

“Useful storage capacity” means that portion of a water storage facility capable of meeting the distribution system pressure requirements contained in N.J.A.C. 7:10-11.7(c) and 7:19-6.7.

“Water purveyor” means a person which owns, operates, manages or controls a water supply system, plant or equipment.

“Water Supply System Claim,” or “WSSC,” means a claim (whether asserted by a water purveyor or any other person) for compensation for construction and ancillary costs associated with providing an alternative supply of water required because of damage to an existing supply of water caused by a discharge of a hazardous substance.

Amended by 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).

Amended “Applicable containment standard”, “Damages”, “Person”, “Potable water”, and added paragraph 7 to “Damages”.

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

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

Inserted “Covenant not to sue”, Engineering controls”, Institutional controls” and “No further action letter”.

**Case Notes**

One-year limitations period for spill fund claims brought by township municipal utilities authority did not begin until authority actually expended the water line extension costs for which it sought reimbursement; inasmuch as no costs were actually incurred by authority until payment was authorized, discovery of authority’s damages coincided with the date the governing body authorized payment of the expenditure. *Lacey Mun. Utilities Authority v. New Jersey Dept. of Environmental Protection*, 312 N.J.Super. 298, 711 A.2d 932 (N.J.Super.A.D. 1998).

Purchasers not entitled to attorney fees; sellers owned property when fuel oil tank leaked. In *Matter of Spill Compensation and Control Act Claim of Thomas*, 93 N.J.A.R.2d (EPE) 79.

**7:1J-1.5 Delegation**

The administrator may delegate administrative, supervisory, or investigatory authority to members of the Department’s staff. The administrator 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 administrator under the Act, including, but not limited to, the performance of claims adjustment services.

**7:1J-1.6 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.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).

In (b), added language detailing criminal liability for false statements.

**7:1J-1.7 Notices and other communications**

All claims, notices, requests and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All such communications sent to the Department by certified mail shall be sent to the following address:

Department of Environmental Protection  
Environmental Claims Administration  
PO Box 028  
Trenton, New Jersey 08625-0028

All such communications sent to the Department by means for which a street address is required by the carrier shall be sent to the following address:

Department of Environmental Protection  
Environmental Claims Administration  
401 East State Street  
Trenton, New Jersey 08609

All such communications to the claimant shall be sent to the mailing address set forth in the claim under N.J.A.C. 7:1J-6.3(a)3, unless the claimant directs otherwise under N.J.A.C. 7:1J-6.7.

Amended by 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).

#### 7:1J-1.8 Computation of time

(a) In computing any period of time fixed by or under this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(b) In computing any period of time fixed by or under any provision of this chapter, "days" shall mean calendar days, unless the provision specifies working days.

## SUBCHAPTER 2. CLAIMS GENERALLY

#### 7:1J-2.1 Persons who may submit a claim

Any person claiming to have incurred damages may submit to the Department a claim for such damages. No subrogee or assignee of a person who has incurred damages may submit a claim. No claim by a subrogee or assignee of a person who has incurred damages shall be eligible for compensation from the Fund.

#### 7:1J-2.2 Provisions applicable to all claims

The provisions of N.J.A.C. 7:1J-1, 2, 6, 7, 8 and 9 are applicable to all claims made pursuant to this chapter, including without limitation water supply system claims pursuant to N.J.A.C. 7:1J-3, and property value diminution claims pursuant to N.J.A.C. 7:1J-4. The provisions of N.J.A.C. 7:1J-1, 2 and 6 are applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5; the provisions of N.J.A.C. 7:1J-7, 8 and 9 are not applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5.

#### 7:1J-2.3 Burden of proof

No claim shall be eligible for compensation from the Fund unless the claimant shows by a preponderance of the evidence that the claim satisfies all requirements for eligibility under the Act and this chapter, and that the amount of the claim correctly reflects and is reasonable in relation to the damages which the claimant has sustained.

#### 7:1J-2.4 Damages actually incurred; mitigation

(a) A claim shall not be eligible for compensation from the Fund unless the claimant has actually suffered the damages which are the subject of the claim. A claim shall be ineligible for compensation from the Fund to the extent that the damages which are the subject of the claim are contingent or speculative.

(b) A claim shall be ineligible for compensation from the Fund to the extent that the claimant has received compensation from any other source for damages which are the subject of the claim. The claimant shall exercise best efforts to obtain compensation from any other source from which compensation is reasonably likely to be available, including, without limitation, insurance policies, court awards, contractual rights, grants or other financial assistance from the Hazardous Discharge Site Remediation Fund, N.J.S.A. 58:10B-4, the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, N.J.S.A. 58:10A-37.3 and any other remedies provided under statutory or common law (including, without limitation, remedies with respect to a potentially responsible party under N.J.A.C. 7:1J-7). In determining the amount of the award, if any, the administrator shall reduce the award by the amount of compensation already received by the claimant for the damage which is the subject of the claim. The administrator may suspend processing of any claim pending the completion of the claimant's efforts to obtain compensation from such other sources.

(c) The claimant shall exercise reasonable diligence and ordinary care to mitigate or to prevent the damages by the claimant from increasing or being aggravated. Additional damages that are the result of claimant's failure to mitigate damages shall not be eligible for compensation from the Fund.

(d) A claim shall not be eligible for compensation from the Fund if the claimant knew or should have known at the time of purchase that the property which is the subject of the claim is contaminated or otherwise impacted by a discharge of hazardous substances.

(e) A claim shall be eligible for compensation from the Fund only to the extent that the claim is for costs associated with remediation which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge, and cost effective. Environmentally sound remediation is remediation conducted in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. To determine if the remediation is cost-effective, the Department shall consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, reliability and feasibility of implementation.