

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 such action or provide information was insufficient); and

2. The Department determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

**7:11-2.8 Relaxation of procedural requirements**

(a) Except as provided by (b) below, the Department may relax any of the procedural requirements of this chapter if the Department determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Notwithstanding (a) above, the Department shall not relax procedural requirements of this chapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

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**7:1I-2.9 Imminent hazard**

Priority review of claims may occur in cases where the claimant has demonstrated to the Department's satisfaction that extreme hardship or extreme existing or imminent hazard will proximately result from the improper operation or improper closure of the sanitary landfill facility.

**SUBCHAPTER 3. CLAIMS PROCEDURE****7:1I-3.1 Time for filing of claims**

Claimants shall submit any claims to the Department not later than one year after the date of discovery of damages. With regard to property value diminution claims, damages, if any, are incurred when the property is sold. Claims for property value diminution, therefore, must be filed within one year of sale of the property. If a claimant fails to submit any claim to the Department within such one-year period, the claimant shall be deemed to have waived such claim. Such waiver is with prejudice and shall bar all recourse by the claimant against the Fund for any damages arising out of or related to the improper operation or improper closure of the sanitary landfill facility.

**Case Notes**

Limitations under Sanitary Landfill Facility Closure and Contingency Fund Act would not be tolled. *Hurst v. Sanitary Landfill Contingency Fund*, 93 N.J.A.R.2d (EPE) 265.

Claim under Sanitary Landfill Facility Closure and Contingency Fund Act against Sanitary Landfill Contingency Fund was time-barred. *DeLuca v. DEPE*, 93 N.J.A.R.2d (EPE) 259.

Date of discovery of damage was date property owners should have discovered basis for claim against fund. *Wilde v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 47.

Claim for damages under the Sanitary Landfill Facility Contingency Fund filed more than one year after owners had knowledge of damage was untimely. N.J.S.A. 13:1E-107. *Curcio v. Environmental Claims Admin.*, 91 N.J.A.R.2d 5 (EPE).

**7:1I-3.2 Submission of claim**

(a) For the purposes of determining whether a claim has been timely filed pursuant to N.J.A.C. 7:1I-3.1, the following shall apply:

1. If the claimant submits the claim by United States mail, the claim will be deemed filed as of the date of mailing by the claimant. Claims submitted by mail must be sent in accordance with N.J.A.C. 7:1I-1.8; or
2. If the claimant submits the claim via another means of delivery, the claim will be deemed filed as of the date of receipt by the Department.

**7:1I-3.3 Contents of claim**

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. The name of the claimant;
2. The street address of the claimant;
3. The mailing address of the claimant;
4. The telephone number of the claimant during normal daytime business hours;
5. The name, mailing address, telephone number, and relationship to the claimant of any person designated to receive communications from the Department pursuant to N.J.A.C. 7:1I-3.6;
6. Whether the claimant is an individual, general partnership, limited partnership, corporation, local government entity, Federal government entity, or state government entity;
7. A statement that the claimant has actually incurred damages, as such term is defined in N.J.A.C. 7:1I-1.5, that the claimant has not received compensation from any other source for such damages, and that the claimant is not an owner or operator or responsible party in relation to the claim. Such statement need not be specific about the amount or nature of such damages;

8. If the claim is for property value diminution, a statement that the claimant is attempting to sell the subject property. The Department shall deny, without prejudice, a claim for property value diminution which is filed after the effective date of these rules which does not contain this statement. The claimant may again file the claim upon commencing efforts to sell the subject property;

9. In accordance with N.J.A.C. 7:1I-2.3(d), a statement that the claimant did not know of the existence of the sanitary landfill facility and did not know, nor reasonably could have known, of the potential that property value diminution could result by virtue of purchasing property near the particular sanitary landfill facility in question; and

10. If the claim is for property value diminution and is made pursuant to N.J.A.C. 7:1I-4.8, all documents required by N.J.A.C. 7:1I-4.8 are to be submitted with the claim, including a statement that the claimant has contracted to sell or has sold the subject property and that the claimant will allow the Department or its agents access to the property if claimant still maintains title to the property. If the property has not been sold, claimant must submit within 10 days of the signing of a binding agreement of sale a copy of the contract of sale to allow adequate time for the Department to schedule an appraisal.

(b) The claimant shall submit to the Department the following types of information requested by the Department:

1. The location of the sanitary landfill facility which the claimant believes to be the proximate cause of the

damages incurred, including the name of the site, the street address, the municipality, and the county, including without limitation the following:

- i. Whether any person, or owner or operator of the sanitary landfill facility has admitted responsibility for the damages claimed or for the condition from which the claim arose, or liability for the amount of damages for which the claim is being made;
  - ii. If any such person has admitted responsibility or liability pursuant to (b)1i above, the names of such persons and the nature of such statements or admissions; and
  - iii. Whether the claimant filed a claim against the sanitary landfill facility's Environmental Impairment Liability Fund established pursuant to N.J.S.A. 13:1E-109;
2. A description of any damage to real property located thereon, including without limitation the following:
- i. The date on which the damage occurred;
  - ii. The precise location of the damaged real property, including the street address, the tax lot and block, the municipality, and the county;
  - iii. A description of the predominant use of the damaged real property;
  - iv. A detailed description of the damage to the real property;
  - v. An estimate for the cost to remedy the damage, and the name, address and qualifications of the person making the estimate; and
  - vi. A description of the claimant's interest in the damaged real property, and documents evidencing such interest. Documents evidencing fee title to the damaged real property shall include an affidavit of title executed by the claimant, together with either a copy of the recorded deed conveying title to the claimant, or an owner's title insurance policy insuring the claimant's interest in the property. Documents evidencing a leasehold interest in the property shall include a copy of the lease for the property, together with an affidavit of the claimant stating that the lease is in full force and effect;
3. A description of any damage to personal property located thereon, including without limitation:
- i. The date or dates on which the damage occurred;
  - ii. The location of the personal property at the time the damage occurred;
  - iii. A description of the personal property which was damaged;
  - iv. A description of the damage;

- v. The original cost paid by the claimant for the damaged personal property;
  - vi. The date the claimant acquired the damaged personal property;
  - vii. Evidence of the claimant's ownership of the damaged personal property;
  - viii. An estimate of the cost of repairing the damage to the personal property, and an estimate of the value of the damaged personal property as of the time of the damage;
  - ix. The name, address and qualifications of any persons who prepared the estimates required by (b)2viii above; and
  - x. The location at which the Department's designee can inspect the damaged personal property;
4. A detailed description of the facts known to the claimant which support the claim, such as the facts which lead the claimant to believe that the improper operation or improper closure of the sanitary landfill facility cause the damages suffered by the claimant;
5. The names and addresses of any witnesses known to the claimant who may have knowledge concerning the improper operation or improper closure, threatened damage, or damage caused by the sanitary landfill facility;
6. The names of any public agencies (including without limitation any local or state police or any other local, county, state, interstate or Federal agencies) who have investigated the improper operation or improper closure activities and, if known to the claimant, the names of the persons who conducted the investigations on behalf of such agencies;
7. If any of the damaged real or personal property or any of the asserted lost income may be covered by any insurance policy or policies, or other financial agreement or instrument under which compensation is reasonably likely to be available, claimant shall exercise best efforts to obtain compensation from such sources for the damages sustained in accordance with N.J.A.C. 7:1I-2.3(b), and shall provide as proof of such action the following information:
- i. The name and address of the insurance carrier which issued the policy, or issuer of the other financial agreement or instrument;
  - ii. The policy number or other applicable reference number;
  - iii. A copy of the certificate of insurance or other financial agreement or instrument; and
  - iv. Copies of any correspondence between the insurance carrier or issuer of the other financial agreement or instrument and the claimant or claimant's representatives concerning the damages claimed;

8. The names and addresses of any persons other than the Fund (including without limitation insurance companies) against whom the claimant has asserted a claim;

9. Whether the claimant has received or agreed to receive any compensation from any person in connection with the damages claimed, and the details of any such compensation or agreement to receive compensation;

10. A description of any action taken to repair, restore or replace damaged real or personal property, including without limitation the following:

i. The name and address of the person who has taken such action; and

ii. The cost of such action;

11. If the claimant asserts any personal injury damages including medical expenses incurred and income lost as a result thereof, the claim shall include the following information:

i. The total amount of the claimed loss of income;

ii. The period of time during which the claimant asserts that the loss of income has occurred;

iii. If the claimant asserts that the loss of income has occurred over a period exceeding 12 months, a breakdown of the loss of income by three-month periods, with the first such period commencing on the date of discovery;

iv. A detailed description of the method employed by the claimant in calculating the claimed loss of income;

v. A statement of whether all income, sales and other accounting and financial information supporting the claim is available for inspection, copying and audit by the Department;

vi. If any of the information described in (b)11v above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vii. With respect to any of the information described in (b)11v above, which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

viii. If any of the information described in (b)11i through vii above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and the auditor's reports;

ix. A specific statement as to the nature of the health injuries and how the health injuries are related

to the improper operation or improper closure of the sanitary landfill facility in question; and

x. Detailed records substantiating the personal injuries; effects or damages suffered by the claimant including any medical records, prognosis statements, and documentation indicating the monetary value of medical attention;

12. If the claimant is a limited partnership, the names and addresses of all general partners;

13. If the claimant is a general partnership, the names and addresses of all partners;

14. If the claimant is a corporation, the names and addresses of all directors and of all officers;

15. Any other information which the claimant believes to be relevant to the claim; and

16. Any other information which the Department deems necessary to process the claim.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating the damage resulting from the improper operation or improper closure of a sanitary landfill facility shall be presented as follows:

1. The claimant shall submit a compilation of all such costs, stating the aggregate amount of the costs incurred; and

2. The claimant shall submit a breakdown of the aggregate costs incurred, stating which portion of the aggregate cost is attributable to ameliorating damage resulting from the improper operation or improper closure of the sanitary landfill facility, and which portion is not.

(d) The claimant shall submit all bills, invoices, receipts and other documentation in an orderly fashion, accompanied by an index and/or a summary if the Department determines that an index or summary would assist in the organized and expeditious processing of the claim.

(e) The Department may administratively close the claim pursuant to N.J.A.C. 7:1I-2.7 for failure to provide information under this section.

#### Case Notes

Environmental Protection Department's regulations enacted during claims processing suspension were applicable to previously filed claims. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Sanitary Landfill Facility Contingency Fund regulation which required a sale or attempt to sell property to prove damages was reasonable. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Department of Environmental Protection regulation prohibiting value diminution damage award was contrary to Sanitary Landfill Con-

tingency Fund Act. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Department of Environmental Protection regulation preconditioning value diminution award was properly applied to pending claims. *Citizens for Equity v. New Jersey Dept. of Environmental Protection*, 252 N.J.Super. 62, 599 A.2d 516 (A.D.1990), affirmed 126 N.J. 391, 599 A.2d 507.

Properly run landfill; no basis for compensation claim. *Rizzi v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 108.

Homeowners' claim would be granted despite contention that they sold home without obtaining required appraisal figure and without offering it for sale according to formula set in regulation. *Allen v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 101.

Date of discovery of damage was date property owners should have discovered basis for claim against fund. *Wilde v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 47.

#### 7:1I-3.4 Amendment of claim

(a) A claimant may amend a claim, or a response to the Department's request for information, with respect to the nature or extent of the damages, the cause of the damages, the amount of the claim, or any other information relevant to the claim, until the occurrence of the earliest of the following:

1. The approval of the claim by the Department;
2. The denial of the claim by the Department; or
3. The agreement to a settlement among a claimant and one or more owners or operators or other persons in connection with the sanitary landfill facility which is the subject of the claim.

#### 7:1I-3.5 Consent to inspection; investigation

(a) Submission of a claim shall constitute consent by the claimant to allow the Department, and other persons designated by the Department:

1. To inspect all documents and property relating to his or her claim for damages including, but not limited to:
  - i. Financial, medical, employment and property records;
  - ii. Insurance policies; and
  - iii. Damaged real and personal property;
2. For all information submitted pursuant to N.J.A.C. 7:1I-3.3, to copy and audit the information; and
3. To enter onto any property to which the claimant has the right to grant access, or to which the claimant has the right to compel another person to grant access. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant and shall not constitute a compensable damage payable by the Fund.

(b) In investigating claims for personal injuries, the Department may direct a medical examination of the claimant by an independent physician selected by the Department. The claimant shall present himself or herself to the physician selected at the time and place designated by the physician.

1. A written report of such examination shall be filed by the examining physician with the Department and a copy mailed by the Department to the claimant; and

2. If the Department has directed a medical examination by a physician selected by the Department, such physician's fee shall be paid by the Department from the Fund.

#### 7:1I-3.6 Communication with claimant or representative

The Department will direct all communications in connection with the claim to the person who signed the claim, unless the claimant submits to the Department a written statement, signed by the person required to sign the claim, designating a representative to receive communications from the Department.

#### 7:1I-3.7 Notice to owner or operator

When, in the opinion of the Department, the claim is complete for payment pursuant to N.J.A.C. 7:1I-2.2 and 3.3, the Department shall notify the owner or operator of the sanitary landfill facility by mailing a notice of the claim by certified mail, return receipt requested, to such owner or operator. In the case of multiple, related claims (series claims), the Department will notify the owner or operator of the sanitary landfill facility of the first claim of the series only. This notification will include an estimate of the approximate number of claims expected in that series if known, and will give notice that copies of all further claims must be requested in writing.

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## SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

### 7:1I-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that the subject property has been sold and such diminution proximately results from the improper operation or improper closure of a sanitary landfill facility. A diminution of property value may be deemed attributable to the improper operation or improper closure of a sanitary landfill facility notwithstanding the lack of any physical intrusion resulting from the sanitary landfill facility onto the subject property.