

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

Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, expires on January 31, 2014.

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