are directly applicable or enforceable to child care centers for other contaminants, there exist many national regulatory standards and recommended exposure limits for a majority of the contaminants of concern. These standards and guidance documents include, but are not limited to: The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA): Permissible Exposure Limits (PEL); The U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH): Recommended Exposure Limits (REL); [and] The American Conference of Governmental Industrial Hygienists (ACGM): Threshold Limit Values (TLVs). Since most of the standards and recommended exposure limits referenced are based on occupational inhalation exposure limits, direct comparison and use for children in child care centers may not be appropriate. However, such standards and recommended exposure limits do exist that could be used as a starting point to develop MCLs for airborne contaminants other than using the formulae proposed. Perhaps the MCLs established should be consistent for all child care centers,

regardless of environmental background levels.

The civil administrative penalties [at N.J.A.C.] 8:50-5.5 indicate penalties for individuals, applicants or licensees of up to \$ 25,000 per day for a first offense and up to \$ 50,000 per day for a second and each subsequent offense for violation of a provision of the Act. [These] penalties should be further analyzed, as current levels may cause insurance premiums to escalate and deter individuals, applicants and licensees from future participation, non-renewal of existing child care licensure and child care facility closure.

The exhaustive requirements for licensure most likely will result in closure of many existing child care centers, cause extreme economic burden to those seeking license renewal, and will likely result in a decline for the establishment of new child-care facilities within the State . . ." (21)

RESPONSE: The Department acknowledges the commenter's support of the proposed new rules.

The Department disagrees with the commenter's assertion that the proposed new rules do not provide a standardized assessment protocol. Proposed new Subchapter 3, Evaluation and Assessment of Buildings and Lease Spaces for use as Child care Centers and Educational Facilities, would establish the procedure for conducting an assessment.

The Department agrees with the commenter's assertion that the proposed new rules do not establish a single set of maximum contaminant levels (MCLs) for all facilities. Rather, as stated in the definition of the term "maximum contaminant level" at proposed new N.J.A.C. 8:50-1.3, the Department would establish site-specific MCLs pursuant to proposed new Subchapter 4, Procedures for Determining Maximum Contaminant Levels and Issuance of Certification of Safe Building Interior, specifically, in accordance with the standardized formulae at proposed new N.J.A.C. 8:50-4.1, Determination of maximum contaminant levels (MCLs) for child care centers and educational facilities.

The Department agrees with the commenter's assertion that conditions can fluctuate within an indoor environment based on circumstances particular to each facility. This is why the Department proposes to determine MCLs on a site-specific basis, as stated above. Likewise, the Department agrees that outdoor air quality can have a negative impact on results of sampling the indoor environment. Levels may change daily and seasonally. This is why proposed new N.J.A.C. 8:50-4.1 would require outside ambient sampling.

An assessment conducted in accordance with the formulae at proposed new N.J.A.C. 8:50-4.1, and the Department's subsequent development of site-specific MCLs, would take into account these potential variations. The formulae would require the measurement of ambient conditions. However, a licensed professional in the exercise of professional judgment, and the Department as part of its site visit and review of the submitted application, would indicate on a site-specific basis whether there is a need for more than one sampling event and whether additional monitoring is necessary if a contaminant is present.

The Department acknowledges that a sample necessarily is a "snapshot" of levels at a facility at a moment in time, and that indoor environmental quality can change as conditions change. One method the Department has used to address fluctuating indoor environmental quality at facilities, particularly in urban environments, is to require seasonal monitoring, to ensure that a facility that receives a certificate of safe [page=3267] building interior continues to maintain acceptable levels. This approach would meet the Department's statutory obligation to establish MCLs in a manner that provides a reasonable assurance that children and staff at facilities subject to the chapter are not exposed to unacceptable levels of contaminants while taking into account the costs of sampling. The Department has engaged this approach at approximately 250 centers, with good results.

The Department disagrees with the commenter's assertion that the notice of proposal does not address the potential negative economic impact upon the child care industry in the State. As stated above more fully in response to a previous comment, the Economic Impact identifies the fees and costs child care facilities might incur and identifies the possibility that some facilities that are unable to meet the requirements of the proposed new rules might elect either to relocate or to close.

The Department agrees that the notice of proposal does not identify sources of public funding assistance for entities that are subject to compliance with the proposed new rules. The Department is unaware of the availability of any funding to assist the regulated entities with compliance.

The Department disagrees with the commenter's assertion that the Department should establish uniform MCLs for all child care centers, for the reasons stated above. The Department acknowledges the existence of many standards and guidance documents that recommend exposure limits for contaminants of concern. While a "one-size-fits-all" approach might be easier to apply and administer, it would convey an artificial sense of precision, and would not provide the same level of protection as would a site-specific determination of reasonably plausible MCLs.

The Department has determined to employ the health assessment model for site-specific lifetime excess cancer risk (LECR) developed by the Agency for Toxic Substances and Disease Registry (ATSDR), a Federal public health agency of the Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services, adjusted for age and length of exposure. Use of this model would ensure a consistent level of protection that takes into account the many variables relevant to determining appropriate MCLs, such as facility-specific conditions, the impact of fluctuating exterior environmental quality, the vast number of potential contaminants, and the age and exposure time of the targeted population.

Proposed new N.J.A.C. 8:50-5.5(a) is a restatement of the maximum amounts of penalties N.J.S.A. 52:27D-130.4(e) authorizes the Department to impose for violations. That law provides the Department with discretion to impose lesser penalties as the circumstances of a particular violation may warrant. Proposed new N.J.A.C. 8:50-5.5(f) would establish the factors the Department would take into consideration in assessing penalties.

As described more fully above in response to previous comments, the Department's experience in administering P.L. 2007, c. 1 over the past two years indicates that the commenter's concerns of widespread child care facility closures, stemming from implementation of that law and the proposed new rules, are overstated.

53. COMMENT: "The law's commendable procedures for evaluating buildings make sense. The procedures set up indoors here, the standards and MCLs, is going to be problematic based on where they came from, from ATSDR, and experience of hazardous waste sites.

I truly have a problem with the Department issuing a certification of safe indoor environments for these day-care centers and educational facilities. I do not know how you could possibly do that given the dynamics of buildings, the way they work, the way air flows, pressure relationships, all of these issues that have not been addressed in the proposal.

Let me start with the licensing of consultants. Your requirements are far too lenient, they do not go far enough in education and experience as far as doing this kind of work. You do need to tighten that up. You also need to eliminate environmental contractors or remediation contractors. You need people who are doing assessments and evaluations, and not remedial contracting.

The other issue is, does the company that you license have to have one year of experience, or does every guy that goes out and does this work have to have one year of experience? It is just too lenient; I do believe you have to tighten that up.

The next section on . . . subchapter three, evaluation. You . . . put way too much emphasis on testing, particularly air testing. An air test is nothing more than a snapshot in time, at best. There is no evaluation of buildings, building performance, pressure mapping, . . . air flow patterns, pressure differentials, the way buildings are built, pathways, analysis of pathways.

And way too much emphasis on testing of materials, testing of air. [Air] testing is a snapshot in time. It is going to be difficult to issue permits or . . . licenses or certifications based on air sampling data. Your calculations from ATSDR are based on air sample data.

You have not explained how you are going to modify these MCLs to account for any type of experience. The fact that a lot of the levels of ATSDR are based on 70 years exposure, which is essentially a lifetime. You have not explained how you are going to modify those MCLs for the exposures for young children, building occupants, teachers, or whatever. I do believe that that needs to be pointed out.

You have 'other contaminants of concern'; what does that mean? Are we talking strictly chemical contaminants, or is it biological and physical agents, as well? Are you requiring air sampling for TVOCs and asbestos and radon and all of that stuff? That is not clear in the results.

My comments here--again, too much emphasis on air sampling. Your MCLs are based strictly on air sampling as far as I can tell. Although you do require sampling of dust and surfaces and materials, which you have taken into account inhalation exposures, but what about the other routes of entry, skin contact, absorption, ingestion? So I think that needs to be rethought.

There is no guidance whatsoever on sampling strategy, how many samples to take, where to take samples, under what conditions. Buildings operate differently when you are heating them as opposed to when you are cooling them. They operate differently when the wind is blowing, when it is not blowing, when it is raining, when it is not raining. This has not been addressed whatsoever.

Although I do consider myself an expert on building assessment, building diagnostic, building remediation, I am much less of an expert on toxicology and the MCLs, the development of MCLs. You . . . are going to be developing MCLs; you are going into territory that is uncharted. No one else in the world, that I am aware of, has gone there.

I do not know who you had sitting down on the panel to come up with this rule, but I do believe you need to go outside, rethink this rule significantly, empower, or impanel a group of people, a group of experts, that should be given the opportunity to get input beyond a public hearing like this.

It is just fraught with problems, you know, you are going beyond anywhere anyone else has ever gone. You are going beyond American Conference of Government Industrial Hygienists, EPA. You know, these MCLs you folks are coming up with are based on experience of hazardous waste sites. You know, we do not build all of our buildings and schools on hazardous waste sites.

I am just offering a word of caution, if you are going to set MCLs for--each school is going to be evaluated on its own, in and of itself, as far as setting these levels. I think you should reach out and rethink where you are going. I am in full support of the regulation, and I agree

it is needed, but we need to rethink it, particularly with respect to the MCLs.

These calculations, the MCLs and the THVs, are they going to be--from what I can understand, it's based on air sampling matrices. What about the other matrices: soil, water." (42)

RESPONSE: The Department acknowledges the commenter's support of the proposed new rules and concern for the certification of buildings as safe. N.J.S.A. 52:27D-130.4 obliges the Department to develop a process for the certification of building interiors as safe for use as child care centers or for educational purposes.

The applicability of the ATSDR model is not limited to the assessment of hazardous waste sites. Rather, it is a method to determine if an exposure pathway exists that may impact human health, and the Department has determined that this method is appropriate in assessing the indoor environment of child care centers and educational facilities.

The Department disagrees with the commenter's assertion that the standards for licensure of indoor environmental consultants are lenient. The proposed new rules establish experiential requirements at N.J.A.C. 8:50-2.1. The license holder is obliged to sign off on the work of reports [page=3268] filed with the Department. This would oblige the license holder to ensure that a person of the requisite professional experience, as established at N.J.A.C. 8:50-2.1, collected and/or analyzed data submitted in the report. N.J.S.A. 52:27D-130.4e, as restated at proposed new N.J.A.C. 8:50-5.5, establishes penalties for false statements, representations, and certifications.

The Department disagrees with the commenter's assertion that the proposed new rules "emphasi[ze] air testing." N.J.A.C. 8:50-3(a)11 through 18 identify methods for sampling numerous types of bulk materials and dust, in addition to air.

As stated above in response to a previous comment, the Department agrees with the commenter's assertion that an air sample provides a "snapshot" of a moment in the environment of a building. However, the use of sampling is only one part of the overall IEHA process and provides information that is supportive, not conclusive, of the overall conclusions in an IEHA.

The Department disagrees with the commenter's assertion that the proposed new rules do not take into consideration that the target population in determining MCLs is young children. Proposed new N.J.A.C. 8:50-4.1 would require appropriate adjustment for age, body weight, and exposure time, as part of the calculation.

Proposed new N.J.A.C. 8:50-2.1 would define the term "contaminant" to include any substance that does not belong in an environment or that might cause adverse health effects.

The Department disagrees with the commenter's assertion that the proposed new rules do not provide a sampling strategy. Proposed new N.J.A.C. 8:50-4.1 would establish minimum requirements for the conduct of an assessment. The licensed professional would make site-specific determinations as to when and where and how frequently to conduct sampling and other site assessment methods in the exercise of professional judgment and based on the professional's education and experience. The Department's subsequent site visit would provide an additional means of review as to whether a professional used an approach to site assessment method that was rational based on the particular, and perhaps fluctuating, conditions at the facility.

The Department agrees with the commenter's assertion that that New Jersey may be the first State to attempt to establish an approach to determining MCLs in an indoor environment and

to issue certificates of safe building interior. P.L. 2007, c. 1 obliges the Department to undertake this effort.

The Department declines to empanel a workgroup to reconsider the proposed new rules and the proposed methodologies for determining MCLs and issuing certificates of safe building interior. As stated in response to each of the commenter's specific assertions above, the proposed new rules address the concerns of this commenter and others. Once the Department adopts the proposed new rules in fulfillment of its statutory obligation, the Department would welcome specific suggestions for alternative ways to conduct IEHAs or otherwise to improve the proposed new rules, particularly as the regulated community develops working experience with the rules in practice.

54. COMMENT: "As the premier association of occupational and environmental health and safety professionals, the [entity on behalf of which the commenter comments (association)] represents professionals who serve on the front line of worker health and safety. [Association] members, as well as employees and employers, rely on [Federal] and [State] laws, rules, regulations, standards and guidelines to improve health and safety in the workplace and the community.

Over the course of the last several years, [the association] has closely followed the issue of the many proposed rules and regulations pertaining to the Indoor environment. To say this issue has become increasingly at the top of many [State] policymaker agendas would be an understatement, as states address the many hazards impacting health and safety, [that is], mold, lead, asbestos, methamphetamine laboratories, radon, etc.

. . . In general, [the association supports] the proposed rules to adopt safety and health standards for the interior of buildings to be used as child care centers and educational facilities.

[With respect to proposed new N.J.A.C. 8:50-1.2(a)1, the] proposed rules establish procedures by which to 'obtain licensure as an indoor environmental consulting firm'. [The association] does not believe this is the correct term to be used. Many occupational health and safety professionals practice indoor air quality or indoor air quality consulting in areas other than for interiors of buildings to be used as child care centers and educational facilities. If the proposed term is adopted, it would prevent unlicensed firms from conducting indoor air quality assessments in other areas; not the intention of the proposed rules. The term proposed should be more specific as to its limitations. Perhaps something such as a "childcare/educational facility indoor environmental consultant." Furthermore, the proposed rules alternate between an indoor environmental consulting firm and an indoor environmental consultant. [The association] recommends this be clarified to implicitly detail whether there are two separate licensing options available.

[With respect to proposed new N.J.A.C. 8:50-1.3, the association] appreciates and supports the definition of [the] AIHA and the searchable list of laboratories accredited by [the] AIHA.

[The association] questions the definition used for 'Indoor environmental consultant' [and] recommends this definition be amended and clarified to specifically state whether this is licensure for an individual or a firm, or both.

[With respect to proposed new N.J.A.C. 8:50-2.1, the association] is concerned that the nonrefundable fee of \$ 2,000 is extremely high. No justification was given for such a high fee. This cost will inevitably be passed on to the daycare or educational facilities. It will be difficult for most firms to absorb this large fee without large increases in prices charged to the relatively few facilities that must bear the cost. By the Department's own admission, there may be fewer than 350 daycare facilities impacted. [The association] recommends this fee be revisited.

[With respect to proposed new N.J.A.C. 8:50-2.1(d)1, the association] supports language that applicants shall provide documentation demonstrating that the applicant has, at a minimum, at least one year of experience in the listed disciplines.

[With respect to proposed new N.J.A.C. 8:50-2.1(d)2, the association] supports language that requires applicants to also have at least a bachelor's degree and/or certification or licensure as a health officer, industrial hygienist, engineer, or in another profession. However, [the Department should] clarify what is a certified or licensed 'health officer.' [The association] is not aware of such a title. The recommendation is to add language stating that any license or certification awarded must be awarded by an accredited body that is nationally recognized as an accrediting body. Today, there are over 350 titles in occupational health and safety, yet fewer than 30 of these titles are awarded from accredited bodies. New Jersey has an opportunity to ensure the public that only those individuals who meet stringent knowledge, education, and continuing education requirements shall become licensed. Individuals who attend short two-day and three-day certifications offered by many non-accredited bodies should not be allowed to become licensed.

[With respect to proposed new N.J.A.C. 8:50-2.6, the association] questions the need for licensees to retain records and documents for a period of five years from the date of completion of the assessment. These reports are already submitted to the [State] with the daycare-licensing renewal. The [State] or even the daycare facility should maintain this information at their cost rather than the consulting firm.

[With respect to proposed new N.J.A.C. 8:50-3.1, the association] supports language that ensures that all samples are analyzed by a laboratory that is appropriate to the material being tested and is accredited by the [State], the AIHA, or the NVLAP. Again, [the association] reiterates its support for the use of the term 'accredited' throughout the proposed rules for individuals and laboratories.

[The association] reiterates its support for the intention of the New Jersey proposed rules. However, we also urge the [State] to tighten the qualifications for those interested in conducting indoor environmental assessments for childcare centers and educational facilities. If past trends for licensure in other states for things like asbestos and mold are any indication, there could be an influx of individuals who specialize in some of these areas but do not have a strong background in or understanding of industrial hygiene risk assessment. Furthermore, many of the professionals most qualified to assess the risks in these areas do not obtain or maintain certifications and/or licenses because there are too many specialists and technicians that essentially squeeze them out of practicing in these areas. This is particularly dangerous for an area such [page=3269] as indoor environmental quality [(IEQ),] which can be very complex. Too often individuals promoting themselves as IEQ consultants have little knowledge beyond some of the basics. IEQ can involve exposures to many agents and the individuals conducting assessments must be qualified." (46)

RESPONSE: The Department acknowledges the commenter's support of the proposed new rules.

The Department is unable to locate uses of the term "firm" in the proposed new rules. Proposed new N.J.A.C. 8:50-2.1 would define the term "indoor environmental consultant" to mean the business entity that holds the license, which can be a natural or non-natural person. See proposed new N.J.A.C. 8:50-2.1(a).

The Department acknowledges the commenter's support of the proposed definition of "AIHA" and the reference to the AIHA's searchable list of laboratories that it accredits.

The Department disagrees with the commenter's assertion that the proposed fee of \$ 2,000

for licensure of indoor environmental consultants would be unjustifiably high. The fee would reflect anticipated costs to the Department to administer the application process and subsequent compliance and enforcement activities. The fee would be generally within range of credentialing fees other agencies charge other types of environmental professionals, such as asbestos contractors, asbestos control monitoring firms, lead abatement contractors and lead evaluation firms. The Department anticipates that its review process would be similar to the process for credentialing these single-discipline environmental professionals. However, the Department anticipates that its scrutiny and verification of the training and experiential credentials of applicants for licensure as indoor environmental consultants would be relatively more extensive and labor-intensive due to the multidisciplinary nature of this particular type of licensed entity.

The Department acknowledges the commenter's support of the educational and experiential requirements for the staff resources of licensees.

A health officer is a person who holds New Jersey licensure in good standing as a health officer pursuant to N.J.S.A. 26:1A-38 through 43 and the rules the Department promulgates pursuant thereto at N.J.A.C. 8:7.

The Department would require a licensed indoor environmental consultant to retain business records rather than a licensee's educational or child care facility client, to ensure that the licensee, as a professional, is accountable and can document its assessment activities at a facility should a problem arise later. It is appropriate to impose this responsibility on the licensee, because a child care center can change hands or go out of business, and records can be displaced in these processes. Educational facilities, particularly public schools, are not necessarily proprietorships and are subject to frequent staff changes, retirements, and other losses of institutional memory, creating additional opportunities for records displacement. The Department does not believe that the proposed record retention obligation would impose as costly a burden as it may have in the past, given the increasingly sizeable data storage capacity of digital media. The Department believes that most of the records licensees would need to retain would be susceptible to digital storage. The Department is without the resources to underwrite the cost of record storage for licensed professionals. The Department believes most, if not all, of the other State licensed or certified professions impose some record storage obligation on professionals to ensure future accountability for their work product. None of these other professions would countenance the State maintaining the storage obligation for a professional's body of work.

The Department acknowledges the commenter's support for the use of laboratories accredited for the analysis of the material to be tested.

The Department appreciates the commenter's concern for the need to ensure that qualified professionals perform assessment activities. The Department believes the approach it has proposed, that is, the licensing of a business entity that has staff resources with the specified education and experience, adequately addresses this concern. Upon adoption of the proposed new rules, the Department intends to continue to monitor the professionalism of the business entities it licenses, including their selection of staff resources, and will make changes to the rules as its experience with the program develops, as necessary to correct deficiencies in professionalism. Moreover, the Department's site reviews will serve as a mechanism to review the rationality of methodologies used by licensees in conducting assessments.

55. COMMENT: "This regulation creates a licensing of environmental consultants that mimics and in several ways duplicates the proposed LSP regulations proposed by NJDEP. This results in redundant and unnecessary bureaucracy . . .

The costs for performing the assessment and analyses required to apply for a certificate of safe building interior are not estimated in the proposed rule. Clearly these costs will depend

on the past use of the building, the quality of available documentation and the size of the facility. However, the costs for performing the indoor air quality analyses, environmental services and other sampling can run into the multiple if not tens of thousands of dollars. These costs are beyond what many child care institutions can absorb . . .

The jobs impact estimated in the proposed rule may be significantly understated. The increased cost of performing these assessments in accordance with the proposed regulations change may result not only in closure of child care centers but in loss of employment for the parents who depend on them. This consequential cost was not considered in the analysis.

[Subchapter 2] identifies four areas of specialty. Radon testing should be listed as a separate specialty from the indoor air quality assessment as it requires separate certification as does asbestos and lead testing.

[Subchapter 2] requires that each applicant must either individually or through their staff possess acceptable minimum qualifications and experience in every one of the four disciplines listed.

This is an unreasonable requirement and would eliminate specialty companies from performing work on these types of facilities that are consistent with their expertise. In addition, many full service consulting companies do not retain staff in all these specialties due to the highly specialized nature of the training and licensing specifically for radon, asbestos and lead assessment. The practice of these services is significantly different than other areas of environmental consulting and sampling and the people who perform this work are generally technicians. Retaining staff in these specialties can result in an unacceptable financial burden unless there is sufficient volume of work to keep them busy. The number of licensed child care facilities would not support a sufficient volume of work to warrant many companies employing specialists in all of these areas. As a result the many otherwise desirable companies may not seek this licensure. [Because] of radon testing, [the commenter would] be one of those companies.

The proposed regulation does not address requirements for or procedures or required conditions for changing the primary contact person. Due to turn over within companies it is plausible that the primary contact person may leave during the two year license term. As with the NJDEP underground storage tank regulations, the applicant should be required to notify the [Department] and identify a new primary contact person within some specified period . . .

[At N.J.A.C. 8:50-2.5(b), the word, 'individual'] should be replaced by 'individual or entity' or 'licensee.'

[N.J.A.C.] 8:50-3.1(a)1 . . . should be clarified to indicate that individuals conducting any aspect of IEHAs can only perform work in the specialty areas in which they are qualified.

[N.J.A.C.] 8:50-3.1(a)1 . . . is likely to have an unintended cost consequence. It would be very rare to find one individual qualified to work in all four specialties identified. As a result typical IEHAs would need to be performed by multiple staff working for the same entity and their work coordinated and incorporated into one document. Currently this is achieved in most cases by hiring relatively inexpensive specialty contractors on an as needed basis for asbestos, lead and radon testing. The environmental consultant interprets and incorporates information from the specialty subcontractors into the IEHA documentation. Requiring all the work to be done by the environmental consultant will significantly increase the cost of performing these assessments.

[With respect to the formula at proposed N.J.A.C. 8:50-4.1(b)2, the] Department is in error if the referenced formula is intended to be used to determine health based asbestos-related

risk! Air samples analyzed under the AHERA protocol then compared against a limit of 70 [structures per millimeter squared (s/mm<sup>2</sup>)], are not compared to a health-based exposure benchmark. Rather the 70 s/mm<sup>2</sup> benchmark was established to reflect the [page=3270] background fiber load on manufactured air sampling cassettes in 1987. Since that time, the background concentration on filter cassettes [has] been significantly reduced, but the AHERA standard has not been altered to reflect this change (EPA 2003).

Since being specified in the AHERA protocol, the 70 s/mm<sup>2</sup> via TEM criteria has been the benchmark to be reached in clearing regulated areas following asbestos abatement in schools prior to re-occupancy (US-EPA AHERA, 1987). However . . . , this criterion holds little, if any, health-based merit.

EPA's Integrated Risk Information System (IRIS) toxicity value for asbestos (all fiber types with a 3:1 aspect ratio and greater than 5 # [micro]#m [micrometers] in length) is 4 x 10<sup>-4</sup> f/m/ [fibers per milliliter] (or f/cc [fibers per cubic centimeter]) at a target population risk value of 1:10,000. Following the egregious attack on the US on September 11, 2001, the population risk criterion of 4 x 10<sup>-4</sup> f/m/ (or f/cc) used by the USEPA for the Residential Dust Cleaning Program was, for the first time in the asbestos abatement industry, a health-based criterion. Unfortunately, United States policy has been slow in establishing this criterion throughout the asbestos abatement industry.

The State . . . has a unique opportunity to truly initiate a health-based standard for determining asbestos-related risk. [The Department] should adopt a TEM-derived health based standard for asbestos, which for this case should be 0.0004 f/m/, using Phase Contrast Microscopy equivalent (PCMe) counting techniques. This benchmark is reasonably attained using conventional asbestos sampling pumps and cassettes." (51)

56. COMMENT: "I have been an indoor quality consultant for 18 years; it's not really a new field . . .

[You] are basically going to be making up new contaminant levels of concerns for these regulations, which, I think, in a toxicological standpoint, there are many problems with that.

And although other people have raised issues about the qualifications of consultants and regulations requiring that certain experience, a small business, environmental consulting business, would need to have separate licenses for lead, asbestos, underground storage tanks, radon, and possibly other areas of special credentials that no small companies would have.

So only a very few large environmental services companies would have multiple individuals with different certifications that would cover all of the bases. I think it is essentially going to cost-prohibit the small companies from ever getting their \$ 2,000 license.

So the number of service providers is going to be very minimal, and the cost is going to escalate as a result of them being able to name their price. On the other side of things, I think it is very, very likely to put a significant percentage of day-care centers out of business as others have well stated.

And I think the result is that there will be a verging underground babysitting business in the local neighborhoods where these kids are going to wind up in their neighbors' moldy radon-filled basements instead of the day-care center." (53)

RESPONSE TO COMMENTS 55 AND 56: The Department believes that in referring to "proposed LSP regulations proposed by NJDEP," the commenter means Assembly Bill No. 2962. That bill passed both houses of the New Jersey Legislature on March 16, 2009, and the Governor approved the bill on May 7, 2009 as P.L. 2009, c. 60. That law, known as the "Site

Remediation Reform Act," "establishes a program for the licensing of site remediation professionals and makes changes to the laws concerning the remediation of contaminated sites." Assembly Environment and Solid Waste Committee Statement to Assembly Committee Substitute for Assembly, No. 2962 (February 26, 2009).

The Department disagrees with the commenter's assertion that proposed new N.J.A.C. 8:50 would "mimic" the Site Remediation Reform Act. The Site Remediation Reform Act addresses consulting firms conducting work pursuant to the Industrial Site Recovery Act and does not address licensure of consultants to assessments indoor environments.

As discussed more fully above in response to previous comments, the Department, in evaluating the quality of IEHAs that licensed indoor environmental consultants submit, would take into consideration data collected during preliminary site assessments conducted pursuant to the Industrial Site Recovery Act rules at N.J.A.C. 7:26B, but the Department's review would go further to ensure that these licensees' IEHAs appropriately take into consideration the indoor environments of buildings at these sites. Likewise, the qualifications of persons performing IEHAs would necessarily require different approaches and skill sets, warranting the establishment of a different licensure category.

The Department's experience in addressing complaints from child care centers relating to consultants they have retained to implement P.L. 2007, c.1, §§1 and 2 indicates that licensure of firms conducting indoor environmental consulting is necessary to ensure accountability and oversight of this industry.

Radon, asbestos, and lead each require separate certification, which the Department would recognize. The Department anticipates that some applicants for licensure would have on staff individuals who do not hold all of the required experiential and training credentials. The proposed new rules would permit subcontracting. The Department disagrees with the commenter's assertion that the proposed new rules would have an adverse effect on those who conduct specialty work. The proposed new rules would apply only to child care centers and educational facilities, and not to other types of buildings where these services would continue to be needed.

The Department anticipates that the proposed new rules may result in the decrease of costs for some assessment services, because licensees conducting indoor environmental health assessments would need to include these assessment services in their work. This would simplify consumers' ability to compare cost proposals and limit the number of consultants consumers would need to engage to one rather than several.

The proposed new rules would provide cross-references to the standards cited therein, including the AHERA clearance standard.

57. COMMENT: "I've been an environmental consultant for about three years now, and I know people have a lot of problems with what the current legislation proposes. Day-care centers are pleading: 'We have already done a preliminary assessment. Why are we required to do these indoor environmental health assessments? Why can't we get these encompassed in one report?'

Environmental consultants are saying, 'they are requiring us to do it,' but you are not giving us enough guidance as to what those requirements are . . . I would like to propose that you allow environmental consultants to do phase one environmental assessment of day-care centers. This will give you a history of the property, which was obviously why the thermometer factory was an issue.

If someone, at that time, had done a phase one and it had gone through the proper measures to get that site remediated as required by [DEP] standards, then maybe this

mercury contamination would have been identified, and maybe we would not have this issue to date.

As far as the usefulness of the phase one, there are certain standards. You have to have five years as an environmental consultant in order to be considered capable of performing this work, so you have that criteria right there. There is also a minimum liability coverage for environmental companies to perform this work.

So by allowing an independent environmental company to do this work, you are ensuring that there is a certain industry standard of experience in assessing properties for both current hazards and former hazards. And there is also a liability coverage.

So if there is ever any type of issue, if that environmental consultant were found to be deficient in the work that they did, there is a liability covering and the minimum requirement is one million dollars that would help day-care centers that have identified problems.

I understand that you want government oversight in this process, so that is probably where this all came along. And you are requiring certification under the Indoor Environmental Health Assessments. Well, if you are requiring that certification, that is one level of government oversight. You are recognizing that these people are qualified to do this level of work in providing the certification.

Let that certification mean more than, yes, you can do the work, but, yes, that you are capable of identifying the areas of concern that are there. As far as environmental guidance and indoor air quality, it is a new field. I mean, it is not an entirely new field, but there are things that are regularly changing.

ASTM has some recommendations; there are also different industry recommendations. An environmental consultant who is qualified to do [page=3271] this work should understand what industry standards are, and should be able to perform that work as per requirements.

Also, within the State . . . , if there are areas of concern like underground storage tanks, like pesticides usage, a qualified environmental consultant should be able to recognize those areas of concern and refer them to the DEP for proper investigation and remediation . . .

I feel that phase one environmental assessment, from your areas of concern, what the impact on children could be from a historic standpoint, and a current on-site standpoint would cover your basis, and you would have it summarized in one report.

And as far as government oversight, you have that certification that you are requiring us to have, so I think that would probably be a solution to everyone's headache." (41)

RESPONSE: Proposed new N.J.A.C. 8:50-3 would establish standards for conducting indoor environmental health assessments.

A phase one environmental assessment does not evaluate the indoor environment of a building. It is a review of the historical uses of a property and its environs and identifies external areas of concern. An IEHA specifically evaluates the indoor environment and includes assessing any of the information contained in a preliminary or phase one report of potential contaminants that may affect the indoor environmental quality of child care centers and/or educational facilities. The Department's issuance of an indoor environment consultant license would assure that a licensee has met certain standards, and that the Department would conduct compliance and enforcement activities in connection with that license.

58. COMMENT: "The summary . . . states: 'The MCLs established for asbestos, radon and lead-based paint are currently in both Federal and State regulations.' There is no MCL for

radon in air. A recommended action level of four picoCuries per liter has been established by the U.S. Environmental Protection Agency and the [DEP].

In addition, the [Summary] states: 'The adopted amendment requires all applicants to certify that they provide safe drinking water and comply with requirements of the DCF for the assessment for the presence of asbestos, lead-based paint and radon.' Is this referring to a certification of the drinking water provided by the Bureau of Safe Drinking Water? It is unclear whether radon in water is included in the proposed standards. If it is included, how is the MCL being determined since there is no MCL for radon in water at this time?

All radon in air testing and mitigation must be conducted by certified individuals and businesses. Since N.J.A.C. 8:50 requires evaluation for the presence of radon in air, a reference should be added to the regulations to indicate that all radon testing must be conducted in accordance with N.J.S.A. 26:2D-70 et seq. and N.J.A.C. 7:28-27 et seq." (35)

RESPONSE: The Department agrees with the commenter's assertion that the level established for radon in air is only a recommended action level and not an MCL. The reference to certification of drinking water is to the requirement at N.J.A.C. 10:122, which is a condition of licensure as a child care center. N.J.A.C. 10:122 requires applicants to provide potable water sampling results demonstrating compliance with MCLs for all contaminants required to be tested pursuant to N.J.A.C. 7:10-5.1. N.J.A.C. 7:10-5.1 does not establish an MCL for radon. Thus, there is no requirement to test water for radon.

The Department agrees that radon activities are to be conducted by personnel the DEP certifies pursuant to N.J.A.C. 8:50-3.1(a)15.

59. COMMENT: "The [commenter, writing on behalf of], a federation of the [State's] local boards of education, . . . believes that local boards of education should provide conditions and establish policies that will ensure the health and safety of students . . .

N.J.A.C. 8:50-5.2(b) indicates that all child-care centers and educational facilities must comply with the provisions of [N.J.A.C.] 8:50. However, pursuant to N.J.S.A. 52:27D-130.5 (a)(1), the only such entities that are specifically required to comply with the act are child-care centers and buildings used for educational purposes that have previously been used for industrial, storage, or high-hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or are on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the 'Industrial Site Recovery Act,' P.L. 1983, c.330 (C. 13: 1K-6 et al.). [N.J.A.C.] 8:50-5.2(b) should be clarified and further defined so that local boards of education can be sure to whom the regulation applies.

N.J.A.C. 8:50-4.2(e): [Funding] should be provided for the full cost of all [State] mandates. This code provision indicates that applicants for the issuance or renewal of a certification of safe building must submit an application fee of \$ 1,500 for each certificate sought. This requirement would appear to impose an unfunded mandate on local school districts that is in violation of N.J. Const. art. VIII, § II, paragraph 5, as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 et seq. The proposed [new rule] does not contemplate providing any additional funds associated with the cost of compliance. In fact, according to the Economic Statement . . . , 'Child care centers and private educational facilities may elect to pass these increased costs to consumers of their services (parents of children who attend child care or pay school tuition). Public educational facilities would presumably pass these costs on to taxpayers in affected school districts.' As such, it falls squarely within the constitutional prohibition mentioned above.

The lone exception to the prohibition is found at N.J.S.A. 52:13H-3(b), which provides: 'Notwithstanding the provisions of any other law to the contrary, the following categories of laws and rules or regulations shall not be unfunded mandates: those which are imposed on

both government and non-government entities in the same or substantially similar circumstances.' However, this exception is inapplicable to the matter at hand. While the requirement to test for harmful substances is imposed on private day-care centers and local school districts alike, these two entities are not in the same or substantially similar circumstances. As noted in the Economic [Impact], private child-care centers can simply raise tuition rates to pass the costs of compliance on to parents who utilize their services. However, public school districts cannot simply pass these costs on to the local taxpayer. Public schools are subject to annual budgets that must be approved by the executive county superintendent, commissioner of education, and local voters. Furthermore, local school districts are under statutory and regulatory mandates to keep costs down and lessen the impact on the local taxpayer. This proposal to simply pass costs on to the local taxpayers flies in the face of the current fiscal constraints imposed on local school districts." (57)

RESPONSE: Proposed new N.J.A.C. 8:50-5.2(b) would not, and could not, abrogate N.J.S.A. 52:27D-130.5 with respect to the circumstances that trigger a facility's obligation to secure a certificate of safe building interior from the Department. Rather, proposed new N.J.A.C. 8:50-5.2(b) would establish that all facilities must comply with the procedures and requirements in proposed new N.J.A.C. 8:50 once N.J.S.A. 52:27D-130.5 triggers the obligation. The Department declines to restate the triggering circumstances as the law speaks for itself.

The Department is without discretion to elect not to promulgate the proposed new rules. N.J.S.A. 52:27D-130.4 and 130.5 require the Department to promulgate the proposed new rules. N.J.S.A. 52:27D-130.4b requires the Department to establish fees to address the Department's costs to administer the program. The Department is without authority to waive the fees at proposed new N.J.A.C. 8:50-4.2(e) for public schools or to assume funding for those fees on their behalf. The Department takes no position as to whether the enabling legislation establishes an unfunded mandate.

#### **Summary** of Agency-Initiated Changes:

1. At N.J.A.C. 8:50-4.1(a), a cross reference to non-existent N.J.A.C. 8:50-4.1(c) is deleted.

2. Throughout all of the forms at proposed new N.J.A.C. 8:50 Appendices A and B, the Department will make the following technical changes on adoption:

(a) Formatting changes to make the forms user-friendly and web-friendly. These changes will enable users to fill out the forms on line for either printing and subsequent submission either in hard copy and/or electronically;

(b) Correction of spelling, grammar, punctuation, form labeling, field numbering, and typographical errors;

(c) Correction of mailing address and telephone number errors;

(d) Relocation of text to ensure consistency among the forms; and

(e) Insertion of Department form numbers and edition dates.

#### [page=3272] **Federal Standards Statement**

P.L. 2007, c. 1, an Act concerning contaminated property, supplementing Title 52 of the Revised Statutes, and amending and supplementing P.L. 1983, c. 330 (Act) at §§1 and 2, N.J.S.A. 52:27D-130.4 and 130.5, establishes the Department's obligation to promulgate the adopted new rules. The Department is not promulgating the adopted new rules under the authority of, or to implement, comply with, or participate in, a program established under Federal law, or under a State statute that incorporates or refers to Federal law, standards or

requirements. Therefore, a Federal standards analysis is not required.

**Full text** of the adoption follows (deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**(Agency Note:** Adopted N.J.A.C. 8:50 Appendices A and B are published below with the technical changes described above incorporated but without the use of adoption change

## CHAPTER 50

### STANDARDS FOR INDOOR ENVIRONMENT CERTIFICATION AND FOR LICENSURE OF INDOOR ENVIRONMENTAL CONSULTANTS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 8:50-1.1 Purpose

The purpose of this chapter is to implement the obligations of the Department of Health and Senior Services pursuant to P.L. 2007, c. 1, an Act concerning contaminated property, supplementing Title 52 of the Revised Statutes, and amending and supplementing P.L. 1983, c. 330 (Act) at §§1 and 2, N.J.S.A. 52:27D-130.4 and 130.5.

##### 8:50-1.2 Scope

(a) This chapter establishes procedures by which to:

1. Obtain licensure as an indoor environmental consulting firm;
2. Conduct an indoor environmental health assessment of buildings to be used as either child care centers or educational facilities;
3. Conduct an indoor environmental health assessment of certain facilities required to obtain a construction permit for the reconstruction, alteration, conversion or repair of a building to be used as a child care center or educational facility if that building was either:
  - i. Used for industrial, storage or high hazard purposes, as a nail salon, for dry cleaning or as a gasoline station; or
  - ii. Located on a contaminated site, a site suspected of contamination or a site that is subject to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:26B; and
4. Obtain a safe building interior certification.

##### 8:50-1.3 Definitions

(a) As used in this chapter, the following words and terms shall have the meanings established by the Department of Community Affairs pursuant to N.J.S.A. 52:27D-130 and rules promulgated pursuant thereto at N.J.A.C. 5:23, particularly at 5:23-1.4, unless the context clearly indicates otherwise: "alteration," "building," "construction permit," "group," "reconstruction," "repair," "structure" and "use group."

(b) As used in this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

"Adjacent business" means a business that is co-located next to a child care center or

educational facility.

"AIHA" means the American Industrial Hygiene Association, for which the contact information is AIHA, 2700 Prosperity Ave., Suite 250, Fairfax, VA 22031-4340, (703) 849-8888, telefacsimile (703) 207-3561, [www.aiha.org](http://www.aiha.org).

1. A searchable list of laboratories accredited by the AIHA is available at <http://www.aiha.org/Content/LOAP/accred/AccreditedLabs.htm>.

"ASTM" means the ASTM International, for which the contact information is ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959, 1-800-262-1373, [www.astm.org](http://www.astm.org).

"ASTM Standard D7144" means ASTM Standard D7144-05a "Standard Practice for Collection of Surface Dust by Micro-vacuum Sampling for Subsequent Metals Determination" (2005), incorporated herein by reference, as amended and supplemented, available from the ASTM.

"Averaging time" or "AT" means the period during which an exposure dose is averaged.

1. For non-cancer health effects, AT is expressed as 24 hours per day per year multiplied by 365 (days per year).

2. For cancer health effects, AT is expressed as a lifetime estimate of 70 years.

"Body weight" or "BW" means the weight of a human being in kilograms (kg).

"Cancer slope factor" or "CPSi" means the slope of a dose-response curve obtained from animal and/or human cancer studies expressed as the inverse of the daily dose for the inhalation exposure pathway.

"Child care center" means a facility required to obtain licensure pursuant to the Child Care Center Licensing Act, P.L. 1983, c. 492, N.J.S.A. 30:5B-1 et seq.

"Co-located" means any building sited and joined by a contiguous roof.

"Commissioner" means the Commissioner of Health and Senior Services or his or her designee.

"Concentration" means the amount of a substance present in a certain amount of soil, water, air, food, blood, hair, urine, breath or any other media.

"Contaminant" means a substance that is either present in an environment where it does not belong or is present at levels that might cause harmful, that is, adverse, health effects.

"Conversion" means the performance of work for the purpose of, and/or that would result in, the reclassification of a building from one use group to another.

"Department" means the New Jersey Department of Health and Senior Services.

"Dose-response curve" means a graphical relationship between a dose, that is, an amount of exposure to a substance, and a response, that is, a resulting change in body function or health.

"Dust exposure factor" means the frequency, duration and time of exposure to contaminated dust.

"Educational facility" means a "public school" and a "private school" as N.J.S.A. 18A: 1-1 defines those terms and a charter school pursuant to N.J.S.A. 18A: 36A-1 et seq. and the rules promulgated thereunder at N.J.A.C. 6A: 11, particularly 6A: 11-1.2.

"Exposure duration" or "ED" means the length of time in years during which a person is exposed to a potentially hazardous substance.

"Exposure frequency" or "EF" means the average amount of time per year during which a person is exposed to a potentially hazardous substance, usually expressed in hours per day.

"Exposure time" or "ET" means the amount of time, expressed in hours per day, during which a person is exposed to a potentially hazardous substance.

"Facility" means a building at which a child care center or an educational facility is located.

"Field Sampling Procedures Manual" means the Field Sampling Procedures Manual issued by the New Jersey Department of Environmental Protection (August 2005), incorporated herein by reference, as amended and supplemented, available at <http://www.state.nj.us/dep/srp/guidance/fspm>.

"Indoor environmental consultant" means a business entity licensed by the Department to conduct an indoor environmental health assessment in child care centers or educational facilities.

"Indoor environmental health assessment" or "IEHA" means an evaluation and assessment of indoor environment conducted by a licensed indoor environmental consultant.

"Intake rate" or "IR" means the amount of a contaminated medium, such as air, water or soil, to which a person is exposed during a specified period, usually expressed in cubic meters per day, that is,  $m^3/day$ .

"Lifetime excess cancer risk" or "LECR" means the product of the calculated daily exposure dose and the cancer slope factor.

"Maximum contaminant level" or "MCL" means a site-specific maximum contaminant level the Department determines pursuant to N.J.A.C. 8: 50-4.1.

[page=3273]"Method" means one of the methods below contained in the Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air - Second Edition (EPA/625/R-96/010b) (January 1999), incorporated herein by reference, as amended and supplemented, by the Center for Environmental Research Information (CERI), National Risk Management Research Laboratory, Office of Research and Development, US Environmental Protection Agency, Cincinnati, OH 45268, available at <http://www.epa.gov/ttn/amtic/files/ambient/airtox/tocomp99.pdf>, and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650, telefacsimile (703) 321-8547, [Info@ntis.fedworld.gov](mailto:Info@ntis.fedworld.gov), <http://www.ntis.gov>.

1. "Method TO-15" means Compendium Method TO-15 Determination Of Volatile Organic Compounds (VOCs) In Air Collected In Specially-Prepared Canisters And Analyzed By Gas Chromatography/Mass Spectrometry (GC/MS), (January 1999), incorporated herein by reference, as amended and supplemented, by the CERI, available at <http://www.epa.gov/ttn/amtic/files/ambient/airtox/to-15r.pdf>, and from the NTIS.

2. "Method TO-17" means Compendium Method TO-17 Determination of Volatile Organic Compounds in Ambient Air Using Active Sampling Onto Sorbent Tubes (January 1999), incorporated herein by reference, as amended and supplemented, by the CERI, available at

<http://www.epa.gov/ttn/amtic/files/ambient/airtox/to-17r.pdf>, and from the NTIS.

"NVLAP" means the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology, for which the contact information is National Voluntary Laboratory Accreditation Program, Standards Services Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899-2140, (301) 975-4016, telefacsimile (301) 926-2884, <http://ts.nist.gov/standards/accreditation/index.cfm>.

1. A searchable list of laboratories accredited by the NVLAP is available at <http://ts.nist.gov/Standards/scopes/programs.htm>.

"Proximate business" means a building or an improved or unimproved lot, as to which it is reasonably foreseeable that conditions and/or past or present operations thereat could have an effect on the indoor environment of a child care center or an educational facility.

"Radius search" means a search for sites that are of environmental concern within a 400-foot radius around the location of a child care center.

"Reference dose" or "RfD" means an estimate of daily human exposure to a potentially hazardous substance that is not likely to cause adverse human health effects, expressed in milligrams of a substance per kilogram of body weight per day, that is, mg/kg/day.

"Target hazard quotient" or "THQ" means a comparison of a dose to a reference dose, expressed as a ratio of the dose to the reference dose.

"Vapor Intrusion Guidance" means the New Jersey Department of Environmental Protection Vapor Intrusion Guidance (October 2005), incorporated herein by reference, as amended and supplemented, by the New Jersey Department of Environmental Protection, available at <http://www.state.nj.us/dep/srp/guidance/vaporintrusion/vig.htm> and by contacting the Site Remediation Program, NJ Department of Environmental Protection, 401 E. State Street, 6th Floor, East Wing, PO Box 028, Trenton, NJ 08625-0028, (609) 292-1250, telefacsimile (609) 777-1914.

## SUBCHAPTER 2. LICENSURE OF INDOOR ENVIRONMENTAL CONSULTANTS

### 8:50-2.1 Application for license

(a) A person or entity that seeks to apply for an indoor environmental consultant license shall submit the completed application forms at chapter Appendix A, incorporated herein by reference, which shall be signed by an authorized representative of the entity.

(b) The applicant shall submit with the application a nonrefundable application fee of \$ 2,000 by certified check or money order made payable to the Treasurer, State of New Jersey.

(c) The applicant shall submit with the application documentation in support of the application pursuant to (d) below using electronic media, such as a compact disk or a flash drive.

1. Licensees shall provide documents that are not susceptible to submission by electronic media due to size or other unwieldiness, such as maps or drawings, in hardcopy with the electronic media submission.

(d) Applicants shall provide documentation demonstrating that the applicant has staff resources to meet, at a minimum, the following education and experience requirements:

1. At least one year of experience in each of the following disciplines:

- i. Indoor air quality assessment;
- ii. Asbestos assessment;
- iii. Lead hazard evaluation and assessment; and
- iv. Environmental consulting; and

2. Staff whose experience in the areas listed in (d)1 above is to count toward meeting the experience requirement shall:

- i. Hold at least a bachelor's degree; and/or
- ii. Be certified or licensed, as applicable to the discipline for which the individual's experience is to count, as a health officer, an industrial hygienist, an engineer or in another profession in a scientific field related to environmental protection or remediation.

(e) Examples of forms of documentation applicants may submit to evidence satisfaction of (d) above include, but are not limited to, training certificates, professional degrees, certifications, transcripts, resumes and evidence of projects on which proposed staff have worked.

(f) Applicants shall provide the name, address and occupation of each person that has an ownership interest of 10 percent or more in the entity that is the proposed licensee and shall notify the Department in writing within 10 days of any change in ownership that affects the accuracy of the disclosure contained in the application.

(g) Applicants shall provide proof of insurance from one or more insurance companies authorized by the New Jersey Department of Banking and Insurance to write policies in New Jersey and holding an "A" rating or better rating from Best, for:

1. A minimum of \$ 1,000,000 per occurrence for liability or errors and omissions; and
2. The entire applicable New Jersey Worker's Compensation obligation of the licensee.

(h) The period of insurance coverage required in (g) above shall remain in effect during the entire period in which a licensee holds licensure.

1. Failure of a licensee to maintain the insurance coverage required in (g) above shall be grounds for revocation of license.
2. A licensee shall not practice as an indoor environmental consultant during any lapse in the insurance coverage required in (g) above.

(i) Applicants and successful licensees shall notify the Department of any change that would affect the accuracy of the information provided in support of the application for licensure within two weeks of that change.

(j) The Department shall not accept applications for licensure from persons who were unsuccessful in a previous application for licensure pursuant to this chapter for one year following from the date of the denial of the initial application.

8:50-2.2 Granting of license

(a) The Department shall grant an application for licensure of an indoor environmental consultant after consideration of the materials the applicant submits pursuant to N.J.A.C. 8:50-2.1, upon a finding that the applicant meets the education and experience requirements in N.J.A.C. 8:50-2.1(d)2, the insurance requirements at N.J.A.C. 8:50-2.1(g) and upon being satisfied, upon a review of the applicant's history in the field and experience with governmental agencies, that the granting of licensure would not be inimical to the public interest.

(b) A license issued pursuant to this chapter shall:

1. Be in writing;
2. Be valid for two years from the date of issuance;
3. Contain the date of expiration;
4. Contain the name and business address of the consultant to whom it is issued;
5. Be signed by the Commissioner or his or her designee; and
6. Be non-transferable.

[page=3274] (c) Continued licensure is contingent upon the full cooperation of the licensee with the Department in all matters relating to the conduct of assessments and the administration of the indoor environment program.

#### 8:50-2.3 Identification of license

(a) The licensee shall make available for inspection at each worksite either the original or a true photocopy of the license on request of the Department, the contracting agency and/or the owner or the owner's representative.

(b) The licensee shall use the license number on all business correspondence.

#### 8:50-2.4 Renewal of indoor environmental consultant license

(a) The Department shall transmit a renewal application to licensees in good standing 60 days prior to the expiration of each licensee's license.

(b) If the licensee submits the renewal application and the fee specified in (c) below to the Department at least 30 days prior to expiration date of the licensee's existing license, the license shall continue without expiration until the Commissioner renders a determination on the renewal application.

(c) An applicant for renewal of an indoor environmental consultant license shall submit a nonrefundable application fee of \$ 2,000 by certified check or money order made payable to the Treasurer, State of New Jersey, with the application for renewal.

(d) Renewal of a license is contingent upon the satisfaction of outstanding fines, penalties or other obligations imposed on the applicant pursuant to the Act or this chapter.

(e) The Department shall treat an application for renewal of a license that is filed untimely pursuant to (b) above as an initial application and the extension period applicable to timely filed applications for renewal established pursuant to (b) above shall not apply.

(f) The replacement cost of an altered, defaced, mutilated or lost license is \$ 50.00.

1. The Commissioner or his or her designee shall review a request for license replacement to verify the identity of the licensee and may condition issuance of a replacement license upon the requester's submission of supporting documentation as necessary to confirm the requester's identity.

2. In support of an application for a replacement license, the licensee shall provide a written description, to the best of the licensee's knowledge, information and belief, of the disposition of the original license, to which writing the licensee shall append the following statement: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."; and below which statement the licensee shall place his or her original signature.

#### 8:50-2.5 Suspension, denial or revocation of a license

(a) The Department may suspend, deny or revoke licensure of a person or entity that violates the Act or this chapter.

(b) An individual whose license the Department has revoked shall be ineligible to reapply for licensure for two years from the date of revocation.

(c) If the Commissioner proposes to deny, revoke or suspend a license and/or assess an administrative penalty, the individual, applicant or licensee shall have the right to an informal conference, a hearing or both, pursuant to N.J.A.C. 8:50-5.

#### 8:50-2.6 Licensee recordkeeping obligation

(a) Licensees shall retain records and documents pertaining to any assessment the licensee conducts in accordance with the Act or this chapter for a period of five years from the date of completion of the assessment unless the Department establishes and directs the licensee to observe, a longer period of retention in a particular case.

(b) Licensees shall make records and documents retained pursuant to (a) above available for inspection upon request of the Department.

### SUBCHAPTER 3. EVALUATION AND ASSESSMENT OF BUILDINGS AND LEASED SPACES FOR USE AS CHILD CARE CENTERS AND EDUCATIONAL FACILITIES

#### 8:50-3.1 Procedures for conducting an indoor environmental health assessment in child care centers and educational facilities

(a) The conduct of an indoor environmental health assessment shall be in accordance with the following:

1. Only licensees shall conduct IEHAs;
2. The licensee shall conduct a site inquiry;
3. The licensee shall assess the indoor environment of the building or space used or to be used as a child care center or an educational facility to determine if contaminants are present that may have an impact on the health of the children and staff;
4. The licensee shall conduct an assessment to determine if adjacent businesses are known or suspected to contain contaminants that may have an impact on the indoor environment of the building or space used or to be used as a child care center or educational facility;

5. The licensee shall conduct an assessment to determine if proximate businesses are known or suspected to contain contaminants that may have an impact on the indoor environment of the building or leased space used or to be used as a child care center or educational facility;

6. The licensee shall conduct an assessment to determine if the building or leased space or adjacent or proximate businesses to child care centers or educational facilities are known or suspected contaminated sites or industrial sites that are subject to the Industrial Site Recovery Act, N.J.A.C. 7:26B;

7. The licensee shall evaluate for the presence of the following contaminants:

i. Asbestos-containing materials;

ii. Lead;

iii. Organic compounds;

iv. Formaldehyde;

v. Metals;

vi. Inorganic compounds;

vii. Pesticides;

viii. Radon; and

ix. Other contaminants of environmental concern;

8. The licensee shall determine potential sources of interior vapor intrusion by suspected or known contaminants and shall provide a description thereof;

9. The licensee shall provide a site diagram or drawing showing area(s) of concern;

10. The licensee shall conduct a thorough visual inspection of all building spaces and surfaces to identify areas of environmental concern, including, but not limited to, all occupied building spaces, attic spaces, spaces above drop ceilings, basements, crawl spaces and storage areas;

11. The licensee shall conduct appropriate environmental sampling to ascertain both the vertical and horizontal extent and quantification of contamination present and/or impacting building surfaces and structures, by collecting samples from building materials, building structures and building surfaces and, including, but not limited to, samples of concrete, wood, dusts and indoor air.

i. The licensee shall bias the selection of sampling locations toward areas of suspected contamination based on the licensee's professional judgment, the uses and history of the area, field instrument measurements, odor and other information obtained from the site investigation;

12. The licensee shall conduct indoor air sampling in accordance with the Vapor Intrusion Guidance, by using the procedures outlined by Methods TO-15 and TO-17 for the appropriate volatile organic compounds;

13. The licensee shall adhere to applicable procedures for the identification and assessment of asbestos-containing materials pursuant to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519 (Oct 22, 1986), 15 U.S.C. §2651 and the regulations

promulgated pursuant thereto at 40 CFR Part 763, Subpart E, at §§763.80 through 763.99 and Appendices A through E;

[page=3275] 14. The licensee shall adhere to applicable procedures for the evaluation and assessment of lead-based paint at N.J.A.C. 5:17, the Lead Hazard Evaluation and Abatement Code;

15. The licensee shall adhere to applicable procedures for the evaluation of radon at N.J.A.C. 7:28-27, Certification of radon testers and mitigators;

16. The licensee shall adhere to applicable procedures for the collection of metals in dust contained in ASTM D7144;

17. The licensee shall adhere to applicable procedures for the collection of chip samples contained in the Field Sampling Procedures Manual, at Chapter 6c, §6.7.2 Chip Samples; and

18. The licensee shall ensure that all samples are analyzed by a laboratory that is:

- i. Appropriate to the material being tested; and
- ii. Accredited by the New Jersey Department of Environmental Protection, the AIHA, or the NVLAP.

8:50-3.2 Reporting the results of the indoor environmental health assessment in child care centers and educational facilities

(a) Licensees shall report results of IEHAs using the forms provided at chapter Appendix B, incorporated herein by reference, by means of electronic media, such as a compact disk or flash drive.

1. Licensees shall provide documents that are not susceptible to submission by electronic media due to size or other unwieldiness, such as maps or drawings, in hardcopy with the electronic media submission.

#### SUBCHAPTER 4. PROCEDURES FOR DETERMINING MAXIMUM CONTAMINANT LEVELS AND ISSUANCE OF CERTIFICATION OF SAFE BUILDING INTERIOR

8:50-4.1 Determination of maximum contaminant levels (MCLs) for child care centers and educational facilities.

(a) The Department will determine MCLs identified in child care centers and educational facilities using site-specific data reported in the IEHA and/or additional data collected and analyzed by the Department, by calculating cancer and non-cancer risk using the formulae in (b) \*[and (c)]\* below and corresponding to the following:

1. The risk for cancer shall be less than one in 10,000 ( $10^{-4}$ ); and
2. The risk for non-cancer health effects shall be a target hazard quotient of less than one.

(b) The Department shall evaluate site-specific data to determine risk using the following formulae:

1. For volatile organic compounds in air:

i. For cancer health effects:

$$\text{LECR} = \frac{(\text{C} \times \text{ET} \times \text{EF} \times \text{IR} \times \text{ED})}{(\text{AT} \times \text{BW})} \times \text{CPSi}$$

Where:

LECR = Lifetime excess cancer risk

AT = Averaging time

BW = Body weight

C = Contaminant concentration

CPSi = Cancer slope factor

ED = Exposure duration

EF = Exposure frequency

ET = Exposure time

IR = Intake rate

ii. For non-cancer health effects:

$$\text{THQ} = \frac{\text{C} \times \text{EF} \times \text{IR}}{\text{RfD} \times \text{BW} \times \text{AT} \times 1,000 \text{ micrograms per milligram}}$$

Where:

THQ = Target hazard quotient

AT = Averaging time

BW = Body weight

C = Contaminant concentration

EF = Exposure frequency

IR = Intake rate

RfD = Reference dose

2. For cancer and non-cancer health effects of asbestos, 70 structures per millimeter squared (s/mm<sup>2</sup>) or 0.02 structures per cubic centimeter (cc) of air.

3. For radon, for both cancer and non-cancer health effects, less than four picoCuries per liter (pCi/l).

4. For non-cancer health effects of dust (excluding lead):

$$\text{THQ} = \frac{\text{C} \times \text{IR} \times \text{DEF}}{\text{BW} \times \text{RfD}}$$

Where:

THQ = Target hazard quotient

BW = Body weight

C = Contaminant concentration

DEF = Dust exposure factor

IR = Intake rate

RfD = Reference dose

5. For lead, for both cancer and non-cancer health effects, as specified in the Lead Hazard Evaluation and Abatement Code at N.J.A.C. 5:17-9.1(f).

8:50-4.2 Procedure for issuance of safe building interior certification

(a) The Department shall issue a certification of safe building interior provided an applicant adheres to the evaluation and assessment procedures in this chapter and submits:

1. The completed application form at chapter Appendix B indicating that the building interior meets the applicable standards for cancer and non-cancer health effects at N.J.A.C. 8:50-4.1 (a), subject to (b) below; and

2. The fee established at (e) below.

(b) Applicants for certification of safe building interior for buildings at which the risk for cancer is less than one in 10,000 (10<sup>-4</sup>), pursuant to N.J.A.C. 8:50-4.1(a)1, but greater than one in 1,000,000 (10<sup>-6</sup>) shall undertake measures to eliminate or reduce known contaminants to background levels in consultation with, and subject to the approval of, the Department on a case-by-case basis, depending on the particular conditions of the building.

1. These measures may include, but would not be limited to:

i. Further evaluation of the building to determine the source of the contaminants;

ii. Engineering controls; and/or

iii. Implementation of an ongoing monitoring program that may include air, dust and/or bulk sampling at a frequency the Department specifies.

(c) One may apply for renewal of a certification of safe building interior for a child care center upon application for renewal of a license pursuant to \*[N.J.S.A.]\* \***N.J.A.C.**\* 10:122, pursuant to the same procedure as upon original application at (a) above.

(d) One may apply for renewal of a certification of safe building interior for an educational

facility when the conditions at N.J.S.A. 52:27D-130.5 are met, pursuant to the same procedure as upon original application at (a) above.

(e) An applicant for issuance or renewal of a certification of safe building shall submit with the application a fee of \$ 1,500, by certified check or money order made payable to the Treasurer, State of New Jersey.

1. Child care centers and educational facilities that certify to the Department that conditions have not changed within and adjacent and/or proximate to the child care center or educational facility, shall submit with the application a fee of \$ 450.00, by certified check or money order made payable to the Treasurer, State of New Jersey.

## SUBCHAPTER 5. COMPLIANCE AND ENFORCEMENT

### 8:50-5.1 Scope of subchapter

This subchapter establishes procedures for the enforcement of compliance with the Act at §§1 and 2, N.J.S.A. 52:27D-130.4 and 130.5, and this chapter.

### 8:50-5.2 Compliance

(a) All individuals, applicants and licensees falling within the scope of this chapter shall comply with this chapter.

[page=3276] (b) All child care centers and educational facilities shall comply with this chapter.

### 8:50-5.3 Statement of imminent hazard

If the Commissioner determines that there is an imminent threat to public health, safety or welfare, the Commissioner may order a licensee, a child care facility and/or an educational facility to cease and desist operations and/or to take other measures as the Commissioner determines to be necessary to remove, abate and/or remediate the imminent threat, until the imminent threat is removed, abated and remediated.

### 8:50-5.4 Right of entry

(a) Department representatives shall have the right of entry and are empowered to enter and inspect all premises to investigate and ascertain compliance or non-compliance with this chapter.

(b) No person shall require Department representatives in pursuance of their official duties to provide notice or seek permission to conduct inspections or investigations.

(c) No person shall impede or refuse entry to Department representatives in the course of their official duties for any reason, including reasons of regulatory or contractual specification.

### 8:50-5.5 Civil administrative penalties

(a) If the Department finds that an individual, applicant or licensee has violated a provision of the Act or this chapter and/or has knowingly made a false statement, representation or certification in any application, record or document filed or maintained in accordance with the Act or this chapter, the Commissioner may assess a civil administrative penalty of no more than \$ 25,000 per day for the first offense and \$ 50,000 per day for the second and each subsequent offense.

(b) Each day the violation continues shall constitute an additional, separate and distinct offense.

(c) The Department may compromise and settle any claim for a penalty, pursuant to the Act, in an amount as the Department determines is appropriate and equitable under the circumstances.

(d) Any penalty imposed pursuant to the Act or this chapter, may be collected, with costs, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c. 274, N.J.S.A. 2A:58-10 et seq.

(e) The Department shall levy no assessment pursuant to this section until the violator has received notice that is:

1. Delivered by courier, personal service, or certified mail to the violator's last known address;
2. Specifies the provisions of the Act or this chapter that the violator has violated;
3. Contains a concise statement of the facts alleged to constitute the violation;
4. Specifies the amount of the civil administrative penalties to be imposed; and
5. Provides notice of the violator's right to a hearing or an informal conference or review.

(f) In assessing a civil administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, as applicable, in determining what constitutes an appropriate penalty for the particular violation:

1. Degree of hazard posed to human health and the environment;
2. Degree of harm posed to the proper administration of the child care/school certification program;
3. Category of culpability evidenced by the violator's action, including knowing action, reckless action or negligent action.
  - i. In determining culpability, ignorance of any legal requirement of statute or rule shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless; and
  - ii. Actual notice of the legal requirement of this chapter would constitute a finding of knowing action;
4. Past history of compliance on the part of the violator;
5. Economic benefit that the violator accrues as a result of the violation; and
6. Performance of the violator in correcting the violation.

(g) In addition to other sanctions in this chapter, the Commissioner shall require:

1. The immediate correction of any violation; and
2. The removal of any consultant from a job site within the meaning and purpose of this

chapter.

8:50-5.6 Hearings, conferences

(a) A licensee or applicant, as the case may be, shall have the right to an informal conference pursuant to (b) below, a formal hearing pursuant to (c) below, or both, if the Commissioner:

1. Assesses an administrative penalty pursuant to N.J.A.C. 8:50-5.4;
2. Proposes to suspend or revoke a license or a certification issued pursuant to this chapter; or
3. Denies an application made pursuant to this chapter for a license or a certification.

(b) A violator has the right to an informal conference or review before the Commissioner's designee.

1. The Commissioner's designee shall convene a conference or review if the violator submits a written request for a conference or review within 10 calendar days of the violator's receipt of a notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:50-5.4.
2. Upon the conclusion of a conference or review convened pursuant to this subsection, the Commissioner's designee shall state his or her findings and conclusions in writing and transmit a copy thereof to the violator.
3. If the violator does not agree with the findings and conclusions of the Commissioner's designee, the violator may submit a written request for a formal hearing in accordance with (c) below.

(c) A violator has the right to a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the violator submits a written request for a hearing within 10 calendar days of the violator's receipt of a notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:50-5.4.

(d) In the alternative, recipients of an administrative penalty assessment may request the initiation of a settlement conference.

(e) If a violator fails to request a hearing within 10 calendar days of the violator's receipt of a notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:50-5.4, his or her right to a hearing pursuant to this section is deemed waived and the Commissioner's proposed action shall become final.

(f) Payment of the civil administrative penalty shall be due when the Commissioner issues, or the notice becomes, a final order.

[page=3277] APPENDIX A

**New Jersey Department of Health and Senior Services  
Consumer and Environmental Health Services  
Indoor Environments Program  
PO Box 369  
Trenton, NJ 08625-0369**

**INDOOR ENVIRONMENTAL CONSULTANT LICENSE APPLICATION  
Non-Refundable Application Fee: \$2,000.00**

NJDHSS Use Only	
Tracking No.	Date Recd.
<input type="checkbox"/> Check <input type="checkbox"/> MO    No.: ___	
Logged In by:	

I. General Consultant Information					
Legal Company Name (do not abbreviate)					
Physical Address			Mailing Address (if same, check: <input type="checkbox"/> )		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip
Telephone No.	Fax No.		Telephone No.	Fax No.	
Federal Tax ID Number		Unemployment Insurance Registration No.	NJ Corporate Registration No.		
II. Errors and Omissions Insurance					
Must provide proof of a minimum \$1,000,000 per occurrence for liability or errors and omissions insurance. Must include copy of certificate of insurance. Insurance company must be approved by the NJ Dept. of Banking to write policy "A" rating or better from Best, Inc. Insurance coverage must be in effect the entire period for which a consultant is licensed.					
Policy No.	Name of Insurance Carrier		Ins. Carrier Tel. No.	Policy Period	
III. Primary Contact Information					
Name			Email Address		
Street Address			City	State	Zip
IV. Ownership (List all individuals who have at least 10% interest in company. <input type="checkbox"/> Check if additional sheet is used					
1	Name (Full Legal Name)		Date of Birth	Title	
	Street Address		City	State	Zip Code
2	Name (Full Legal Name)		Date of Birth	Title	
	Street Address		City	State	Zip Code
3	Name (Full Legal Name)		Date of Birth	Title	
	Street Address		City	State	Zip Code
4	Name (Full Legal Name)		Date of Birth	Title	
	Street Address		City	State	Zip Code



**INDOOR ENVIRONMENTAL CONSULTANT LICENSE APPLICATION**  
(Continued)

V. Employee Qualifications	
See directions. You must complete the appropriate Employee Qualifications form for each discipline.	
VI. Certification Statement	
I certify that all the information provided on this application or supplied on any documents submitted for the pu certification is true and accurate to the best of my knowledge. I understand that the falsification of any document result in the rejection of my application and/or the assessment of an administrative penalty of up to \$25,000 per day for offense and \$50,000 per day for the second and each subsequent offense. I understand that this application is : verification and that I agree to provide any additional documentation as required. For the same purposes, I understand outside sources may be contacted and I do hereby give my permission for disclosure of any information provided to : certification validity and/or eligibility. I understand that failure to provide full disclosure of all required information may the denial of this application. I understand that the completion of this application does not guarantee certification to Indoor Environmental Health Assessments of child care facilities.	
Representative Name (Please Print or Type)	Title
Signature	Date

**Directions for the Completion of the "Indoor Environmental Consultant License Application" F**

**Section I. General Consultant Information**

Provide the information indicated in this section. The company name must be the legal name and may be abbreviated.

**Section II. Errors and Omissions Insurance**

Must provide proof of insurance as follows: a minimum of \$1,000,000 per occurrence for liability or errors and omissions insurance; a copy of the consultant's certificate of insurance specifying the name of the insurance carrier, policy number, policy period under which the entire New Jersey Worker's Compensation obligation is insured; the insurance company must be otherwise approved to write policies in New Jersey by the Department of Banking and Insurance, and with an "A" rating or better rating from A.M. Best Company, Inc. Insurance meeting this requirement shall be in effect during the entire period in which a consultant remains licensed. Insurance cannot be allowed to lapse.

**Section III. Primary Contact Information**

The individual (if there will be more than one responsible person it must be indicated on a separate sheet) listed here will be the responsible party for ensuring that all work completed in accordance with applicable regulations and all individuals employed will be qualified to conduct the work they have been hired to do.

**Section IV. Ownership**

List all individuals who have at least 10% ownership interest in the company.

**Section V. Employee Qualifications**

All individuals who will be conducting an Indoor Environmental Health Assessment of child care facilities registered with the DHSS. As such Employee Qualification forms must be completed for each area (Asbestos, Radon, and General Indoor Environmental Assessments). In addition, documentation which proves that each individual is qualified to conduct specific portions of or the entire indoor environmental health assessment must be included. Documentation includes, but is not limited to, training certificates, professional degrees, college educational transcripts, licenses, diplomas, resumes, and evidence of projects on which proposed employees have worked. In addition, for each employee a consultant submits for review and approval to provide services, a "Consultant Employee Certification" form must be completed and submitted with all of the above documentation.

**Section VI. Certification Statement**

Please read this statement carefully. The primary, authorized contact, indicated in Section III, must sign this

**New Jersey Department of Health and Senior Services  
 Consumer and Environmental Health Services  
 Indoor Environments Program  
 PO Box 369  
 Trenton, NJ 08625-0369**

**Indoor Environme  
 EMPL  
 LEAD INSPECTORS  
 CONT**

*Directions for Completion:*

- Type or legibly print all information.
- Attach resumes, diplomas and a notarized copy of a current certification for all named lead inspectors.
- This form must contain the employer and all employees working for that company. If lead inspection/risk assessment form identifying employer and employee information form must be used.
- Complete the page number and number of pages for this form on the bottom right corner of each page.

Company Certification Information (Must include notarized copy of license)		
Employer Name	Telephone	NJ DCA Certification
Location Address	City	
Mailing Address	City	
Has this company been issued a violation from the NJ DCA, NJ DEP, USEPA or any other Federal or State Agency? <input type="checkbox"/> Yes <input type="checkbox"/> No    (If yes, attach a statement describing circumstances )		

Lead Inspector/Risk Assessor Information (Include notarized copy of permits/licenses and certifications)				
Certified Individual (Last Name, First Name, MI)	Check if Sub-contractor	Date of Birth	NJ DHSS Permit No.	NJ
	<input type="checkbox"/>			

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\* Attach resume.









**New Jersey Department of Health and Senior Services  
Consumer and Environmental Health Services  
Indoor Environments Program  
PO Box 369  
Trenton, NJ 08625-0369**

**CONSULTANT/EMPLOYEE CERTIFICATION**

<b>I. Employee Information (matched to Employee Qualification forms)</b>	
Employee Name (Print or Type Legibly)	
<p>I hereby certify that all documentation submitted as proof of my qualifications as an Indoor Environment Consultant Employee, to conduct Indoor Environmental Health Assessments is accurate, true and complete best of my knowledge. I understand that if such information contained in this application is false, I am subject to penalty provisions under <u>N.J.A.C. 8:50</u>.</p> <p>I understand that all information submitted is subject to verification and that I agree to provide any additional documentation as required. For the same purpose I also understand that outside sources may be contacted and I do hereby give permission for disclosure of any information which may be needed to determine certification application validity and/or eligibility. I also understand that failure to provide full disclosure of any of the requested or required information may result in rejection of this application for approval. I also understand that completion of this application does not guarantee approval to perform Indoor Environmental Health Assessments in New Jersey.</p>	
Signature	Date
<b>II. Consultant (Employer) Information</b>	
<p>The information being submitted for the approval of the above-named employee to conduct Indoor Environmental Health Assessments of child care and educational facilities is accurate, true and complete to the best of my knowledge. I understand that if such information contained in this application is false, I am subject to the provisions under <u>N.J.A.C. 8:50</u>.</p> <p>I understand that this application is subject to verification and that I agree to provide any additional documentation as required. For the same purpose I also understand that outside sources may be contacted and that I do hereby give permission for disclosure of any information which may be needed to determine certification application validity and/or eligibility. I also understand that failure to provide full disclosure of any of the requested or required information may result in rejection of this application for approval. I also understand that completion of this application does not guarantee approval to perform Indoor Environmental Health Assessments in New Jersey.</p> <p>I am authorized to sign for and on behalf of the persons listed as owners, partners, shareholders, officers or directors of this company.</p>	
Company Name	Consultant Cert. No. (if applicable)
Authorized Consultant Representative (Print or Type Legibly)	Title
Authorized Consultant Representative Signature	Date

**This form, and all accompanying information, must be sent to the  
NJDHSS Indoor Environments Program by the consultant firm.**





**New Jersey Department of Health and Senior Services  
 Consumer and Environmental Health Services  
 Indoor Environments Program  
 PO Box 369, Trenton, NJ 08625-0369  
 Email Address: [jep.program@doh.state.nj.us](mailto:jep.program@doh.state.nj.us)  
 Submission Fee: \$1,500.00**

**Child Care Center – Indoor Environmental Health Assessment  
 FORM A: SUBMISSION INFORMATION**

**Directions:** Please print clearly or type. In addition, forms A through G, as well as any other information required must be completed and included in the submission package.

NJDHSS Use Only	
Tracking No.	Date Recd.
<input type="checkbox"/> Check	<input type="checkbox"/> MO No.: ___
Logged In by:	

I. Environmental Consultant Information and Type of Facility			
Consultant Name		DHSS Certification No.	
Individual Who Conducted Assessment (use separate sheet for more than one)		DHSS Approval No.	
Select the Type of Facility: <input type="checkbox"/> Child Care Facility (complete Sections II. and IV. below) <input type="checkbox"/> Educational Facility (complete Sections III. and IV. below)			
II. Child Care Facility Information			
Facility Name			
Street Address		City	County
Contact Name		Title	Daytime Tel.
Mailing Address	<input type="checkbox"/> Check if same as above	City	State   Zip
Operator Name		<input type="checkbox"/> Check if same as Contact Name	
Building Owner Name		<input type="checkbox"/> Check if same as Contact Name	
Child Care Center License Data (Reason for Application): <input type="checkbox"/> Initial Application <input type="checkbox"/> Renewal Application, specify expiration date: ___ / ___ / ___ <input type="checkbox"/> New Construction <input type="checkbox"/> Relocation <input type="checkbox"/> Other, Specify: _____			
III. Educational Facility Information			
Building Information			
Building Name		Type of Activity Being Conducted (check all that apply) <input type="checkbox"/> New <input type="checkbox"/> Renovation/Remodeling <input type="checkbox"/> Addition <input type="checkbox"/> Other, Specify: _____	
Street Address		City	Zip Code   County
School District		Contact Information	
District Name		Contact Name	Daytime Tel.
Street Address		Title	
City	State	Zip Code	Email
IV. Certification of Compliance to be Signed by Authorized Consultant Representative			
As an authorized representative of the consultant firm identified in Section I of this document, I hereby certify under penalty of law that all information required to be provided for the Indoor Environmental Health Assessment (IEHA), are true, accurate, complete to the best of my professional knowledge and judgment. I also certify that all individuals who conducted the IEHA are properly trained personnel and that all samples and information was collected in accordance with appropriate regulatory requirements. In addition, I certify that there are significant penalties for submitting false information, including the suspension of my firm's Consultant Certification penalties of up to \$25,000 per day for the first offense and \$50,000 per day for the second and each subsequent offense.			
Authorized Consultant Representative (Please print legibly or type)		Title	
Signature		Date	



**Child Care Center – Indoor Environmental Health Assessment  
FORM A: SUBMISSION INFORMATION  
(Continued)**

<b>INDOOR ENVIRONMENTAL HEALTH ASSESSMENT - CHECKLIST OF REQUIRED DOCUMENTATION</b> <i>Check off each item to ensure that it is attached and include this form with submission.</i>		
<b>X</b>	<b>Form</b>	<b>Building and Site Information</b>
<input type="checkbox"/>	<b>A</b>	Submission Information: <ul style="list-style-type: none"> <li>• Consultant</li> <li>• Facility type, name and address</li> <li>• Certification statement by authorized consultant representative</li> </ul>
<input type="checkbox"/>	<b>B</b>	Historical and Current Uses of Building and Site: <ul style="list-style-type: none"> <li>• Describe current conditions and uses of the child care center or educational facility site and building</li> <li>• Provide building history</li> <li>• Identify all chemicals, contaminants and areas of concern from previous uses of the site or building</li> <li>• Identify all current chemicals, contaminants and areas of concern in the child care center or educational facility and proximate businesses</li> <li>• Assessment of adjacent businesses or known contaminated sites which can impact the child care center or educational facility</li> <li>• Industrial Site Recovery Act information</li> </ul>
<input type="checkbox"/>	<b>C</b>	Descriptions and Conditions of Building Components: <ul style="list-style-type: none"> <li>• Describe interior building components</li> <li>• Describe exterior building components</li> <li>• Indicate any other building component of concern</li> </ul>
<input type="checkbox"/>	<b>D</b>	Description of Heating and Cooling System <ul style="list-style-type: none"> <li>• Describe HVAC system</li> <li>• Describe fuel/energy source</li> <li>• Describe where make-up/fresh air comes from (if any)</li> </ul>
<input type="checkbox"/>	<b>E</b>	Water and Sewer Information <ul style="list-style-type: none"> <li>• Describe potable water system</li> <li>• Describe waste system</li> <li>• Indicate any concerns about either</li> </ul>
<input type="checkbox"/>	<b>F</b>	Hazardous Substances and Vapor Intrusion <ul style="list-style-type: none"> <li>• Indicate if asbestos, lead-based paint, mold, or volatile organic compounds are/were present, their condition and location</li> <li>• Indicate if other metals (besides lead) are/were present, their condition and location</li> <li>• Indicate if other hazardous substances (other than previously indicated) are/were present, their condition and location</li> <li>• Evaluate the potential for vapor intrusion, identify the chemical(s), and include site diagram indicating source</li> <li>• Indicate whether or not an underground storage tank is present; if so indicate where it is, what it contains and include site diagram indicating location.</li> </ul>
<input type="checkbox"/>	<b>G</b>	Summary of Testing and Evaluation Results <ul style="list-style-type: none"> <li>• List all tests performed, include contaminant, sample result, sample number, sample date, sample type, analytical method and sample location for each sample taken</li> <li>• Attach site drawings that identify sampling and testing locations</li> <li>• Attach copies of field sampling forms and analytical laboratory reports</li> <li>• Attach copies of all sample chain of custody documents</li> <li>• If no samples were taken, check the box at the top of the first page and leave the rest blank.</li> </ul>
<input type="checkbox"/>	<b>H</b>	Assessment Summary, Conclusions, Recommendations and Corrective Measures <ul style="list-style-type: none"> <li>• Only an authorized representative of the consultant firm can complete and sign this form</li> <li>• The summary, conclusions and recommendations resulting from the assessment must be included here. In addition, a type of resulting corrective measures must also be outlined, including sample results from any clearance sampling and name and address of the contractor performing the work.</li> </ul>
<b>ADDITIONAL INFORMATION THAT MUST TO BE INCLUDED (UNLESS OTHERWISE NOTED)</b>		
<input type="checkbox"/>	Non-refundable certification fee: certified check or money order made payable to the "New Jersey Department of Health and Senior Services" for the amount of \$1,500.	
<input type="checkbox"/>	Site drawings that identify the proposed/existing child care center or educational facility and areas or businesses of concern	
<input type="checkbox"/>	A copy of a "No Further Action Letter" or equivalent issued by the NJDEP	



**New Jersey Department of Health and Senior Services  
 Consumer and Environmental Health Services  
 Indoor Environments Program  
 PO Box 369, Trenton, NJ 08625-0369  
 Child Care Center - Indoor Environmental Health Assessment  
 FORM B: HISTORICAL AND CURRENT USES OF BUILDING AND SITE**

Facility Name	Street Address	City	County
<b>I. General Building Information</b>			
Owner Name	Owner Address	County	
Year Built	Date(s) of Addition/Major Renovations	No. of Floors	No. of Units
Check all that are present in the building: <input type="checkbox"/> Attic <input type="checkbox"/> Basement <input type="checkbox"/> Crawlspace			
Give brief description of current usage of site and building (use additional sheet if necessary):			
Give brief description of all prior uses of site and building (use additional sheet if necessary):			
<b>II. High Hazard Purposes – In Child Care or Educational Facility</b>			
Include diagram indicating areas where hazardous materials were stored/used. Indicate (check all that apply) if building was ever used for any of the following:			
<input type="checkbox"/> None, go to next section.			
<input type="checkbox"/> <b>Industrial Storage</b> , describe:			
<input type="checkbox"/> <b>Factory</b> , describe:			
<input type="checkbox"/> <b>Nail Salon</b> , describe:			
<input type="checkbox"/> <b>Dry Cleaning Facility</b> , describe:			
<input type="checkbox"/> <b>Gasoline Station</b> , describe:			
<input type="checkbox"/> <b>Other Contamination</b> , specify: _____, describe:			



**Child Care Center - Indoor Environmental Health Assessment  
FORM B: HISTORICAL AND CURRENT USES OF BUILDING AND SITE  
(Continued)**

III. High Hazard Purposes – In Adjacent or Proximate (Nearby) Buildings		
1. Include a site map which labels (by name) all nearby businesses. 2. On a separate paper indicate the name, address and brief description of each business; include contact name and telephone number. 3. Include a diagram indicating areas where hazardous materials were stored/used. 4. Indicate (check all that apply) if it is an adjacent or proximate building and describe business.		
<input type="checkbox"/> None, go to next section.		
<input type="checkbox"/> <b>Industrial Storage</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
<input type="checkbox"/> <b>Factory</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
<input type="checkbox"/> <b>Nail Salon</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
<input type="checkbox"/> <b>Dry Cleaning Facility</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
<input type="checkbox"/> <b>Gasoline Station</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
<input type="checkbox"/> <b>Other Contamination, specify:</b>	<input type="checkbox"/> Adjacent	<input type="checkbox"/> Proximate
Describe:		
IV. Industrial Site Recovery Act		
Is this site under the jurisdiction of the Industrial Site Recovery Act? <input type="checkbox"/> No, go to the next section <input type="checkbox"/> Yes, Complete the following:		
Case Number	Case Manager	Case Manager Telephone No.
Provide Explanation:		



**New Jersey Department of Health and Senior Services  
 Consumer and Environmental Health Services  
 Indoor Environments Program  
 PO Box 369, Trenton, NJ 08625-0369**

**Child Care Center - Indoor Environmental Health Assessment  
 FORM C: DESCRIPTIONS AND CONDITIONS OF BUILDING COMPONENTS**

Facility Name	Street Address	City	County
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*Directions: Check the component to be evaluated and then provide an evaluation of what was checked.*

I. Interior Components (Describe the Condition of Each)
<input type="checkbox"/> Walls          
<input type="checkbox"/> Floors          
<input type="checkbox"/> Ceilings          
<input type="checkbox"/> Windows          
<input type="checkbox"/> Doors          
<input type="checkbox"/> Stairs          
<input type="checkbox"/> Other, Specify:          



**Child Care Center - Indoor Environmental Health Assessment  
FORM C: DESCRIPTIONS AND CONDITIONS OF BUILDING COMPONENTS  
(Continued)**

**II. Exterior Components (Check all that apply and describe condition)**

Siding Type (check all that apply and include any siding underneath visible siding):

- |   |                                  |  |
|---|----------------------------------|--|
| <input type="checkbox"/> Wood Clapboard         | <input type="checkbox"/> Brick   | <input type="checkbox"/> Asbestos Shingle      |
| <input type="checkbox"/> Wood Shingles          | <input type="checkbox"/> Stone   | <input type="checkbox"/> Other Shingles        |
| <input type="checkbox"/> Aluminum/Vinyl Covered | <input type="checkbox"/> Masonry | <input type="checkbox"/> Other, Specify: _____ |

Describe condition of siding materials indicated above:

**III. Additional Building Components**

Indicate any additional building components (inside or outside) which might be of concern:



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 PO Box 369, Trenton, NJ 08625-0369**

**Child Care Center - Indoor Environmental Health Assessment  
 FORM D: DESCRIPTION OF HEATING AND COOLING SYSTEMS**

Facility Name	Street Address	City	County
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**Directions:** Provide the following information. Use an additional sheet if necessary.

**I. HVAC System (check both, if applicable)**

- Heating       Air Conditioning

Describe System (include condition of components):

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**II. Fuel/Energy Sources (check all that apply)**

- Fuel Oil      No.: \_\_\_\_\_      Size: \_\_\_\_\_      Location: \_\_\_\_\_
- Propane      No.: \_\_\_\_\_      Size: \_\_\_\_\_      Location: \_\_\_\_\_
- Natural Gas
- Electric
- Other, specify and describe below:

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**III. Make-Up / Outside Air**

Source of make-up/outside air:

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Description of area around intake (include photos if necessary):

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 PO Box 369, Trenton, NJ 08625-0369**

**Child Care Center - Indoor Environmental Health Assessment  
 FORM E: WATER AND SEWER INFORMATION**

Facility Name	Street Address	City	County
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**Directions:** Provide the following information. Use an additional sheet if necessary.

**I. Potable Water Supply**

Is the potable water certified to meet NJ DEP safe drinking water standards?     Yes     No

Check type of water supply:

- On-site Well - Depth of well: \_\_\_\_\_    Depth of pump set at: \_\_\_\_\_
- Public Community Water System

**II. Waste System (Check one)**

Septic System:    Size: \_\_\_\_\_    Location: \_\_\_\_\_  
 Describe Condition: \_\_\_\_\_

Cesspool:    Size: \_\_\_\_\_    Location: \_\_\_\_\_  
 Describe Condition: \_\_\_\_\_

Public Community Sewer System

**III. Comments or Concerns**

Indicate any comments or concerns regarding any of the above:

**New Jersey Department of Health and Senior Services  
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Indoor Environments Program  
PO Box 369, Trenton, NJ 08625-0369**

**Child Care Center - Indoor Environmental Health Asses.  
FORM F: HAZARDOUS SUBSTANCES AND VAPOR INTRL**

Facility Name	Street Address	City
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*Directions: Provide the following information. Check whether the substance was or is currently present.*

I. Hazardous Substances that are Currently or were Formerly Present			
Substance	Currently Present (✓)	Formerly Present (✓)	Location
Asbestos (Surfacing, Thermal Insulation, Exterior Roofing/Siding, etc.)			
Organic Compounds			
Formaldehyde			
Inorganic Compounds			
Pesticides			
Radon			
Lead Based Paint			
Mold			
Volatile Organic Compounds			
II. Additional Metals (other than lead) that are Currently or were Formerly Present. (Use additional sheets if necessary.)			
Additional Metals (list below)	Currently Present (✓)	Formerly Present (✓)	Location

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**Child Care Center - Indoor Environmental Health Assessment  
FORM H: ASSESSMENT SUMMARY, CONCLUSIONS, RECOMMENDATIONS AND CORRECTIVE ACTION  
(Continued)**

**III. Recommendations**

Indicate any Recommendations for this Facility/Site

**IV. Corrective Actions  
(Use additional sheets, if necessary)**

Type of Corrective Action	Date Completed	Clearance Methodology (include copies of sample results)	Location of Corrective Action	Corrective Performer (list name and address of contractor)

Name of Person Completing This Form (print legibly or type)	Title
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Signature	Date
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