

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., and 13:1D-9.

Source and Effective Date

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).

Executive Order No. 66(1978) Expiration Date

Chapter 1J, Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, expires on December 23, 2002.

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 was readopted as R.1998 d.67, effective December 23, 1997. 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).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 7:1J-1.1 Scope
- 7:1J-1.2 Construction and applicability
- 7:1J-1.3 Severability
- 7:1J-1.4 Definitions
- 7:1J-1.5 Delegation
- 7:1J-1.6 Signatures; certifications
- 7:1J-1.7 Notices and other communications
- 7:1J-1.8 Computation of time

SUBCHAPTER 2. CLAIMS GENERALLY

- 7:1J-2.1 Persons who may submit a claim
- 7:1J-2.2 Provisions applicable to all claims
- 7:1J-2.3 Burden of proof
- 7:1J-2.4 Damages actually incurred; mitigation
- 7:1J-2.5 Overlapping claims
- 7:1J-2.6 Waiver of damages not set forth in claim
- 7:1J-2.7 Claims by responsible parties or by owners or occupants of property from which discharge has emanated
- 7:1J-2.8 Administrative closure of claims

SUBCHAPTER 3. WATER SUPPLY SYSTEMS CLAIMS

- 7:1J-3.1 Eligibility of water supply systems claims for compensation
- 7:1J-3.2 Spill Fund Claims Area
- 7:1J-3.3 Most cost-effective environmentally sound alternative
- 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
- 7:1J-3.5 Other reductions in amount eligible for compensation from Fund
- 7:1J-3.6 Delineation of Spill Fund Claims Area (SFCA)

- 7:1J-3.7 Currently known extent of ground water pollution
- 7:1J-3.8 Most probable pollution migration zone
- 7:1J-3.9 Cost of obtaining estimate by Department consultant of amount eligible for compensation
- 7:1J-3.10 Sealing of well

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

- 7:1J-4.1 Extent of eligibility
- 7:1J-4.2 Requirements for eligibility
- 7:1J-4.3 Appraisal of subject property
- 7:1J-4.4 Valuation of claim
- 7:1J-4.5 Evidence of good faith sale
- 7:1J-4.6 Settlement based upon legal inability to sell the subject property
- 7:1J-4.7 Settlement when emergency relocation is necessary
- 7:1J-4.8 Contract for sale of property entered into before filing of claim
- 7:1J-4.9 Suspension of claims

SUBCHAPTER 5. EMERGENCY RESPONSE CLAIMS BY LOCAL UNITS

- 7:1J-5.1 Eligibility of emergency response claims for compensation
- 7:1J-5.2 Procedure for making emergency response claim
- 7:1J-5.3 Processing of emergency response claims
- 7:1J-5.4 Notice to potentially responsible parties
- 7:1J-5.5 Eligible costs

SUBCHAPTER 6. CLAIMS PROCEDURE

- 7:1J-6.1 Time for filing of claims
- 7:1J-6.2 Submission of claim
- 7:1J-6.3 Contents of claim
- 7:1J-6.4 Amendment of claim
- 7:1J-6.5 Consent to inspection
- 7:1J-6.6 Notice of Intent to Deny; Denial
- 7:1J-6.7 Communication with claimant or representative
- 7:1J-6.8 Relaxation of procedural requirements
- 7:1J-6.9 Remediation of discharge which is subject of claim

SUBCHAPTER 7. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND POTENTIALLY RESPONSIBLE PARTIES

- 7:1J-7.1 Notice of claim to potentially responsible party
- 7:1J-7.2 Settlement negotiations
- 7:1J-7.3 Effect of settlement between claimant and potentially responsible party

SUBCHAPTER 8. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND FUND

- 7:1J-8.1 Request for payment upon failure to identify or settle with potentially responsible party
- 7:1J-8.2 Contest of validity or amount of claim
- 7:1J-8.3 Settlement offer by the administrator
- 7:1J-8.4 Action on administrator's settlement offer

SUBCHAPTER 9. BOARDS OF ARBITRATION

- 7:1J-9.1 Convening a board of arbitration
- 7:1J-9.2 Notice of arbitration
- 7:1J-9.3 Membership of Board
- 7:1J-9.4 Jurisdiction over all claims related to discharge
- 7:1J-9.5 Class actions
- 7:1J-9.6 Administrative conference, preliminary hearing, and mediation conference
- 7:1J-9.7 Discovery
- 7:1J-9.8 Prehearing requirements
- 7:1J-9.9 Conduct of hearing
- 7:1J-9.10 Consent to service of process

7:1J-9.11	Evidence
7:1J-9.12	Subpoenas; witnesses
7:1J-9.13	Inspections and investigations by the Board
7:1J-9.14	Submission of briefs
7:1J-9.15	Default
7:1J-9.16	Decisions of the board; award; payment of claim
7:1J-9.17	Waiver of hearing
7:1J-9.18	Variance from procedural requirements
7:1J-9.19	Extensions of time
7:1J-9.20	Expedited procedures
7:1J-9.21	Waiver of rules
7:1J-9.22	Interpretation and application of rules
7:1J-9.23	Copies of papers for judicial proceedings
7:1J-9.24	Exculpation of arbitrators

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).

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, 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 remediation standard” as defined under N.J.A.C. 7:26E.

“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, 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.

"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.

"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 or other applicable maximum level 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.

"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 or for agricultural 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.

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".