

## NEW JERSEY STATE LIBRARY

## CHAPTER 11

PROCESSING OF DAMAGE CLAIMS PURSUANT  
TO THE SANITARY LANDFILL FACILITY CLO-  
SURE AND CONTINGENCY FUND ACT

## Authority

N.J.S.A. 13:1B-3, 13:1D-9 and 13:1E-100 et seq.,  
particularly 13:1E-106 and 13:1E-114.

## Source and Effective Date

R.1994 d.83, effective February 22, 1994.  
See: 25 N.J.R. 5116(a), 26 N.J.R. 1114(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary  
Landfill Facility Closure and Contingency Fund Act, expires on Febru-  
ary 22, 1999.

## Chapter Historical Note

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary  
Landfill Facility Closure and Contingency Fund Act, was adopted as  
R.1983 d.571, effective December 5, 1983. See: 15 N.J.R. 1213(a), 15  
N.J.R. 2034(d). Amendments were adopted as R.1984 d.351, effective  
August 20, 1984. See: 16 N.J.R. 958(a), 16 N.J.R. 2268(a). The text  
of Chapter 11 was repealed and new rules regarding damage claims  
were adopted as R.1988 d.337, effective July 18, 1988. See: 20 N.J.R.  
443(a), 20 N.J.R. 1732(b). Public Notice. See: 21 N.J.R. 1911(b).  
Administrative Change. See: 23 N.J.R. 3325(b). Amendments were  
adopted as R.1991 d.582, effective December 2, 1991, and R.1993  
d.303, effective June 21, 1993. See: 22 N.J.R. 3675(a), 23 N.J.R.  
3647(b); 25 N.J.R. 741(a), 25 N.J.R. 2715(a).

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 7:1I-1.1 Purpose and scope

(a) This chapter constitutes the rules of the Department  
concerning the processing of all claims under the Sanitary  
Landfill Facility Closure and Contingency Fund Act,  
N.J.S.A. 13:1E-100 et seq. (the "Act"), for damages proxi-  
mately resulting from the improper operation or improper  
closure of a sanitary landfill facility, pursuant to the Act,  
including Department procedures for review and decision  
making regarding such claims.

(b) This chapter is promulgated for the following pur-  
poses:

1. To implement the purposes and objectives of the  
Sanitary Landfill Facility Closure and Contingency Fund  
Act, N.J.S.A. 13:1E-100 et seq.;
2. To establish rules for administration of the Sanitary  
Landfill Facility Contingency Fund, established pursuant  
to the Act, for the purpose of providing prompt and  
adequate compensation for damages as defined herein;  
and

3. To protect and insure that the taxes credited to the Fund are spent in a proper manner and for the intended purposes.

### 7:II-1.2 Construction and applicability

(a) This chapter shall be liberally construed to allow the Department to fulfill the purposes of the Act concerning claims for compensation for damages proximately resulting from the improper operation or improper closure of a sanitary landfill facility. This chapter shall be construed in conformity with, and not in derogation of, the Act.

(b) This chapter shall apply to the processing of all claims which have not been paid, settled, denied or the subject of a final decision by the Commissioner of the Department on or before February 22, 1994, notwithstanding the date upon which any such claim was filed with the Department.

#### Case Notes

Township that consented to installation and maintenance of leachate monitoring wells on property, which was former sanitary landfill site, and assumed obligation to do work and provide funding work was not barred from applying for statutory damages under Sanitary Landfill Closure and Contingency Fund Act. Matter of Adoption of N.J.A.C. 7:11, 291 N.J.Super. 183, 677 A.2d 218 (A.D.1996).

### 7:II-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

### 7:II-1.4 Delegation

The Department may delegate administrative, supervisory, or investigatory authority to members of the Department's staff. The Department may enter into contracts on behalf of the Fund or the Department for the performance of services ancillary to the powers and duties of the Department under the Act, including, but not limited to, the performance of claims adjustment services.

### 7:II-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found at N.J.A.C. 7:26-1.4.

"Act" means the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

"Claim" means the claim for damages filed with the Department for recovery from the Fund. The claim includes all documents submitted under this chapter in support of the claim, including without limitation any amendments thereto under N.J.A.C. 7:11-3.4.

"Claimant" means the person filing a claim.

"Closure" means all activities and costs associated with the design, purchase, construction or maintenance of all measures required by the Department, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfill facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility, and the cost of general liability insurance, including environmental impairment liability insurance, or an amount sufficient to create a self-insurance fund as may be determined by the Board of Regulatory Commissioners pursuant to section 10 of P.L. 1981, c.306 (N.J.S.A. 13:1E-109), to fund potential claims against the owner or operator of the sanitary landfill facility during the closure and post-closure period.

"Commissioner" means the Commissioner of Environmental Protection and Energy in the State Department of Environmental Protection.

"Damages" means and includes, but is not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed;
2. The diminution in fair market value of any real property where such diminution can be shown by a preponderance of the evidence to have solely resulted from the improper operation or improper closure of a sanitary landfill facility. Any property valuation calculations made for the purpose of this chapter shall expressly take into consideration any and all other factors which directly or indirectly affect the fair market value of the property;
3. The cost of any personal injuries, including any medical expenses incurred and income lost as a result thereof; and
4. The costs of the design, construction, installation, operation and maintenance of any device or action deemed necessary by the Department to clean up, remedy, mitigate, monitor or analyze any threat to the environment and public health, safety or welfare of the citizens of this State, including the installation and maintenance of methane gas monitors and vents and leachate monitoring wells and collection systems, and the sampling and analysis of any public or private potable water supply.