

## **ENVIRONMENTAL CLAIMS ADMINISTRATION (ECA) New Jersey Spill Compensation Fund (Spill Fund)**

### **Frequently Asked Questions (FAQs)**

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#### **Q1. What is the Spill Fund?**

- A1. The Spill Fund (N.J.A.C. 7:1J et seq.) was established by the New Jersey Legislature when it enacted the Spill Compensation and Control Act (Spill Act) in 1976 (N.J.S.A. 58:10-23.11 et seq.). A courtesy copy of the rules and regulations can be viewed and downloaded at: <http://www.nj.us/dep/srp/regs/spillfund>. A copy of the Spill Act may also be reviewed at the State Library or some other libraries.

The purpose of the Spill Compensation Fund (Spill Fund) is to provide compensation for damages to property and persons resulting from the discharge of hazardous substances, including all cleanup and removal costs and all direct and indirect damages arising in connection with a discharge of a hazardous substance. However, if a responsible party is identified or known, then they remain strictly liable for all cleanup and removal costs.

Spill Fund revenues are generated primarily from a tax on the initial transfer of each barrel of petroleum and other hazardous substances from major facilities. Since its inception, the Fund has paid out over \$86 million in claims to individuals, businesses and governmental entities for damages relating to potable well treatment systems, public waterline installations, remediation of contaminated sites, and other real and personal property damages caused by discharges of hazardous substances. Additionally, the Fund has been used to pay for publically funded cleanup projects and emergency response actions.

**Q2. What does the Spill Fund pay for?**

- A2. The Fund pays for, but is not limited to: clean up and removal costs incurred by the Department for contaminated sites and compensation paid for damage claims relating to potable well treatment systems, public waterline installations, remediation of contaminated sites, and real and personal property damages caused by discharges of hazardous substances. Monies in the Fund are limited, therefore, eligible claims are paid in priority order. The Fund rules at N.J.A.C 7:1J-2.2(b) provides that the administrator prioritize the categories of claims that are eligible for compensation in the following order:
1. Potable water restoration and vapor intrusion at residential properties;
  2. Potable water restoration and vapor intrusion mitigation at schools and childcare facilities; and
  3. All other categories of claims.

**Q3. Who can file a claim?**

- A3. Any individual, business or governmental entity can file a claim if they are damaged as a result of the discharge of a hazardous substance.

**Q4. How do I file a claim?**

- A4. Claims can be filed by contacting the Environmental Claims Administration (ECA) at (609) 777-0101 and requesting a Spill Fund claim application by mail or by downloading an application from the ECA website at <http://www.nj.gov/dep/srp/finance/ecaclaim.htm>. Claims should be filed by Certified Mail Return Receipt Requested or other means that provides a receipt as proof of mailing. By law, all claims must be filed within one year of the date of discovery of damage. Therefore, proof of the date of mailing is essential.

**Q5. What do I need to do to qualify for Spill Fund compensation?**

A5. There are specific regulations, rules, and guidelines which govern the filing and processing of Spill Fund damage claims.

Residential Well Water:

Typical residential contaminated well claims require an initial and confirming certified laboratory test indicating that the water does not meet the applicable drinking water standards for hazardous substances and requires installation of a treatment system. If both an initial and confirming laboratory test is over the applicable standards, the claim for installation of the treatment system may be eligible for payment. The confirming test fee may also be eligible for reimbursement. If public waterlines are available for hookup, claimants will be asked to provide three estimates from licensed plumbers for the cost to interconnect the property to the waterline. If no waterlines are available, claimants will be asked for three estimates from qualified water treatment vendors for the cost to install, monitor and maintain an appropriate point-of-entry treatment (POET) system. In some cases, claimants will be asked to provide cost estimates for both, interconnection to the waterline and POET installation. Additional information for claims related to contaminated drinking water wells can be downloaded at: <http://www.nj.gov/dep/srp/finance/spillfund/>

Claims for more complicated damages must include sufficient supporting evidence and documentation necessary for the ECA to evaluate the damages based on site specific conditions and information. Such proofs may include, but are not limited to: engineering reports, environmental site assessments, remedial investigations, remedial action workplans, cost estimates and invoices.

Property Value Diminution

Except for claims settled under N.J.A.C. 7:1J-4.6 (legal inability to sell) or 4.7 (emergency relocation), claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the property and the administrator determines that the claimant's sale was in good faith based upon the Department's appraisals, and documents and information submitted by the claimant. In addition, a claim for property value diminution is not eligible for compensation where a water treatment system has been installed or the property has been connected to the public water supply system at the expense of the Fund.

The rules for property value diminution claims require, generally, that:

- The claim can be filed prior to but, preferably, within 30 days of listing the property for sale. In all cases the claim must be filed within one year of sale.

- A copy of the binding contract of sale must be provided within 30 days after signature so the property can be inspected, if necessary, before the property is transferred.
- Factors other than sale price and comparable sales can be used to evaluate property value diminution claims, including general economic conditions, interest rates, neighborhood, schools, etc.
- The property must be listed with the MLS (Multiple Listing Service) or its commercial equivalent continuously with no more than a 14 day break in listing.
- Claimants must provide copies of all listing agreements, written offers, contract of sale, settlement statement, Deed transferring the property, an affidavit from the claimant which certifies that:
  - no other compensation received;
  - documents submitted are true copies of originals;
  - amount and reasons for the alleged loss;
- An affidavit from the Realtor which certifies:
  - the initial listing price;
  - the listing time with a MLS Service;
  - list of changes in listing price;
  - a log of inquiries and comments by prospective buyers;
  - a list of dates of open houses;
  - a list and date of offers;
  - the final sale price.

After reviewing the documents and information provided, the ECA may have real estate appraisals conducted which reflect the market value of the property with and without consideration to the discharge.

Claims for property value damages are difficult to evaluate and claimants must keep in mind that claims for property value diminution shall be eligible for compensation from the Fund only to the extent that such diminution is attributable to the discharge of a hazardous substance. It is the claimant's responsibility to assemble and provide all the documentation necessary to support the claim.

**Q6 Are there any limitations on the filing of claims?**

- A6 Generally speaking there are certain limitations on claims imposed by law:
- Claims must be filed no more than one year from the date of discovery of damage;
  - The discharge which is the subject of the claim must have commenced post-Act or after April 7, 1977. Claims arising from Pre-Act discharges are not eligible. (Residential potable wells are excluded from this provision)

- Damages must actually be suffered and not contingent or speculative.
- If a person who is 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 discharge, the claim shall be ineligible for compensation from the Fund unless the claimant can show he/she is an innocent party as provided in the Spill Act.

There are also provisions in the rules that may affect the filing of claims. One important provision is N.J.A.C. 7:1J-2.4(b), which provides that “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, court awards, contractual rights, grants or other financial assistance...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). This means that before a claim can be considered for payment by the Spill Fund, claimants must exhaust other available remedies, including pursuing a settlement with a potential responsible party, if one is identified.

**Q7. Can I appeal a claim decision if I disagree?**

A7. Any person, including potential responsible parties, can contest a denial or amount or validity of a claim by requesting arbitration within 20 days of the date of receipt of the final written decision. The request must be in writing and contain relevant information, including the reasons for contesting the claim. Arbitration requests are referred to the Department's Office of Legal Affairs which refers the case to the Office of Administrative Law (OAL) for scheduling of an arbitration hearing. The Spill Fund is represented in OAL by the Office of the Attorney General.

**Q8. Do I need an attorney to file a claim or to contest a claim?**

A8. You do not need an attorney to file a claim or for the arbitration process. Filing simple potable well claims are straight forward and are usually resolved within a few weeks of receiving the pertinent information. More complex claims and claims that go through the arbitration process, especially if there is a potential responsible party, may benefit from attorney representation because of the complex legal and technical issues involved. However, there is no requirement to hire an attorney.

**Q9. What if there is a potentially responsible party (PRP) for the discharge?**

A9. When the ECA receives a claim, a preliminary review is performed to determine if anyone has been named in the claim application or is noted in the Department's files as being potentially responsible for the discharge that allegedly caused the claimed damages. In accordance with the Spill Act, if a PRP is named or identified, "Upon receipt of any claim, the administrator shall as soon as practicable, inform all affected parties of the claim." However, the Spill Act also provides that, "Boards of arbitration shall be convened by the administrator when persons alleged to have caused the discharge, the administrator or other persons contest the validity or amount of damage claims or cleanup and removal costs presented to the fund for payment." This means that if anyone contests a claim, payment of the claim must be suspended until the claim matter is resolved through the arbitration process. It is also possible that the claim may not be paid after arbitration is completed, depending on the ruling. Therefore, it may be in the claimant's best interest to resolve the matter directly with a PRP rather than go through a court process.

**Q10. What else should I know about the Spill Fund claims process?**

A10. The filing and review of a Spill Fund claim can be as simple or complex as the nature of the claim itself. Most claims are quickly decided and paid or denied. However, environmental damages and the reading of the Spill Act can be complicated and open to interpretation. The ECA/Spill Fund bases its rules, regulations and policies on its statutory responsibility and authority. It is also guided by numerous court decisions, which have been rendered by various courts over many years. For this reason, it is important that you review the rules at N.J.A.C 7:1J et seq. and if your situation warrants, the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11 et seq. A courtesy copy of the rules and regulations can be viewed and downloaded at: [www.state.nj.us/dep/srp/regs/spillfund](http://www.state.nj.us/dep/srp/regs/spillfund). A copy of the Spill Act may be reviewed at the State Library or some other libraries.

It is also important to note that the Fund has limited resources for which the administrator, by law, has a fiduciary duty to manage in a proper and responsible manner. Accordingly, eligible claims are paid in the most cost-effective, environmentally sound way possible. For this reason, requests by claimants for a more aesthetically pleasing or expensive fix to a particular damage is usually denied. For example, claimants may request that more expensive or heavier duty equipment or materials be

used in mitigation systems. However, the Fund is mandated to pay for the least expensive solution, as long as the remediation method meets the applicable environmental standards.

As noted in Q7 and Q9, a PRP has the right to contest the amount and validity of a claim. Therefore, if a PRP does exist for a particular claim, it may be in the claimant's best interest to negotiate and settle directly with the PRP because such a settlement is not constrained by limitations and requirements of the Spill Act or Fund rules and regulations. Moreover, direct settlement with a PRP can be more flexible and is not hindered by the often lengthy Spill Fund arbitration process. For instance, the Fund can only consider payment of a claim if there is an actual confirmed exceedance of a hazardous substance over the applicable standard. In a private agreement, a PRP may wish to provide a treatment system or payment to a resident as a precaution or gesture of good will, even if the applicable standard has not yet been exceeded.

Finally, it should be understood that filing a claim with the Fund does not constitute a right to compensation. All claimants must show "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."

Disclaimer: These FAQs are intended to provide a general overview of the Spill Fund claims process. The Spill Act and/or rules and regulations should be consulted for more specific information and guidance. Any questions should be directed to the ECA at (609) 777-0101.