

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.

5. Damages do not include legal fees incurred in filing claims or for participation in an administrative hearing or any legal action against the Fund and costs normally associated with the listing, sale and transfer of property which is the subject of a claim. Additionally, damages do not include interest on any monetary award assessed against the Fund.

“Department” means the New Jersey Department of Environmental Protection.

“Discovery” means the time at which the claimant discovers, or by the exercise of reasonable diligence and intelligence should have discovered, that he or she has incurred damages.

“Disposal” or “disposed” means the use of the term which is expressly discussed and defined at N.J.S.A. 13:1E-3.

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.

“Fund” means the Sanitary Landfill Facility Contingency Fund established pursuant to the Act.

“Government entity” means a governing body, department, agency, authority or any other unit of any Federal, State, county or local government or governments, including without limitation a municipal utilities authority.

“Improper operation” or “improper closure” of a sanitary landfill facility means the operation or closure of a sanitary landfill facility that results in a substantial deviation from applicable operation and closure requirements. A de minimis deviation from such applicable operation and closure requirements shall not constitute grounds for a determination that a sanitary landfill facility is being improperly operated or has at any time been improperly closed. A finding of improper operation or improper closure shall only be made upon the basis of a preponderance of the evidence being introduced by the claimant.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Notice of Intent,” or “NOI,” means a notice issued by the Department to a claimant pursuant to N.J.A.C. 7:11-5.4, informing the claimant that the Department intends to pay or deny his or her claim.

“Owner or operator” means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a sanitary landfill facility is located, has been located, had been located or at any time was located, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill facility and every person who operates or operated a sanitary landfill facility at any point in time and every agent or representative of such operator.

“Person” means any public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents.

“Physical intrusion” means the existence of methane gas, leachate or other material emanating from the sanitary landfill facility on or under a claimant’s real property.

“Potable water” means drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. “Potable water” does not include water for use in fire fighting or for agricultural purposes, or for other non-potable purposes.

“Responsible party” means any person who directly or indirectly contributed at any point in time to the occurrence, event, action or damages upon which any person’s claim or other claims are based.

“Sanitary landfill facility” means a governmentally approved solid waste facility at which solid waste is deposited, or has ever been deposited, on or in the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste.

“Solid waste” means the use of the term which is expressly discussed and defined at N.J.S.A. 13:1E-3(a).

Amended by R.1999 d.91, effective March 15, 1999.  
See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

In “Closure” substituted a reference to the Board of Public Utilities for a reference to the Board of Regulatory Commissioners; in “Commissioner”, substituted a reference to the Commissioner of the Department of Environmental Protection for a reference to the Commissioner of Environmental Protection and Energy in the State Department of Environmental Protection; inserted “Covenant not to sue”, “Engineering controls”, “Institutional controls” and “No further action letter”; rewrote “Person”; and in “Sanitary landfill facility”, inserted “, or has ever been deposited,” following “is deposited”.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).  
See: 41 N.J.R. 4467(a).

Rewrote definition “Covenant not to sue”; added definition “Final remediation document”; and deleted definition “No further action letter”.  
Administrative correction.  
See: 42 N.J.R. 778(a).

Amended by R.2010 d.174, effective August 16, 2010.

See: 41 N.J.R. 2759(a), 42 N.J.R. 642(a), 42 N.J.R. 1860(a).

In definition "Potable water", inserted ", or for other non-potable purposes".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

#### Case Notes

Landfill was "sanitary landfill". State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J.1994, 866 F.Supp. 826.

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. 711, 291 N.J.Super. 183, 677 A.2d 218 (A.D.1996).

Sanitary Landfill Facility Closure and Contingency Fund Act regulations defined "sanitary landfill" and "governmental approval." Johnson Machinery Co., Inc. v. Manville Sales Corp., 248 N.J.Super. 285, 590 A.2d 1206 (A.D.1991).

Township qualified as owner of sanitary landfill and could not recover costs of installing monitoring wells. Township of Voorhees v. Department of Environmental Protection and Energy, 95 N.J.A.R.2d (EPE) 104, reversed 291 N.J.Super. 183, 677 A.2d 218.

#### 7:II-1.6 Liabilities for damages

(a) Every owner or operator of a sanitary landfill facility shall be jointly and severally liable for the proper operation and closure of the sanitary landfill facility, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operation or closure of the sanitary landfill facility.

(b) The Fund shall be strictly liable for all direct and indirect damages proximately resulting from the improper operation or improper closure of any sanitary landfill facility. The Fund shall not be liable for any damages resulting from the proper operation or proper closure of any sanitary landfill facility.

#### Case Notes

Diminution in fair market value of real property in absence of tangible physical damage could be compensable under Sanitary Landfill Closure and Contingency Fund Act. State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J.1994, 866 F.Supp. 826.

Former procedure of deducting 25% to reflect estimated decrease in property's fair market value. State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J.1994, 866 F.Supp. 826.

Amended mechanism for paying diminution of value claims was not arbitrary or capricious. State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc., D.N.J.1994, 866 F.Supp. 826.

Township qualified as owner of sanitary landfill and could not recover costs of installing monitoring wells. Township of Voorhees v. Department of Environmental Protection and Energy, 95 N.J.A.R.2d (EPE) 104, reversed 291 N.J.Super. 183, 677 A.2d 218.

#### 7:II-1.7 Signatures; certifications

(a) All claims, and all affidavits required under this chapter, shall be signed by the claimant and notarized, as follows:

1. If the claimant or affiant is a corporation, the claim or affidavit shall be signed by a person authorized by a resolution of the claimant's board of directors to sign the document in question. The claimant or affiant shall submit with the document a copy of the resolution of the claimant's board of directors authorizing the person to sign the document. The copy of the resolution shall be certified as a true copy by the secretary of the corporation.

2. If the claimant or affiant is a partnership, the claim or affidavit shall be signed by a general partner of the partnership.

3. If the claimant or affiant is a sole proprietorship, the claim or affidavit shall be signed by the proprietor of the proprietorship.

4. If the claimant or affiant is a municipality, local unit, State, Federal or other public agency, the claim or affidavit shall be signed by a principal executive officer of such entity, the ranking elected official of such entity, or the designee of such principal executive officer or ranking elected official. If the claim or affidavit is signed by a designee, the claimant shall submit with the claim or affidavit a copy of the document authorizing the designee to sign the claim or affidavit.

5. If the claimant or affiant is a natural person, the claim or affidavit shall be signed by the claimant or affiant, provided however, that if the claimant or affiant is a minor, is incompetent as defined under New Jersey law, or is deceased, the claim or affidavit shall be signed by the claimant's parent, guardian, executor, or court appointed representative, as applicable.

(b) All claims, and all affidavits required by this chapter, shall contain the following certification, signed by the person required to sign the claim or affidavit:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe the information submitted is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information, and that I am committing a crime in the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for penalties."

Amended by R.1999 d.91, effective March 15, 1999.

See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

Rewrote (b).

#### Case Notes

Sanitary Landfill Facility Contingency Fund award regulation reducing award by any prior compensation for damages is valid. Citizens for Equity v. New Jersey Dept. of Environmental Protection, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

after the issuance of a final remediation document for a remediation at the sanitary landfill facility that involves only the use of institutional controls shall receive compensation from the Fund for damages proximately resulting from removing the institutional control at the very sanitary landfill facility for which they are an owner, operator or otherwise responsible party.

(f) Notwithstanding (b), (d) and (e) above, an owner or operator may be eligible for damages if such owner or operator can establish to the satisfaction of the Department that the claim satisfies one of the following requirements:

1. Despite exercising reasonable diligence and intelligence before purchasing or otherwise acquiring or obtaining title to the land, the claimant did not discover until after purchasing or otherwise acquiring or obtaining title to the land, that a sanitary landfill facility is located, has been located, had been located or at any time was located on the subject property, and before purchasing or otherwise acquiring or obtaining title to the land, the claimant conducted a diligent and thorough inquiry into previous ownership and uses of the property. In order for a person to satisfy the requirement to engage in a diligent and thorough inquiry into previous ownership and uses of the property, a person must perform a preliminary assessment and site investigation in accordance with N.J.S.A. 58:10-23.11g(d)(2)(d) and N.J.A.C. 7:26E-3;

2. The claimant is a government entity and acquired the property by escheat or other involuntary transfer or by operation of law, and not by an affirmative act such as exercise of the power of eminent domain. If the government entity acquired or obtained title to the property by an affirmative or voluntary act, the standard set forth in (d)1 above shall govern eligibility of the government entity's claim;

3. The claimant is the current owner of the sanitary landfill facility who acquired the sanitary landfill facility after the facility ceased operating, but prior to the effective date of the Act, January 1, 1982, and took no part in the operation of the sanitary landfill facility; or

4. The claimant acquired the sanitary landfill facility after the issuance of a final remediation document concerning the sanitary landfill facility or a portion of the sanitary landfill facility and all of the following apply:

- i. The remediation which is the subject of the final remediation document involves the use of an institutional control only;

- ii. The claimant is a person who is relieved from liability pursuant to N.J.S.A. 58:10-23.11g(d) or (f) for the contamination at the sanitary landfill facility; and

- iii. The claim is for the payment of damages in response to a Department order that the claimant conduct additional remediation at the sanitary landfill facility, except if the order is for any additional remediation that is required to remove an institutional control.

Amended by R.1999 d.91, effective March 15, 1999.

See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

Inserted new (d) and (e); and recodified former (d) as (f), made internal citation changes, and added 3 and 4 and made a corresponding language change.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (d) and (e), deleted "issued by the Department" following "sue", inserted "or 58:10C-31" and substituted "issuance of a final remediation document" for "Department issued a no further action letter"; in the introductory paragraph of (f)4, substituted "issuance of a final remediation document" for "Department issued a No Further Action letter"; and in (f)4i, substituted "final remediation document" for "No Further Action letter".

Administrative correction.

See: 42 N.J.R. 778(a).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

#### Case Notes

Owner of closed landfill was eligible for Contingency Fund reimbursement of cleanup costs, despite owner's prior knowledge of site's previous use as landfill, and owner's earlier utilization of landfill for waste disposal, where owner purchased site after landfill facility was closed, and after passage of Sanitary Landfill Facility Closure and Contingency Fund Act. Matter of Adoption of N.J.A.C. 7:II, 149 N.J. 119, 693 A.2d 97 (1997).

Landowner was not entitled to compensation for contamination emanating from its former use of property. Estate of Sommer v. Environmental Claims Administration, Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 241.

#### 7:II-2.7 Administrative closure of claims

(a) The Department may, in its discretion, administratively close any claim for which the claimant has:

1. Failed to take actions required by this chapter within 60 days after the claimant was required to take such action; or

2. Failed to respond to a request for information by the Department within the time period set forth in the request.

(b) Administrative closure of a claim is without prejudice. The claimant may reactivate the claim by rectifying the failure under (a)1 or 2 above and making a written request to the Department for reactivation.

(c) Before closing a claim under (a) above, the Department shall send the claimant written notice of the Department's intent to administratively close the claim. The Department shall state in the written notice the reason for the administrative closure, and the procedure to avoid administrative closure under (d) below.

(d) The Department shall administratively close the claim unless:

1. Within six months after the claimant's receipt of the notice described in (c) above, the claimant has submitted to the Department an affidavit explaining why the claim should not be administratively closed (which affidavit may include an explanation of why the time allotted to take such action or provide information was insufficient); and

2. The Department determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

Amended by R.1999 d.91, effective March 15, 1999.  
See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

In (d), substituted a reference to six months for a reference to 30 days in 1.

### 7:1I-2.8 Relaxation of procedural requirements

(a) Except as provided by (b) below, the Department may relax any of the procedural requirements of this chapter if the Department determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Notwithstanding (a) above, the Department shall not relax procedural requirements of this chapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

### 7:1I-2.9 Imminent hazard

Priority review of claims may occur in cases where the claimant has demonstrated to the Department's satisfaction that extreme hardship or extreme existing or imminent hazard will proximately result from the improper operation or improper closure of the sanitary landfill facility.

## SUBCHAPTER 3. CLAIMS PROCEDURE

### 7:1I-3.1 Time for filing of claims

Claimants shall submit any claims to the Department not later than one year after the date of discovery of damages. With regard to claims filed by government entities, for damages resulting from contamination to private potable wells other than the claimant's own well(s), the date of discovery of damages is when the government entity agrees by vote, ordinance, resolution or other binding commitment, whichever occurs first, to restore, repair or replace the contaminated potable wells in question. With regard to property value diminution claims, damages, if any, are incurred when the property is sold. Claims for property value diminution, therefore, must be filed within one year of sale of the property. If a claimant fails to submit any claim to the Department within such one-year period, the claimant shall be deemed to have waived such claim. Such waiver is with prejudice and shall bar all recourse by the claimant against the Fund for any damages arising out of or related to the improper operation or improper closure of the sanitary landfill facility.

Amended by R.1999 d.91, effective March 15, 1999.  
See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

Inserted a new second sentence.

### Case Notes

No compensation permissible for landfill location-related damages when claim filed beyond one-year limitations period. *Cocco v. DEP*, 96 N.J.A.R.2d (EPE) 131.

Limitations under Sanitary Landfill Facility Closure and Contingency Fund Act would not be tolled. *Hurst v. Sanitary Landfill Contingency Fund*, 93 N.J.A.R.2d (EPE) 265.

Claim under Sanitary Landfill Facility Closure and Contingency Fund Act against Sanitary Landfill Contingency Fund was time-barred. *DeLuca v. DEPE*, 93 N.J.A.R.2d (EPE) 259.

Date of discovery of damage was date property owners should have discovered basis for claim against fund. *Wilde v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 47.

Claim for damages under the Sanitary Landfill Facility Contingency Fund filed more than one year after owners had knowledge of damage was untimely. *N.J.S.A. 13:1E-107. Curcio v. Environmental Claims Admin.*, 91 N.J.A.R.2d 5 (EPE).

### 7:1I-3.2 Submission of claim

(a) For the purposes of determining whether a claim has been timely filed pursuant to N.J.A.C. 7:1I-3.1, the following shall apply:

1. If the claimant submits the claim by United States mail, the claim will be deemed filed as of the date of mailing by the claimant. Claims submitted by mail must be sent in accordance with N.J.A.C. 7:1I-1.8; or
2. If the claimant submits the claim via another means of delivery, the claim will be deemed filed as of the date of receipt by the Department.

### 7:1I-3.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. The name of the claimant;
2. The street address of the claimant;
3. The mailing address of the claimant;
4. The telephone number of the claimant during normal daytime business hours;
5. The name, mailing address, telephone number, and relationship to the claimant of any person designated to receive communications from the Department pursuant to N.J.A.C. 7:1I-3.6;
6. Whether the claimant is an individual, general partnership, limited partnership, corporation, local government entity, Federal government entity, or state government entity;
7. A statement that the claimant has actually incurred damages, as such term is defined in N.J.A.C. 7:1I-1.5, that the claimant has not received compensation from any other source for such damages, and that the claimant is not an owner or operator or responsible party in relation to the

iv. A detailed description of the method employed by the claimant in calculating the claimed loss of income;

v. A statement of whether all income, sales and other accounting and financial information supporting the claim is available for inspection, copying and audit by the Department;

vi. If any of the information described in (b)11v above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vii. With respect to any of the information described in (b)11v above, which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

viii. If any of the information described in (b)11i through vii above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and the auditor's reports;

ix. A specific statement as to the nature of the health injuries and how the health injuries are related to the improper operation or improper closure of the sanitary landfill facility in question; and

x. Detailed records substantiating the personal injuries; effects or damages suffered by the claimant including any medical records, prognosis statements, and documentation indicating the monetary value of medical attention;

12. If the claimant is a limited partnership, the names and addresses of all general partners;

13. If the claimant is a general partnership, the names and addresses of all partners;

14. If the claimant is a corporation, the names and addresses of all directors and of all officers;

15. Any other information which the claimant believes to be relevant to the claim; and

16. Any other information which the Department deems necessary to process the claim.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating the damage resulting from the improper operation or improper closure of a sanitary landfill facility shall be presented as follows:

1. The claimant shall submit a compilation of all such costs, stating the aggregate amount of the costs incurred; and

2. The claimant shall submit a breakdown of the aggregate costs incurred, stating which portion of the aggregate

cost is attributable to ameliorating damage resulting from the improper operation or improper closure of the sanitary landfill facility, and which portion is not.

(d) The claimant shall submit all bills, invoices, receipts and other documentation in an orderly fashion, accompanied by an index and/or a summary if the Department determines that an index or summary would assist in the organized and expeditious processing of the claim.

(e) The Department may administratively close the claim pursuant to N.J.A.C. 7:11-2.7 for failure to provide information under this section.

Amended by R.1999 d.91, effective March 15, 1999.

See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

In (a), made an internal citation change in 9, substituted a reference to 30 days for a reference to 10 days in the last sentence of 10, and added 11 through 14; in (b)1, inserted new iii and iv, recodified former iii as v, and added vi and vii; and in (b)2, rewrote iv.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (a)11, substituted "pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31" for "if one has been issued by the Department"; in the introductory paragraph of (a)14, substituted "a final remediation document was issued" for "the Department issued a no further action letter"; in (a)14i, substituted "final remediation document" for "No Further Action letter"; in (b)1iii, substituted "a final remediation document was issued" for "the Department ever issued a no further action letter"; and in (b)1iv, deleted "Department issued a" preceding "covenant" and substituted "58:10C-31 applies to" for "concerning".

Administrative correction.

See: 42 N.J.R. 778(a).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

#### Case Notes

Environmental Protection Department's regulations enacted during claims processing suspension were applicable to previously filed claims. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Sanitary Landfill Facility Contingency Fund regulation which required a sale or attempt to sell property to prove damages was reasonable. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Department of Environmental Protection regulation prohibiting value diminution damage award was contrary to Sanitary Landfill Contingency Fund Act. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Department of Environmental Protection regulation preconditioning value diminution award was properly applied to pending claims. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Homeowners' claim against Sanitary Landfill Facility Contingency Fund was properly denied due to homeowners' failure to prove damages. *Gulite v. Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 326.

Homeowner was not entitled to compensation under landfill fund for unproven damages. *Dickel v. Environmental Claims Administration*, 96 N.J.A.R.2d (EPE) 139.

Properly run landfill; no basis for compensation claim. *Rizzi v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 108.

Homeowners' claim would be granted despite contention that they sold home without obtaining required appraisal figure and without offering it for sale according to formula set in regulation. *Allen v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 101.

Date of discovery of damage was date property owners should have discovered basis for claim against fund. *Wilde v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 47.

#### 7:11-3.4 Amendment of claim

(a) A claimant may amend a claim, or a response to the Department's request for information, with respect to the nature or extent of the damages, the cause of the damages, the amount of the claim, or any other information relevant to the claim, until the occurrence of the earliest of the following:

1. The approval of the claim by the Department;
2. The denial of the claim by the Department; or
3. The agreement to a settlement among a claimant and one or more owners or operators or other persons in connection with the sanitary landfill facility which is the subject of the claim.

#### 7:11-3.5 Consent to inspection; investigation

(a) Submission of a claim shall constitute consent by the claimant to allow the Department, and other persons designated by the Department:

1. To inspect all documents and property relating to his or her claim for damages including, but not limited to:
  - i. Financial, medical, employment and property records;
  - ii. Insurance policies; and
  - iii. Damaged real and personal property;
2. For all information submitted pursuant to N.J.A.C. 7:11-3.3, to copy and audit the information; and
3. To enter onto any property to which the claimant has the right to grant access, or to which the claimant has the right to compel another person to grant access. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant and shall not constitute a compensable damage payable by the Fund.

(b) In investigating claims for personal injuries, the Department may direct a medical examination of the claimant by an independent physician selected by the Department. The claimant shall present himself or herself to the physician selected at the time and place designated by the physician.

1. A written report of such examination shall be filed by the examining physician with the Department and a copy mailed by the Department to the claimant; and
2. If the Department has directed a medical examination by a physician selected by the Department, such

physician's fee shall be paid by the Department from the Fund.

#### 7:11-3.6 Communication with claimant or representative

The Department will direct all communications in connection with the claim to the person who signed the claim, unless the claimant submits to the Department a written statement, signed by the person required to sign the claim, designating a representative to receive communications from the Department.

#### 7:11-3.7 Notice to owner or operator

When, in the opinion of the Department, the claim is complete for payment pursuant to N.J.A.C. 7:11-2.2 and 3.3, the Department shall notify the owner or operator of the sanitary landfill facility by mailing a notice of the claim by certified mail, return receipt requested, to such owner or operator. In the case of multiple, related claims (series claims), the Department will notify the owner or operator of the sanitary landfill facility of the first claim of the series only. This notification will include an estimate of the approximate number of claims expected in that series if known, and will give notice that copies of all further claims must be requested in writing.

### SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

#### 7:11-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that the subject property has been sold and such diminution proximately results from the improper operation or improper closure of a sanitary landfill facility. A diminution of property value may be deemed attributable to the improper operation or improper closure of a sanitary landfill facility notwithstanding the lack of any physical intrusion resulting from the sanitary landfill facility onto the subject property.

#### Case Notes

Possible ground water contamination resulting from the discharge of hazardous substance entitled homeowners to damages. *McDonald v. DEPE*, 94 N.J.A.R.2d (EPE) 10.

#### 7:11-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:11-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject property and the Department determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:11-4.3 and the information submitted pursuant to N.J.A.C. 7:11-4.5.