

**SPILL COMPENSATION AND CONTROL CLAIMS****CHAPTER 1J****PROCESSING OF DAMAGE CLAIMS PURSUANT  
TO THE SPILL COMPENSATION AND  
CONTROL ACT****Authority**

N.J.S.A. 58:10-23.11 et seq., especially 58:10-23.11j(a), 58:10-23.11m,  
58:10-23.11t, and N.J.S.A. 13:1D-9.

**Source and Effective Date**

R.1993 d.2, effective January 4, 1993.  
See: 24 N.J.R. 1255(a), 25 N.J.R. 68(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 1J, Processing of Damage Claims Pursuant to the Spill  
Compensation and Control Act, expires on January 4, 1998.

**Law Review and Journal Commentaries**

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

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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).

### 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, for any particular hazardous substance, the maximum contaminant level for that hazardous substance (if any) established under N.J.A.C. 7:10 and 40 CFR Part 141. If no maximum contaminant level has been established for a particular hazardous substance under those regulations, "applicable contaminant standard" means the applicable cleanup standard under N.J.A.C. 7:26D.

"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 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.

"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 in violation of the Act, or in connection with a threatened discharge, or in connection with a pre-Act 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;

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 N.J.A.C. 7:1J-4, 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 in this document, and that to the best of my knowledge, after diligent investigation including inquiry of those individuals immediately responsible for obtaining the information, the information contained in this claim is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for submitting false information."

#### 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  
CN 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  
506 East State Street  
Trenton, New Jersey 08625

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.

#### 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, contractual rights, 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). 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 prevent the damages incurred by the claimant from increasing or being aggravated.

**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.

**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 either 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.

**Case Notes**

Although owner did not own property when it was leased to polluter, and thus had no capacity or obligation to exercise her authority as lessor to prevent or end pollution, if she failed to take preventative or remedial action when she knew or should have known of discharge, that failure would constitute "intentional or unintentional act or omission," rendering her ineligible for reimbursement of cleanup costs under Spill Compensation and Control Act. *Marsh v. New Jersey Spill Compensation Fund and Environmental Claims Admin.*, 286 N.J.Super. 620, 670 A.2d 67 (A.D.1996).

Donee's right to recover from Spill Compensation Fund no greater than donor's; Spill Act does not permit property owner who has profited by contaminating or permitting contamination of property to obtain public financing for cleaning up pollution by expedient of making gift. *Marsh v. New Jersey Spill Compensation Fund and Environmental Claims Admin.*, 286 N.J.Super. 620, 670 A.2d 67 (A.D. 1996).

Donee's right to recover reimbursement from Spill Compensation Fund is no greater than donor's; Spill Act does not permit property owner who has profited by contaminating or permitting contamination of property to obtain public Marsh v. New Jersey Spill Compensation Fund and Environmental Claims Admin., 286 N.J.Super. 620, 670 A.2d 67 (A.D.1996).

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.

Landowner precluded from relief under Spill Fund. Marsh v. Department of Environmental Protection, 94 N.J.A.R.2d (EPE) 231.

Landowner's claim for reimbursement for cleanup of contaminated property was denied. Pitman Art Supply Co., Inc. v. Department of Environmental Protection, 94 N.J.A.R.2d (EPE) 225.

**7:1J-2.8 Administrative closure of claims**

(a) The administrator may, in his or her 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 (a)2 above and making a written request to the Department for reactivation.

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

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

1. Within 30 days 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 action or provide information was insufficient); and
2. The administrator determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

**SUBCHAPTER 3. WATER SUPPLY SYSTEMS CLAIMS**

**7:1J-3.1 Eligibility of water supply systems claims for compensation**

(a) Water Supply Systems Claims (WSSCs) are eligible for compensation from the Fund only in accordance with

the requirements of this chapter, and only to the extent permitted under this subchapter.

(b) If the Department determines that as a result of a discharge, a water purveyor's existing supply of water is or will become unsuitable to serve the needs of the water purveyor's existing customers, the water purveyor may make a WSSC for the cost of replacing or treating the existing water supply. No portion of such a WSSC which represents costs beyond those necessary to replace or treat the existing water supply is eligible for compensation from the Fund. Such a WSSC is eligible for compensation from the Fund only in accordance with those requirements of this chapter which are listed at (b)1 through 8 below, and only to the extent permitted under such listed requirements.

1. N.J.A.C. 7:1J-3.1(b);
2. N.J.A.C. 7:1J-3.2;
3. N.J.A.C. 7:1J-3.3;
4. N.J.A.C. 7:1J-3.5(c) and (d);
5. N.J.A.C. 7:1J-3.6;
6. N.J.A.C. 7:1J-3.7;
7. N.J.A.C. 7:1J-3.8; and
8. N.J.A.C. 7:1J-3.9.

**7:1J-3.2 Spill Fund Claims Area**

(a) No costs expended by a claimant in connection with a WSSC are compensable by the Fund unless they are either:

1. Directly associated with damages to natural resources located within the Spill Fund Claims Area (SFCA), if the Department has delineated an SFCA;
2. Directly associated with supplying potable water to real property in an area within or outside the SFCA 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; or
3. Directly associated with damages to natural resources resulting from a discharge, notwithstanding whether the Department has delineated an SFCA.

**7:1J-3.3 Most cost-effective environmentally sound alternative**

(a) A WSSC shall be eligible for compensation from the Fund only if the WSSC is for costs associated with remedial actions which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge.

(b) A WSSC shall be eligible for compensation from the Fund only to the extent of the cost (as such cost is determined by the Department) of the most cost-effective means which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge. To determine what remedy is the most cost-effective, for each alternative the Department will consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, reliability, feasibility of implementation, and acceptability to the public.

(c) The Department may evaluate alternatives as well as any new technologies, to determine whether any other environmentally sound means of ameliorating the damages resulting from a discharge are more cost-effective than the remedial actions for which the claim has been made. Such alternatives may include, without limitation, the following (or any combination thereof):

1. Filtration of water supply at point of entry;
2. Extension of existing water lines;
3. Drilling of deeper wells for individual residences;
4. Provision of interim alternative water supplies, such as bottled water or waterbuffaloes;
5. Containment of discharge and treatment of water supply;
6. Stand-alone satellite water supply systems/installation of production wells;
7. Contaminant removal;
8. No remedial action;
9. Drilling new wells; and/or
10. Treatment of the contaminated water supply, by methods such as air stripping or filtration.

**7:1J-3.4 Reductions in costs eligible for compensation if alternative water supply actually constructed exceeds requirements for provision of adequate alternative water supply**

(a) If a WSSC is a claim for compensation for the cost of a water well or wells, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

- i. RA equals the amount of the reduction;
- ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells) of the water well or wells actually constructed; and
- iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells), estimated by the Department after consideration of the report submitted under (a)2 below, of constructing the water well or wells with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be the amount required to satisfy the users' requirements set forth in (d) below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

- i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.2(c)3 and 4, with respect to the water well or wells actually constructed; and
- ii. The design and specifications of the water well or wells that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the wells determined in accordance with (a)1 above.

(b) If a WSSC is a claim for compensation for the cost of water storage facilities, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

- i. RA equals the amount of the reduction;
- ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water storage facilities) of the water storage facilities actually constructed; and