

7:II-1.9 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.

Case Notes

Developer's claim against Sanitary Landfill Contingency Fund was properly denied due to out-of-time filing. *Bruce & Riiff v. Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 334.

SUBCHAPTER 2. CLAIMS GENERALLY**7:II-2.1 Persons who may submit a claim**

Any person claiming to have incurred damages proximately resulting from the improper operation or improper closure of a sanitary landfill facility 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.

Case Notes

Sale was prerequisite to claim for damages to property located next to old dump site. *Russell v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 67.

7:II-2.2 Burden of proof

(a) 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. No claimant shall be entitled to payment from the Fund unless the claimant shows by a preponderance of the evidence that the damages sustained are a proximate result of the improper operation or improper closure of a sanitary landfill facility.

(b) A claimant shall affirmatively rebut any and all reasons for denial as stated in a Notice of Intent (NOI) to deny pursuant to N.J.A.C. 7:II-5.4 or a Denial pursuant to N.J.A.C. 7:II-5.5.

Case Notes

Diminution in fair market value of real property in absence of tangible physical damage could be compensable under Sanitary Landfill Closure and Contingency Fund Act. *State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc.*, D.N.J.1994, 866 F.Supp. 826.

Former procedure of deducting 25% to reflect estimated decrease in property's fair market value was arbitrary and capricious. *State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc.*, D.N.J.1994, 866 F.Supp. 826.

Amended mechanism for paying diminution of value claims was not arbitrary or capricious. *State of N.J. Dept. of Environmental Protection and Energy v. Gloucester Environmental Management Services, Inc.*, D.N.J.1994, 866 F.Supp. 826.

7:II-2.3 Damages actually incurred; mitigation

(a) A claim shall be ineligible for compensation from the Fund unless the claimant has actually incurred 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. The Department may suspend processing of any claim pending the completion of the claimant's efforts to obtain compensation from such other sources. In determining the amount of an award, the Department shall reduce the award by the amount of any prior compensation for the claimed damages received by the claimant, including without limitation, compensation received from insurance policies, court awards, contractual rights, and any other remedies provided under statutory or common law.

(c) Claimants must fully disclose an award or settlement received or sought from any other source within 10 days of receiving compensation or within 10 days of seeking compensation from any other source. Failure to disclose such action shall result in denial of the claim.

(d) A claim involving the purchase and subsequent sale of property near a sanitary landfill facility shall be ineligible for compensation if the claimant knew or reasonably should have known of the potential that damages could result by virtue of purchasing property near the particular sanitary landfill facility in question.

(e) The claimant shall exercise reasonable diligence and ordinary care and take affirmative measures to mitigate or prevent the damages incurred by the claimant from occurring in the first instance or from increasing or being aggravated.

(f) Any costs incurred by the claimant prior to filing of a claim or during the pendency of a claim shall not prejudice

the rights of the Department to evaluate the reasonableness of said costs prior to the granting of an award.

Case Notes

Township that consented to installation and maintenance of leachate monitoring wells on property, which was former sanitary landfill site, and assumed obligation to do work and provide funding work was not barred from applying for statutory damages under Sanitary Landfill Closure and Contingency Fund Act. Matter of Adoption of N.J.A.C. 7:1I, 291 N.J.Super. 183, 677 A.2d 218 (A.D.1996).

Sanitary Landfill Contingency Fund claimants should have been notified processing was temporarily suspended. Citizens for Equity v. New Jersey Dept. of Environmental Protection, 126 N.J. 391, 599 A.2d 507 (1991).

Department of Environmental Protection's newly adopted claims processing regulations applied to pending claims. Citizens for Equity v. New Jersey Dept. of Environmental Protection, 126 N.J. 391, 599 A.2d 507 (1991).

Department of Environmental Protection regulation requiring sale of property as precondition to value diminution damage award was valid. Citizens for Equity v. New Jersey Dept. of Environmental Protection, 126 N.J. 391, 599 A.2d 507 (1991).

7:1I-2.4 Overlapping claims

(a) A claim shall be ineligible 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 Department shall apportion payment for such damages among the claimants or exclude certain of the claims from payment. The Department shall base the apportionment or exclusion upon the Department's determination of which claimants have actually incurred the damages in question.

7:1I-2.5 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. 7:1I-3.3, or in any amendment to such claim or response under N.J.A.C. 7:1I-3.4.

7:1I-2.6 Claims by responsible parties or by owners or operators of a sanitary landfill facility

(a) No responsible party for a particular sanitary landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are a responsible party.

(b) No owner or operator for a particular sanitary landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are an owner or operator.

(c) No person who at any time deposited, disposed or otherwise discarded solid waste on or into any land at a particular sanitary landfill facility shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility at which they, at any time, deposited, disposed or otherwise discarded solid waste. This express prohibition shall particularly apply to any person who at any time hauled or carted solid waste to the sanitary landfill facility in question.

(d) Notwithstanding (b) above, an owner or operator may be eligible for damages if such owner or operator 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 a sanitary landfill facility is located, has been located, had been located or at any time was located on the subject property, 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. In order for a person to satisfy the requirement to engage in a diligent and thorough inquiry into previous ownership and uses of the property, a person must perform a preliminary assessment and site investigation in accordance with N.J.S.A. 58:10-23.11g(d)(2)(d) and N.J.A.C. 7:26E-3; or

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 an affirmative 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 (d)1 above shall govern eligibility of the government entity's claim.

Case Notes

Owner of closed landfill was eligible for Contingency Fund reimbursement of cleanup costs, despite owner's prior knowledge of site's previous use as landfill, and owner's earlier utilization of landfill for waste disposal, where owner purchased site after landfill facility was closed, and after passage of Sanitary Landfill Facility Closure and Contingency Fund Act. Matter of Adoption of N.J.A.C. 7:1I, 149 N.J. 119, 693 A.2d 97 (1997).

Landowner was not entitled to compensation for contamination emanating from its former use of property. Estate of Sommer v. Environmental Claims Administration, Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 241.

7:1I-2.7 Administrative closure of claims

(a) The Department may, in its 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