

(b) The delineation of the most probable pollution migration zone is based upon the most probable ground water flow directions, and the most probable pollutant transport rate, for each hazardous substance present in the ground water. In delineating the most probable pollution migration zone, the Department will consider factors including, without limitation, ground water elevations, the location and distribution of pumping wells, the distribution and concentration of pollutants in affected wells, topography, and geology.

(c) The Department shall calculate the most probable pollutant transport rate pursuant to the following formula:

$$V_{pt} = \frac{K_i}{(n_e)(R_d)}$$

where:

1. V_{pt} equals the most probable pollutant transport rate, expressed in feet per day, of each hazardous substance present in the ground water in a concentration exceeding the applicable contaminant standard;
2. K equals aquifer hydraulic conductivity, measured in affected wells and expressed in feet per day;
3. i equals hydraulic gradient, expressed in feet per foot;
4. n_e equals aquifer effective porosity; and
5. R_d equals the retardation factor, calculated pursuant to the following formula:

$$R_d = 1 + \frac{K_d(pb)}{n_e}$$

where:

- i. K_d equals distribution coefficient;
- ii. pb equals average dry bulk density; and
- iii. n_e equals effective porosity.

(d) The most probable pollutant transport rate (expressed in feet per day), multiplied by the remediation period (expressed in days), yields the migration distance. The migration distance, projected along the most probable ground water flow directions from the currently known extent of ground water pollution (that is, the leading edge of the plume), yields the most probable pollution migration zone.

7:1J-3.9 Cost of obtaining estimate by Department consultant of amount eligible for compensation

(a) Upon the written request of a government entity claimant, accompanied by preliminary plans and specifications for the water supply system which is the subject of a WSSC (including, without limitation, the engineer's reports required under N.J.A.C. 7:1J-3.4(a)2, (b)2 and (c)2), the Department shall cause its consultant to review such plans and specifications and make a preliminary estimate of the amount of the WSSC which will be eligible for compensation from the Fund. The Department shall not be bound or estopped by the preliminary estimate in making a final determination of the amount of the claim eligible for compensation, if there are any changes in the preliminary plans and specifications which are the subject of the preliminary estimate, or if the Department finds that there are errors, omissions or other changes necessary from the preliminary plans and specifications, or if there are other changes in circumstances affecting the WSSC.

(b) The preliminary estimate prepared under (a) above shall be at the claimant's expense. Before the preliminary estimate is performed, the Department shall inform the claimant of the cost of the preliminary estimate, and shall cause the preliminary estimate to be performed only if the claimant provides the Department with written consent to the performance of the estimate at the claimant's expense. The amount eligible for compensation from the Fund shall be reduced by the cost of such estimate.

7:1J-3.10 Sealing of well

The administrator may require as a condition of receiving compensation from the Fund for an alternate water supply, that a claimant shall seal his or her private well in accordance with the Department's requirements.

New Rule, 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).

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

7:1J-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that such diminution is attributable to the discharge of a hazardous substance. A diminution of property value may be deemed attributable to a discharge of a hazardous substance notwithstanding the lack of any physical intrusion of the hazardous substance onto the subject property. A diminution in the value of any improvements to the subject property made after the date of discovery of damages shall not be eligible for compensation from the Fund.

Case Notes

Spill Fund compensation; vandals caused spill. Ultramar Petroleum, Inc. v. DEPE, 94 N.J.A.R.2d (EPE) 163.

7:1J-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:1J-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject properties and the administrator determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:1J-4.3, 4.4 and the information submitted pursuant to N.J.A.C. 7:1J-4.5.

(b) The claimant shall list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or its commercial equivalent for nonresidential property). The claimant shall so list the subject property for sale continuously, until entering into an agreement for the sale of the subject property; provided, however, that discontinuities made necessary by claimant's good faith choice to list the subject property with another broker shall not be deemed to violate this requirement. One discontinuity of less than 14 days shall presumed to be in good faith.

(c) Claimants may file a property value diminution claim with the Department prior to the sale of property.

(d) All claimants shall provide the Department with an executed copy of a contract for sale of the subject property within 30 days after signature, and shall provide the Department or its agents with access to the property to conduct an appraisal and inspection.

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).
Added new (c) and (d).

Case Notes

Property owners were not entitled to damages for loss allegedly resulting from contaminated soil which they had delivered to their property. *Bliszcz v. ECA*, 96 N.J.A.R.2d (EPE) 115.

7:1J-4.3 Appraisal of subject property

(a) After the claimant has elected under N.J.A.C. 7:1J-4.9 to pursue the claim, or in the case of a new claim filed after January 4, 1993, the administrator shall obtain appraisals of the value of the subject property. The appraisals shall be as of the time of the sale of the subject property (or, for claims under N.J.A.C. 7:1J-4.6 or 4.7, as of the date the administrator makes the settlement offer). One such appraisal shall state the value of the subject property as affected by the discharge (unless the administrator elects not to obtain such an appraisal, pursuant to (b) below), and one appraisal shall state the value of the subject property absent the effect of the discharge. The appraisals may, in the administrator's discretion, be based upon one or more of the following factors:

1. Sales of comparable properties in the immediate area;
2. Income generated by the subject property;
3. Replacement cost of the subject property; and/or
4. Such other factors as are ordinarily considered by real estate appraisers who are members of the Appraisal Institute or who are licensed or certified to perform real estate appraisals in New Jersey.

(b) The administrator may elect not to obtain an appraisal of the subject property as affected by the discharge if the administrator determines, in his or her discretion, that there is insufficient information to obtain a meaningful appraisal of the subject property reflecting the effect of the discharge. Without limiting the discretion of the administrator under this subsection, the administrator may determine that there is insufficient information if fewer than three comparable properties which have been affected by the discharge have been sold as of the date on which the claim is filed.

7:1J-4.4 Valuation of claim

(a) If the administrator has obtained appraisals pursuant to N.J.A.C. 7:1J-4.3(a), the amount of the claim eligible for compensation from the Fund shall be computed by the difference between (a)1 and 2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and

2. The greater of:

- i. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), reflecting the effect of the discharge on such value; or

- ii. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(b) If, pursuant to N.J.A.C. 7:1J-4.3(b), the administrator has elected not to obtain an appraisal of the subject property as affected by the discharge, the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (b)1 and 2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and

2. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(c) The administrator may, in his or her discretion, adjust the amount determined pursuant to (a) or (b) above by considering other information available to the administrator which supports a conclusion that the amount determined pursuant to (a) or (b) above does not accurately reflect the diminution in the value of the subject property resulting from the discharge. Such information may include, but is not limited to, any of the following:

1. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that factors other than the discharge affected the sale prices of such properties. Such information may include, without limitation, the prices of comparable properties within and outside the area in which the discharge may have affected real property values; the time elapsed between listing for sale and execution of an agreement of sale for comparable properties within and outside the area in which the discharge may have affected real property values; and specific terms of the agreements of sale (such as financing terms, personal property included in the sale, and apportionments of closing costs);