

CHAPTER 1J

PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SPILL COMPENSATION AND CONTROL ACT

Authority

N.J.S.A. 13:1D-9 and 58:10-23.11 et seq.

Source and Effective Date

R.2009 d.75, effective January 31, 2009.
See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, expires on January 31, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, was adopted as R.1993 d.2, effective January 4, 1993. See: 24 N.J.R. 1255(a), 25 N.J.R. 68(a).

Pursuant to Executive Order No. 66(1978), Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, was readopted as R.1998 d.67, effective December 23, 1997. See: 29 N.J.R. 4365(a), 29 N.J.R. 4594(a), 30 N.J.R. 336(b). Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, expired on June 21, 2003.

Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, was adopted as new rules by R.2003 d.327, effective August 4, 2003. See: 35 N.J.R. 543(a), 35 N.J.R. 3611(a).

Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, was readopted as R.2009 d.75, effective January 31, 2009. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

How to Obtain Public Funds for Private Cleanup. Daniele Cervino. 139 N.J.L.J. No. 8, S8 (1995).

Spill Fund Claims Eligibility and Arbitration. Mark D. Oshinskie, 154 N.J.L.J. 256 (1998).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:1J-1.1 Scope

This chapter constitutes the rules of the Department concerning the processing of all claims under the Act for damages resulting from the discharge of a hazardous substance or a threatened discharge of a hazardous substance.

7:1J-1.2 Construction and applicability

(a) This chapter shall be construed liberally to permit the Department and the administrator to fulfill their statutory functions. 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 or denied on or before the operative date of this chapter, notwithstanding the date upon which any such claim was filed with the Department.

Case Notes

Prior to adoption of statutory amendment to Spill Compensation and Control Act, transferee of property was not legally obligated to make diligent inquiry in advance of acceptance of transfer in order to be absolved from statutory responsibility for environmental cleanup costs, and to extent that administrative regulations were inconsistent with Spill Act as it existed prior to that amendment, they were inoperative as to transfers made prior to amendment's effective date. *Marsh v. New Jersey Spill Compensation Fund and Environmental Claims Admin.*, 286 N.J.Super. 620, 670 A.2d 67 (A.D.1996).

Spill Compensation and Control Act strict liability provision only applies to prospective spills, except for Department of Environmental Protection cleanup and removal costs; discharge defined. *Atlantic City Municipal Utilities Authority v. Hunt*, 210 N.J.Super. 76, 509 A.2d 225 (App.Div.1986).

Remedy under Spill Compensation Fund requires evidence that discharge of hazardous materials occurred after effective date of Spill Compensation and Control Act. *Bayonne Industries, Inc. v. Spill Compensation Fund*, 96 N.J.A.R.2d (EPE) 365.

Spill Compensation Fund is not liable for damages resulting from spill that occurred prior to Spill Act's effective date. *Herz v. Environmental Claims Administration*, 96 N.J.A.R.2d (EPE) 71.

7:1J-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.

7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

"Administrator" means the chief executive of the Fund.

"Affected area" means, with respect to a water supply system claim, the area within or outside the Spill Fund Claims Area for which the Department has determined, pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge.

"Applicable contaminant standard" means the remediation standard developed pursuant to N.J.A.C. 7:26D or N.J.S.A. 58:10B-12, for any particular hazardous substance.

"Board" means a Board of Arbitration convened by the administrator pursuant to N.J.A.C. 7:1J-9.1.

"Claim" means a 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. 7:1J-6.4.

"Claimant" means the person filing a claim.

"Cleanup and removal costs" means all costs associated with a discharge, incurred by the State, or its political subdivisions, or their agents, or any person with written

(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.

7:1J-6.9 (Reserved)

New Rule, R.1998 d.67, effective January 20, 1998.
 See: 29 N.J.R. 4365(a), 29 N.J.R. 4594(a), 30 N.J.R. 336(b).
 Special repeal, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
 See: 41 N.J.R. 4467(a).
 Section was "Remediation of discharge which is subject of claim".
 Readoption of special repeal, R.2011 d.251, effective September 8, 2011.
 See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).
 Provisions of R.2009 d.361 readopted without change.

SUBCHAPTER 7. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND POTENTIALLY RESPONSIBLE PARTIES

7:1J-7.1 Notice of claim to potentially responsible party

(a) If the administrator determines that a person is a potentially responsible party in connection with a discharge which is the subject of a claim, the administrator shall provide such person with written notice of the claim.

(b) The written notice provided under (a) above shall state the following:

1. The nature of the claim;
2. The identity of the claimant;
3. The time period established for settlement negotiations under N.J.A.C. 7:1J-7.2; and
4. The right to contest the validity or amount of the claim by requesting arbitration under N.J.A.C. 7:1J-8.2(a).

7:1J-7.2 Settlement negotiations

(a) If the administrator determines that one or more persons are potentially responsible parties in connection with a discharge which is the subject of a claim, the administrator shall establish a time period for settlement negotiations between all potentially responsible parties and the claimant. Such time period shall be no longer than 60 days, commencing as of the date set forth in the written notice under N.J.A.C. 7:1J-7.1, unless the administrator, the claimant and all potentially responsible parties agree upon a longer period. During this settlement negotiation period, all parties shall negotiate in good faith in attempt to resolve the subject claim. Such settlement negotiation period may be extended upon the agreement of the administrator, the claimant and all potentially responsible parties.

(b) The administrator may arrange for the assistance of a neutral third party to attempt to promote and arrange a settlement between the claimant and the potentially responsible parties.

7:1J-7.3 Effect of settlement between claimant and potentially responsible party

(a) If the source of the discharge which is the subject of the claim is determined, and one or more potentially responsible parties concede liability, the claimant and such potentially responsible parties may agree to a settlement which shall be final and binding upon the parties and which will waive all recourse by that claimant against the Fund in connection with the discharge which is the subject of the claim. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(b) If the source of the discharge which is the subject of the claim has not been determined, or if no potentially responsible party has conceded liability, the claimant and such potentially responsible parties may nonetheless agree to a settlement. Such settlement shall operate as a waiver by that claimant of all recourse against the Fund in connection with the discharge which is the subject of the claim, if the terms of the settlement in any way prejudice the subrogation or assignment rights of the Fund, or in any way impair the Fund's ability to obtain cost recovery. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(c) Notwithstanding the waiver under (a) or (b) above, if the settling potentially responsible party is or becomes insolvent or otherwise unable to perform its obligations under the settlement, the administrator may, in its discretion, allow the claimant to reinstate the claim against the Fund. If the claim is reinstated, the Fund shall not be bound by any aspect of the settlement with the potentially responsible party.

SUBCHAPTER 8. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND FUND

7:1J-8.1 Request for payment upon failure to identify or settle with potentially responsible party

(a) A claimant may request payment of a claim from the Fund, if:

1. Based upon the information supplied by the claimant and other information obtained by the Department, the administrator has determined that he or she cannot identify any potentially responsible parties for the discharge from which the claim arose; or

2. The claimant has made good faith efforts to enter into a settlement with one or more potentially responsible parties, but has not entered into any such settlement within the time allotted under N.J.A.C. 7:1J-7.2.

(b) Upon receipt of a request under (a) above for payment of a claim from the Fund, the administrator shall provide written notice of the request to any potentially responsible parties who have been designated at or before the time of such claim.

7:1J-8.2 Contest of validity or amount of claim

(a) Any potentially responsible party may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If a person receiving notice of the claim under N.J.A.C. 7:1J-7.1 has not delivered a request for arbitration within 20 days after the date of delivery of the notice of the claim (or, if such person has refused delivery of the notice, 20 days after the date of mailing of the notice), such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(b) The administrator may contest the amount or validity of the claim by submitting the claim to arbitration.

(c) Any other person may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If the person seeking to contest the claim has not delivered a request for arbitration within 20 days after receiving actual notice of the claim such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(d) Upon receipt of a request for arbitration under (a) or (c) above, the administrator shall provide the person requesting arbitration with a copy of all information submitted to the administrator under N.J.A.C. 7:1J-6.3(a) and (b). Within 20 days after receipt of such information, the person requesting arbitration shall submit the following information to the administrator in writing:

1. The name, address and telephone number of the person requesting arbitration, and such person's authorized representative;

2. A denial of each fact asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b) which the person requesting arbitration disputes. The denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the person requesting arbitration believes them to be;

3. If the person requesting arbitration asserts that, based upon the facts asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b), the claim is invalid or the amount is unreasonable as a matter of law, a specific explanation of the legal basis for that assertion;

4. Copies of written documents which the person requesting arbitration is relying upon to support its assertions and the request;

5. An estimate of the time required for the hearing; and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(e) If the person requesting arbitration does not submit the information required under (d) above within the time allotted under (d) above, the administrator shall deny the request. If the person requesting arbitration fails to include all of the information required under (d) above, the administrator may deny the request.

(f) The administrator may require that the person requesting arbitration submit additional information beyond that required under (d) above, if the administrator determines that such information is necessary to provide the administrator, the Department, the claimant or the Board with adequate notice of the specific factual or legal bases for the objections by the person requesting arbitration to the validity or amount of the claim.

Case Notes

Department of Environmental Protection's initial acceptance of borough's claim for reimbursement from Spill Compensation Fund for contamination of groundwater well did not preclude arbitrator from subsequently ruling that claim was not valid. *Handy & Harman v. Borough of Park Ridge*, 302 N.J.Super. 558, 695 A.2d 747 (N.J.Super.A.D. 1997).