

CHAPTER 11**PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SANITARY LANDFILL FACILITY CLOSURE AND CONTINGENCY FUND ACT****Authority**

N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-100 et seq. (particularly 13:1E-106 and 13:1E-114), and 58:10-23.11 et seq.

Source and Effective Date

R.2004 d.329, effective July 29, 2004.
See: 36 N.J.R. 1269(a), 36 N.J.R. 4127(a).

Chapter Expiration Date

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, expires on July 29, 2009.

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).

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Facility Closure and Contingency Fund Act, was repealed and Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Facility Closure and Contingency Fund Act, was adopted as new rules by R.1988 d.337,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).

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Facility Closure and Contingency Fund Act, was repealed and Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Facility Closure and Contingency Fund Act, was adopted as new rules by R.1994 d.83, effective February 22, 1994. See: 25 N.J.R. 5116(a), 26 N.J.R. 1114(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Facility Closure and Contingency Fund Act, was readopted as R.1999 d.91, effective February 22, 1999. See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

Chapter 11, Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, was readopted as R.2004 d.329, effective July 29, 2004. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 7:1I-1.1 Purpose and scope
- 7:1I-1.2 Construction and applicability
- 7:1I-1.3 Severability
- 7:1I-1.4 Delegation
- 7:1I-1.5 Definitions
- 7:1I-1.6 Liabilities for damages
- 7:1I-1.7 Signatures; certifications
- 7:1I-1.8 Notices and other communications
- 7:1I-1.9 Computation of time

SUBCHAPTER 2. CLAIMS GENERALLY

- 7:1I-2.1 Persons who may submit a claim
- 7:1I-2.2 Burden of proof

- 7:1I-2.3 Damages actually incurred; mitigation
- 7:1I-2.4 Overlapping claims
- 7:1I-2.5 Waiver of damages not set forth in claim
- 7:1I-2.6 Claims by responsible parties or by owners or operators of a sanitary landfill facility
- 7:1I-2.7 Administrative closure of claims
- 7:1I-2.8 Relaxation of procedural requirements
- 7:1I-2.9 Imminent hazard

SUBCHAPTER 3. CLAIMS PROCEDURE

- 7:1I-3.1 Time for filing of claims
- 7:1I-3.2 Submission of claim
- 7:1I-3.3 Contents of claim
- 7:1I-3.4 Amendment of claim
- 7:1I-3.5 Consent to inspection; investigation
- 7:1I-3.6 Communication with claimant or representative
- 7:1I-3.7 Notice to owner or operator

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

- 7:1I-4.1 Extent of eligibility
- 7:1I-4.2 Requirements for eligibility
- 7:1I-4.3 Appraisal of subject property
- 7:1I-4.4 Valuation of a claim
- 7:1I-4.5 Evidence of good faith sale
- 7:1I-4.6 Settlement based upon legal inability to sell the subject property
- 7:1I-4.7 Settlement when emergency relocation is necessary
- 7:1I-4.8 Contract for sale of property entered into before filing of claim
- 7:1I-4.9 (Reserved)

SUBCHAPTER 5. SETTLEMENT AND DETERMINATION OF CLAIM

- 7:1I-5.1 Settlement of claim with owner, operator or other person
- 7:1I-5.2 Actual real or personal property damage
- 7:1I-5.3 Personal injuries
- 7:1I-5.4 Notices of Intent
- 7:1I-5.5 Denials
- 7:1I-5.6 Adjudicatory hearings

SUBCHAPTER 6. CONDITIONS OF PAYMENT

- 7:1I-6.1 Payment of claim
- 7:1I-6.2 Conditions of payment

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 proximately 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 purposes:

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.

7:11-1.2 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).

7:11-1.3 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.

7:11-1.4 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.

7:11-1.5 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 Public Utilities 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 the Department of Environmental Protection.

"Covenant not to sue" means a document defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.

"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;