

approval from the Department, in: the removal or attempted removal of a hazardous substance; or the taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the Department for the indemnification and legal defense of contractors pursuant to the Act, subject to the appropriation by law of moneys from the General Fund to the Fund to defray these costs.

“Covenant not to sue” means a covenant pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31.

“Damages” means all cleanup and removal costs and all direct and indirect damages actually incurred, no matter by whom sustained, arising in connection with a discharge of a hazardous substance, or in connection with a threatened discharge, which costs and damages include, but are not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge in comparison with its value absent the discharge;

2. The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

3. Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge, provided that such loss or impairment exceeds 10 percent of the amount which the claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

4. Loss of tax revenue by a state or local government for a period not to exceed one year, due to damage to real or personal property proximately resulting from a discharge (which one-year period, in the case of lost real property tax revenue, commences on the effective date of the first reduction in the assessed value of real property for damage proximately resulting from the discharge);

5. Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment or settlement of a claim;

6. Such sums as may be necessary to reimburse a local unit for costs incurred in an emergency response action taken to prevent, contain, mitigate, cleanup or remove a

discharge or threatened discharge of a hazardous substance; and

7. Costs for legal services necessary for remediating contamination, including attorney’s fees for contracting or obtaining permits, drawing of ordinances, acquisition of land and rights of way, drawing and administering construction contracts, and for legal work connected with necessary financing for the construction by a municipal utility authority of a new water system. Damages do not include costs normally associated with the listing, sale and transfer of property which is the subject of a claim.

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

“Discharge” means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

“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.

“Emergency response action” means those activities conducted by a local unit to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

“Emergency response claim” means a claim by a local unit for reimbursement of costs incurred in an emergency response action.

“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, N.J.A.C. 7:26C-1.3.

“Fund” means the New Jersey Spill Compensation 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.

“GPD” means gallons per day.

“GPM” means gallons per minute.

“Ground water” means the portion of water beneath the land surface that is within the zone of saturation (below the water table) where the pore spaces are filled with water.

“Hazardous substance” means any substance defined as such under the Discharges of Petroleum and Other Hazardous Substances regulations, N.J.A.C. 7:1E-1.7.

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

“Local unit” means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

“Most probable ground water flow direction” means the most probable direction of ground water flow within the Spill Fund Claims Area, as determined by the Department.

“Most probable pollutant transport rate” means the most probable rate at which each hazardous substance present in ground water in a concentration exceeding the applicable contaminant standard will be transported within the ground water flow regime, as calculated by the Department pursuant to N.J.A.C. 7:1J-3.8(c).

“Natural resources” means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

“Notice of Intent to Deny,” or “NOI,” means a notice issued by the administrator to a claimant pursuant to N.J.A.C. 7:1J-6.6, notifying the claimant that the claimant’s claim lacks sufficient information to support a determination that the claim is eligible for compensation from the Fund.

“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.

“Point-of-entry water treatment system” or “POET” means a water treatment system used to remove contaminants from the water entering a structure from a potable well.

“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 firefighting, for agricultural purposes, or for other non-potable purposes.

“Potentially responsible party” means any person who may have discharged a hazardous substance from which a claim arises, or may be responsible in any way for any hazardous substance from which a claim arises, including, without limitation, any of the following:

1. Any person whose act or omission results or has resulted in a discharge;
2. Each owner or operator of any land, facility, vehicle or vessel from which a discharge has occurred;

3. Any person who owns or controls any hazardous substance which is discharged;

4. Any person who has directly or indirectly caused a discharge;

5. Any person who has allowed a discharge to occur; or

6. Any person who brokers, generates or transports the hazardous substance discharged.

“Pre-Act discharge” means a discharge of a hazardous substance which occurred before April 1, 1977.

“Private water purveyor” means a water purveyor which is not a government entity. The term “private water purveyor” does not include a municipal utilities or county utilities authority organized pursuant to N.J.S.A. 40:14B.

“Spill Fund Claims Area,” or “SFCA,” means the geographic area delineated by the Department pursuant to N.J.A.C. 7:1J-3.6.

“Subject property” means property which is the subject of a claim.

“Threatened discharge” means any of the following circumstances with respect to a hazardous substance:

1. A hazardous substance which has not been discharged from a grounded or disabled vessel, if the Department determines that such removal is necessary to prevent an imminent discharge of such hazardous substance; or

2. A hazardous substance which has not been discharged, if the Department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:

- i. Explosiveness;
- ii. High flammability;
- iii. Radioactivity;

- iv. Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment;

- v. Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

- vi. High toxicity and is stored or being transported in a container or motor vehicle, truck, railcar or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, railcar or other mechanized conveyance, and such

discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

“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. Ancillary costs shall not include the cost of operation, monitoring and maintenance.

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”.

Amended by R.2009 d.75, effective March 2, 2009.

See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).

Rewrote definition “Applicable contaminant standard”; in definition “Most probable pollutant transport rate”, deleted “or other applicable maximum level” following “standard”; in definition “No further action letter”, updated the N.J.A.C. reference; added definition “Point-of-entry water treatment system”; in definition “Potable water”, substituted a comma for “or” following “firefighting”, and inserted “, or for other non-potable purposes”; and in definition “Water Supply System Claim”, inserted the last sentence.

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”.

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 ad-

ministrator 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

(a) Subject to (c) below, 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 communications submitted pursuant to this subsection shall be sent to the Department by certified mail to the following address:

Department of Environmental Protection
Environmental Claims Administration
PO Box 413
Trenton, New Jersey 08625-0413

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.

(b) Subject to (c) below, all invoices for compensation for POET installation, operation and maintenance shall be submitted in an electronic format acceptable to the Department, and in accordance with the following:

1. Invoices for the cost of the installation of a POET shall be submitted within 60 days after the installation a POET;
2. Invoices for the cost of the operation and maintenance of the POET shall be submitted within 60 days after each date on which the POET is serviced;
3. The results of all analytical monitoring for POETs required by the Department shall be submitted within 60 days after each sampling event; and
4. Any invoices and analytical monitoring data submitted electronically under this subsection may be submitted to the Department by a water treatment vendor or laboratory that is chosen by the claimant to provide these services.

(c) Electronic submittal of invoices and analytical monitoring data for POET claims as required pursuant to (b) above shall be required on or after the date that is 60 days from the date that the Department publishes a notice in the New Jersey Register that the Department's system for

receiving electronic submittals is functioning. All claims other than POET claims shall continue to be submitted in accordance with (a) above.

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 by R.2009 d.75, effective March 2, 2009.
See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).

Inserted designation (a); in (a), substituted "Subject to (c) below, all" for "All", updated the first address, deleted "such" preceding the second occurrence of "communications" and "shall be sent" following the second occurrence of "mail", and inserted "submitted pursuant to this subsection shall be"; and added (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

(a) 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.

(b) The administrator shall prioritize the categories of claims that are eligible for compensation in the following order:

1. Potable water restoration and vapor intrusion mitigation at residential properties;
2. Potable water restoration and vapor intrusion mitigation at schools and child care facilities; and

3. All other categories of claims.

Amended by R.2009 d.75, effective March 2, 2009.
See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).
Inserted designation (a); and added (b).

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.

Case Notes

Substantial evidence supported arbitrator's determination that ground-water contamination was caused by discharge from underground gas tanks occurring after effective date of Spill Compensation and Control Act (Spill Act), thus entitling township water utility to reimbursement from Spill Compensation Fund for extending water service to contaminated areas; tanks were installed eleven years before effective date of Spill Act, tanks were relined, indicating leakage, nine years after effective date of Spill Act, contamination was detected in year tanks were relined, and travel time from tanks to contaminated wells was 368 days. *Lacey Municipal Utilities Authority v. New Jersey Dept. of Environmental Protection*, 848 A.2d 843.

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, the Department's administrative costs, reliability and feasibility of implementation.

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 (b) and (c) and added new (d) and (e).
Amended by R.1999 d.91, effective March 15, 1999.
See: 30 N.J.R. 4157(a), 31 N.J.R. 763(a).

In (b), inserted references to court awards, and to grants or other financial assistance from the Hazardous Discharge Site Remediation Fund and the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund in the second sentence.
Amended by R.2009 d.75, effective March 2, 2009.
See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).

In (e), inserted "the Department's administrative costs,".

Case Notes

Lack of due diligence following conversion from oil to gas precluded owners from obtaining compensation for discharge from leaking oil tank. *Katz v. Spill Compensation Fund and Blackford*, 95 N.J.A.R.2d (EPE) 240.

7:1J-2.5 Overlapping claims

(a) A claim shall not be eligible for compensation from the Fund to the extent that the Fund has already paid or settled another claim for the same damages.

(b) If two or more claims include an assertion of the same damages, the administrator shall apportion payment for such damages among the claimants or exclude certain of the claims from payment. The administrator shall base the apportionment or exclusion upon the administrator's determination of which claimants have actually incurred the damages in question.

(c) On or after March 2, 2009, the purchaser of a property on which a POET has been installed and maintained at the expense of the Fund may not make a claim for compensation from the Fund for ongoing POET operation, monitoring and maintenance costs. The seller of a property on which a POET has been installed and maintained at the expense of the Fund shall notify the Department in writing within 30 days of executing a binding contract of sale for that property.

Amended by R.2009 d.75, effective March 2, 2009.
See: 40 N.J.R. 5101(a), 41 N.J.R. 1019(a).
Added (c).

7:1J-2.6 Waiver of damages not set forth in claim

The claimant shall be deemed to have waived any damages which are not set forth in the claim or in any response to the Department's request for information under N.J.A.C. 7:1J-6.3(b), or in any amendment to such claim or response under N.J.A.C. 7:1J-6.4.

7:1J-2.7 Claims by responsible parties or by owners or occupants of property from which discharge has emanated

(a) If a person in any way responsible for a discharge which is the subject of the claim, or for any hazardous substance which is the subject of the claim makes a claim in connection with the subject discharge, the claim shall be ineligible for compensation from the Fund unless:

1. The claimant is the owner or operator of a major facility or vessel responsible for the discharge; and
2. The claimant establishes one or more of the defenses provided under N.J.S.A. 58:10-23.11g(d).

(b) If, after a discharge occurs, a person purchases or otherwise voluntarily acquires or obtains title to the land from which the discharge emanated, claims by such purchaser in connection with the discharge are ineligible for compensation from the Fund, unless such purchaser 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 any hazardous substance has been discharged or was discharging from the property in question; 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;
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 any affirmative or voluntary 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 (b)1 above shall govern eligibility of the government entity's claim; or
3. The claimant acquired the subject property after the issuance of a final remediation document concerning the subject property or a portion of the subject property 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 subject property; and

iii. The claim is for the payment of damages in response to a Department order that the claimant conduct additional remediation at the subject property; except if the order is for any additional remediation that is required to remove an institutional control.

(c) Notwithstanding (a)2 above, a claimant who is relieved from liability pursuant to N.J.S.A. 58:10-23.11g(d) is not eligible for compensation from the Fund if the claimant:

1. Benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31 for a remediation that involves engineering controls at the property, or acquired the subject property after the issuance of the final remediation document for a remediation at the subject property that involves the use of engineering controls and seeks payment for damages relating to the real property and remediation covered by the covenant not to sue; or

2. Benefits from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31 for a remediation that involves only the use of institutional controls at the subject property, or acquired the subject property after the issuance of a final remediation document for a remediation at the subject property that involves only the use of institutional controls, if the damages claimed proximately result from removing the institutional controls from the subject property.

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

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

In (b), added 3 and made a corresponding language change; and added (c).

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

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

In the introductory paragraph of (b)3, substituted "issuance of a final remediation document" for "Department issued a No Further Action letter"; in (b)3i, substituted "final remediation document" for "No Further Action letter"; and in (c)1 and (c)2, deleted "issued by the Department" following "sue", inserted "or 58:10C-31" and substituted "issuance of the final remediation document" for "Department issued a no further action letter".

Law Review and Journal Commentaries

Court Tightens Spill Fund's Purse Strings. Lewis Goldshore and Marsha Wolff, 151 N.J.L.J. 268 (1998).

Course Correction: A Reasonable Reading of the Spill Act's Responsible Party and Due Diligence Language. Mark Oshinskie, 152 N.J.L.J. 940 (1998).

Case Notes

Spill Compensation and Control Act regulation establishing that owners of contaminated property could not recover from Spill Compensation Fund if they failed to exercise reasonable diligence before acquiring their property was not invalid merely because it preceded enactment of

7. A statement that the claimant claims to have actually incurred damages, as such term is defined in N.J.A.C. 7:1J-1.4, that the claimant has not received compensation from any other source for such damages, and that the claimant is not a potentially responsible party in connection with the discharge which is the subject of the claim. Such statement need not be specific about the amount or the nature of such damages;

8. If the claim is for property value diminution, all documents required by N.J.A.C. 7:1J-4.5 to be submitted with the claim, and a statement that the claimant has contracted to sell or has sold the subject property;

9. A statement that the claimant cannot benefit from a covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31 for the subject property and why;

10. A statement that the damages being claimed are not the proximate result of additional remediation to remove an institutional control at the subject property; and

11. A statement that the claimant is the purchaser of a subject property for which a final remediation document has been issued for the entire property or any part thereof, and that all of the following apply:

- i. The remediation which is the subject of the final remediation document involved the use of an institutional control and not an engineering control;
- ii. The claimant is a person who qualifies to be relieved from liability pursuant to N.J.S.A. 58:10-23.11g(d) or (f) for the contamination at the subject property and why; and
- iii. The Department has ordered the claimant to remediate the contamination.

(b) The claimant shall submit to the Department any of the following types of information requested by the Department:

1. The location of the property from which the claimant believes the discharge to have emanated or at which the threatened discharge occurred, including the name of the site, the street address, the municipality, and the county;

2. With respect to all persons whom the claimant believes to be responsible for the discharge or threatened discharge:

- i. The name and address of each such person;
- ii. If known to the claimant, whether each such person is an individual, general partnership, limited partnership, corporation or government entity;
- iii. Whether any such person has admitted responsibility for the discharge or threatened discharge from which the claim arose, or liability for the amount of damages for which the claim is being made; and

iv. If any such person has admitted responsibility or liability pursuant to (b)iii above, the names of such persons and the nature of such admissions;

3. With respect to a claim involving damage to personal property:

- i. The date or dates on which the damage occurred;
- ii. The location of the personal property at the time the damage occurred;
- iii. A description of the personal property which was damaged;
- iv. A description of the damage;
- v. The original cost paid by the claimant for the damaged personal property;
- vi. The date the claimant acquired the damaged personal property;
- vii. Evidence of the claimant's ownership of the damaged personal property;
- viii. An estimate of the cost of repairing the damage to the personal property, and an estimate of the value of the damaged personal property as of the time of the damage;
- ix. The name, address and qualifications of any persons who prepared the estimates required by (b)3viii above; and
- x. The location at which the administrator or his designee can inspect the damaged personal property;

4. A description of any damage to real property located thereon, including:

- i. The date on which the damage occurred;
- ii. The precise location of the damaged real property, including the street address, the tax lot and block, the municipality, and the county;
- iii. A description of the predominant use of the damaged real property;
- iv. A detailed description of the damage to the real property, including whether the damages include costs associated with installing, maintaining, monitoring or removing engineering or institutional controls;
- v. An estimate of the cost of remediating the damage, and the name, address and qualifications of the person making the estimate; and
- vi. A description of the claimant's interest in the damaged real property; and documents evidencing such interest. Documents evidencing fee title to the damaged real property shall include an affidavit of title executed by the claimant, together with either a copy of the recorded deed conveying title to the claimant, or an owner's title insurance policy insuring the claimant's

interest in the property. Documents evidencing a leasehold interest in the property shall include a copy of the lease for the property, together with an affidavit of the claimant stating that the lease is in full force and effect;

5. A detailed description of the facts known to the claimant which support the claim, including without limitation the following:

i. The facts which lead the claimant to believe that the discharge caused the damages suffered by the claimant; and

ii. The facts which lead the claimant to believe that a person is a potentially responsible party;

6. The names and addresses of any witnesses known to the claimant who may have knowledge concerning the discharge, threatened discharge, or damage;

7. The names of any public agencies (including without limitation any local or state police or any other local, state, interstate or federal agencies) who have investigated the discharge or threatened discharge, and, if known to the claimant, the names of the persons who conducted the investigations on behalf of such agencies;

8. If any of the damaged real or personal property or any of the asserted lost income or tax revenue may be covered by any insurance policy or policies, or other financial agreement or instrument under which compensation may be available, the following information:

i. The name and address of the insurance carrier which issued the policy, or issuer of the other financial agreement or instrument;

ii. The policy number or other applicable reference number;

iii. A copy of the certificate of insurance or other financial agreement or instrument; and

iv. Copies of any correspondence between the insurance carrier or issuer of the other financial agreement or instrument and the claimant or the claimant's representatives concerning the discharge or threatened discharge;

9. The names and addresses of any persons other than the Fund (including without limitation insurance companies) against whom the claimant has asserted a claim;

10. Whether the claimant has received or agreed to receive any compensation from any person in connection with the discharge or threatened discharge, and the details of any such compensation or agreement to receive compensation;

11. A description of any action taken to repair, restore or replace damaged real property, including without limitation the following:

i. The name and address of the person who has taken such action; and

ii. The cost of such action;

12. If the claimant asserts damages which include a loss of income, the claim shall include the following information:

i. The total amount of the claimed loss of income;

ii. The period of time during which the claimant asserts that the loss of income has occurred;

iii. If the claimant asserts that the loss of income has occurred over a period exceeding 12 months, a breakdown of the loss of income by three-month periods, with the first such period commencing on the date of discovery;

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)12v 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)12v above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information; and

viii. If any of the information described in (b)12v 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 of the auditors' reports;

13. If the claimant asserts damages which include a loss of tax revenue, the claim shall include the following information:

i. The total amount of the claimed loss of tax revenue;

ii. The period of time during which the claimant asserts that the loss of tax revenue has occurred;

iii. A detailed description of the method employed by the claimant in calculating the claimed loss of tax revenue;

iv. A statement of whether all financial information supporting the claim is available for inspection, copying and audit by the Department;

v. If any of the information described in (b)13iv above is not available for inspection, copying and audit,

an explanation of why such information is unavailable for such purposes;

vi. With respect to the information described in (b)13iv above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

vii. If any of the information described in (b)13iv 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 of the auditors' reports;

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

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

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

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

18. Any other information which the Department deems necessary to process the claim, including, but not limited to, the following:

i. Whether there is a final remediation document concerning the subject property or a portion thereof, and whether the remediation at the subject property involved an institutional control and/or engineering control;

ii. Whether a covenant not to sue exists pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31 concerning the subject property or a portion of the property; and

iii. Whether the claimant has applied for financial assistance or a grant from the Hazardous Discharge Site Remediation Fund established pursuant to N.J.S.A. 58:10B-4 or the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, N.J.S.A. 58:10A-37.3.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating damage resulting from a discharge 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 discharge, 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 administrator may administratively close the claim pursuant to N.J.A.C. 7:1J-2.8 for failure to provide information under this section.

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).

Deleted (a)8 and recodified (a)9 as (a)8.

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), added 9 through 11; and in (b), rewrote 4iv and 18.

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

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

In (a)9, substituted "pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31" for "if one has been issued by the Department"; in the introductory paragraph of (a)11, substituted "a final remediation document has been issued" for "the Department issued a No Further Action letter"; in (a)11i, substituted "final remediation document" for "No Further Action letter"; in (b)18i, substituted "there is a final remediation document" for "the Department ever issued a No Further Action letter"; and in (b)18ii, deleted "the Department issued" following "Whether" and inserted "exists" and "or 58:10C-31".

7:1J-6.4 Amendment of claim

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: the approval of the claim by the administrator; the denial of the claim by the administrator; or the agreement to a settlement among a claimant and one or more potentially responsible parties.

7:1J-6.5 Consent to inspection

(a) Submission of a claim shall constitute consent by the claimant to the following:

1. The inspection of the damaged real and personal property by the administrator, the Department, a Board of Arbitration convened by the administrator pursuant to N.J.A.C. 7:1J-9.1 (Board) and other persons designated by the administrator, the Department or the Board;

2. For all information submitted pursuant to N.J.A.C. 7:1J-6.3(b)12, 13, 14 or 15, the inspection, copying and audit of such information by the Department, the Board, and other persons designated by the administrator, the Department or the Board; and

3. The entry by the administrator, the Department, the Board, and other persons designated by the administrator or by the Board, 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 to perform remediation activities. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant.

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-6.6 Notice of Intent to Deny; Denial

(a) The administrator shall deny a claim which, on its face, appears to be ineligible for compensation from the Fund.

(b) The administrator may issue a Notice of Intent to Deny (NOI) with respect to any claim which, on its face, does not contain information sufficient to support a determination that the claim is eligible for compensation from the Fund. The administrator shall send the claimant the NOI by certified mail, return receipt requested.

(c) The claimant may contest the NOI by submitting to the Department additional evidence in support of the claim, and evidence that any material fact set forth in the NOI is incorrect. The claimant shall submit such evidence within 30 days after the date on which the claimant received the NOI; provided however, that if the claimant has refused delivery of the NOI, the claimant shall submit such evidence within 30 days after the date the administrator mailed the NOI.

(d) If, after reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim does not clearly fail to satisfy the requirements for eligibility for compensation from the Fund, the administrator shall withdraw the NOI and process the claim in accordance with this chapter.

(e) The administrator shall deny the claim after the expiration of the 30-day period allotted under (c) above, if:

1. The claimant fails to submit any evidence to the Department within the 30-day period; or

2. After reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim clearly fails to satisfy the requirements for eligibility for compensation from the Fund.

(f) If the administrator denies the claim pursuant to (a) or (e) above, the administrator shall prepare a written statement setting forth the denial and the reasons therefor. The administrator shall send the claimant a copy of the statement by certified mail, return receipt requested.

(g) A claimant may request that a denial of a claim be arbitrated under N.J.A.C. 7:1J-9 if the denial was based solely upon the validity of the claim, and not upon other matters including, without limitation, untimely filing of the claim as shown on the face of the claim. The claimant shall make the request in writing within 20 days after receiving the administrator's written statement under (f) above; provided however, that if the claimant refuses delivery of the administrator's written statement, the claimant shall make the request for arbitration within 20 days after the date the administrator mailed the written statement. Failure to request arbitration before the expiration of such 20-day period shall operate as a waiver of any right to have the claim submitted to arbitration.

(h) A request for arbitration under (g) above shall contain the following information:

1. A denial of each fact disputed by the claimant which the administrator has asserted in the denial of the claim. The claimant's denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the claimant believes them to be;

2. If the claimant asserts that, based upon the facts asserted in the administrator's denial of the claim, the administrator's denial is improper as a matter of law, a specific explanation of the legal basis for that assertion;

3. Copies of written documents which the claimant is relying upon to support the request, provided however, that if the claimant has previously submitted such documents to the Department, a specific reference to such documents will be sufficient;

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

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

(i) If the claimant does not submit the information required under (h) above within the time allotted under (g) above, the administrator shall deny the request. If the claimant fails to include all of the information required under (h) above, the administrator may deny the request.

(j) The administrator may require that the claimant submit additional information beyond that required under (h) above, if the administrator determines that such information is necessary to provide the administrator, the Department or the Board with adequate notice of the specific factual or legal bases for the claimant's objections to the denial.

7:1J-6.7 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.

7:1J-6.8 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 administrator 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.