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ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

Processing of Damage Claims Pursuant to the Spill Compensation and Control Act

Readoption with Amendments: N.J.A.C. 7:1J

Adopted Amendments: N.J.A.C. 7:1J – 1.4, 1.7, 2.2, 2.4, 2.5, 3.3, 3.4, 3.5, 3.6, 3.10, 4.2

Proposed: September 15, 2008 at 40 N.J.R. 5101(a).

Adopted: January ____, 2009 by Mark N. Mauriello, Acting Commissioner Department of Environmental Protection

Filed: January ____, 2009 as R. 2009 d. ____, **without change.**

Authority: N.J.S.A. 58:10-23.11 et seq. and 13:1D-9.

DEP Docket Number: 13-08-08/653

Effective Date: ____, 2009.

Expiration Date: ____, 2014.

The Department of Environmental Protection (the Department) hereby readopts with amendments the Processing of Damage Claims Pursuant to the Spill Compensation and Control Act (Spill Act) rules (Spill Fund rules) at N.J.A.C. 7:1J. These rules establish the procedures concerning the processing of all claims under the Act for damages resulting from the discharge of a hazardous substance or a threatened hazardous substance.

The Legislature established the New Jersey Spill Compensation Fund (the Spill Fund) when it enacted the Spill Act in 1976. The purpose of the Spill Fund is to provide swift and adequate compensation for damages to property and persons resulting from by 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. Spill Fund revenues are generated primarily from a tax on the initial transfer of each barrel of petroleum and other

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hazardous substances from major facilities. Other revenue sources for the Spill Fund include interest earned on Spill Fund monies, penalties collected for violations of the Spill Act, and cost recovery on cleanup actions. To date, the Spill Fund has provided over \$77 million in compensation to individuals, businesses and governmental entities for damages relating to potable well filter system installation and maintenance, public waterline installation, remediation of contaminated sites, and real and personal property damages caused by discharges of hazardous substances.

The Spill Fund rules specify procedures for the entire claim process, including the following: the original filing of the claim; the initial acceptance or denial of the claim by the Spill Fund administrator; administrative closure of the claim; claim settlement negotiations between the claimant and potentially responsible parties; settlement negotiations between the claimant and the Spill Fund; and arbitration of claims. The rules also contain provisions designed to ensure that payments to claimants from the Spill Fund serve the sole purpose of compensating for damages incurred by claimants resulting from discharges of hazardous substances, and not other factors.

The proposal was published in the New Jersey Register on September 15, 2008 at 40 N.J.R. 5101(a). No public hearing was held concerning the proposal. The comment period closed on November 14, 2008.

This adoption document may be viewed on the Department's website at <http://www.nj.gov/dep/rules>.

Summary of Public Comments and Agency Responses

The following is a list of the commenters, with their affiliations, if any, who made timely written comments on the proposal:

1. J. Abravo
2. Deidra D. Aceto
3. David L. Adkins
4. Kathleen Alban
5. George Anderson

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6. Ida J. Anderson
7. John R. Anderson
8. John R. Anderson Jr.
9. H. Armitage
10. Barbara Baker
11. Alicia and Alfred Bashian
12. John Bauer
13. John Beckley, Hunterdon County Department of Health
14. Marty and Laurie Berglund
15. Scott and Michele Bogdanowicz
16. Robert Borris
17. Joanne Borucki
18. Jacqueline Brown
19. Stasia Burger
20. Dorothy Burton
21. Robert Burton
22. Elina Bush
23. James Caffely
24. Cathy Cagean
25. Diane Car
26. Stephen A. Carbone
27. Russell V. Carpenter
28. Patrick and Judy Carratura
29. Jeannine Chambers
30. Susan and Shawn Connolly
31. Michael Corson
32. Mark S. Daniels
33. Wilma Davison
34. Edward W. Dawes
35. Joseph L. Delicat
36. Barbara Dietrich
37. Steve and Sally DiGiacomo
38. Francis H. Donovan
39. Margaret S. Dwyer
40. Mary D. Easlick
41. Robert E. Erasman
42. Rebecca L. Evans
43. Robert and Ginger Evans
44. Greta J. and Fredrick Fahrenbruch
45. Mr. and Mrs. Feinleib
46. Vincent Fraiser
47. Karen A. Fry
48. Pete C. Fucci
49. Carol J. Fucci
50. Jere and Suzanne Gainer
51. H.T. Gall

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52. Elisabeth Gates
53. Linda L. Geddart
54. Donald and Kimberly Geiger
55. Sally Giacome
56. Richard and Marie Giberson
57. Edward Gilliland
58. R.M. Glass
59. James and Elizabeth Gooch
60. Sharon Grecco
61. Joseph Grecco
62. Hw Greenby
63. Douglas R. Greene
64. Gary A. Guarino, Hopewell Township Department of Health
65. Christine Hackl
66. Brianna L. Hackl
67. Richard Hackl
68. Deborah Haggerty-Ruggeri
69. William Hardiful. Jr.
70. Arthur W. Harrow
71. Jon D. Harston
72. William J. Hebling
73. Michael Higgins
74. Daniel A. Hoffman
75. George and Peggy Hohenstein
76. Steven Horovitz
77. Andrew Hrniak
78. Jamie Huber
79. Samuel H. Hugh
80. J. Hurley
81. Dolores D. Hurosik
82. Jennifer Husted
83. Celle M. Lacy
84. Lisa Lewis
85. Dawn W. Illegible
86. Gail Ellen Illegible
87. Illegible Illegible
88. Illegible Illegible
89. Illegible Illegible
90. Illegible Illegible
91. Illegible Illegible
92. Illegible Illegible
93. Illegible Illegible
94. Illegible Illegible
95. Lara Illegible
96. Mary Ella Illegible
97. R.C. Illegible

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98. Russell Illegible
99. Joseph C. Imhof
100. Illegible Johnson
101. Jeffrey W. and Bonnis J. Jones
102. Kareyn L. Kahn
103. Richard T. Karcher
104. Judith Karn
105. James Kelbaugh
106. Sheila Kelly
107. Holly Kennedy
108. Andrew J. Knight
109. Frank and Cheryl Koehl
110. Nick and Erna Kurti, Jr.
111. Christine Kustrup
112. Peter C. Lange, Tabernacle Township Committee
113. Johnny Larsen
114. Richard Latham
115. Lara Lebucki
116. Rodney Leeds, Jr.
117. Kristen and Justin Lehmann
118. Judith Lerner
119. Lisa C. Lewis
120. Calle M. Locert
121. Mark and Janet Ludwikowski
122. Colleen Macwilliams
123. Mark and Frances Mainardi
124. Fred Mancinelli, Jr.
125. Joan Mannon
126. Diane Marston
127. William J. Martin
128. Thomas Martin
129. Cindy Marzilli
130. Michelle Mason
131. Christine Maver
132. Jenna Mayer
133. Raymond Mccarty
134. James McCaffery
135. John P. McGowan, McGowan Well Water Compliance Management, LLC
136. Norman and Florence Mcintyre
137. Stephen C. Mclaughlin
138. Donna Mclaughlin
139. Enrico A. Meale
140. Vincent Messina
141. Paul J. Miller
142. Angelo Mimmo
143. Illegible Montrose

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144. Bradley R. Morton
145. Illegible Muller
146. Eileen M. Murphy
147. John P. Neimeratin
148. Barbara Novacki
149. Ken O'keefe
150. Karen O'keefe
151. David L. Oiler
152. Susan D. Onorato, Shamong Township Administrator/Clerk
153. Kenneth and Susan Onorato
154. Ruth Osman
155. Robert M. Ott
156. Colleen Ott
157. William D. Owen
158. Robert A. Park
159. Lynn Pascale
160. Brenda Paulson
161. Ruth Pavlik
162. Debra A. Penton
163. Mark C. Peterson
164. Beverley and Dan Pfeffer
165. Scott C. Pillows
166. Andrew Pirozzi
167. Mr. and Mrs. Edmund Powell
168. Mr. and Mrs. John Procopio
169. Gail Ellen Ready
170. Stanley Rewe
171. Kevin M. Rehmann
172. Celeste K. Richard
173. Kenneth and Diane Richards
174. Paul and Linda Riemann
175. Hank Roberts
176. Sandra Rollins
177. Bonnie Ronere
178. Deloris Rubin
179. Barbara Sachau
180. Thomas W. Schiller
181. Carol A. Schiller
182. Joseph W. Schubert
183. Zachary T. Schuz
184. Barbara A. Schultz
185. Walter R. Schwartz
186. Joan and Bill Schwartz
187. Gregory M. Schweitzer
188. Katherine Shimonis
189. Ken A. Shogars

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190. Linda Siedlecki
191. Mr. and Mrs. Michael Sullivan
192. Cheryl Smith
193. John H. Smith Jr
194. Regina M. Snyder
195. Diane Spuler
196. Paul Starzinski
197. Theresa Starzinski
198. John R. Steponick
199. Linda C. Strayhorne
200. John Surmay, City of Elizabeth Department of Health
201. Cathy Szymanski-Fowler
202. Richard and Janet Szymbauski
203. Mr. and Mrs. Joseph Teti
204. Steven S. Teti
205. Nancy Thomas
206. David Thompson
207. William D. Tosoian
208. Marguerite V. Tosoian
209. Karl and Vickie Tower
210. Leroy D. and Carol K. Touchton
211. Kevin and Susan Troy
212. Joseph Tult
213. Jacque B. Vail
214. Carol Valaitis
215. Barbara Valenzano
216. Doug Valito
217. Debbie Van Curen
218. H. Wade
219. Neil C. Wareham
220. Mary L. Warner
221. Bernard Wenvemer
222. Wm. T. and Irene J. Westfield
223. William S. Westrol
224. Scott and Judith Wheeler
225. Billy Wheeler
226. Stephen and Shirley White
227. Colleen C. Williams
228. Stanley Witkowski
229. Victor Wonderlin
230. George C. Young
231. Joseph R. Zebrowski

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The timely submitted comments and the Department's responses follow. The number(s) in parentheses after each comment identifies the respective commenters listed above.

1. COMMENT: When the Department installed point of entry treatment systems (POETS) in the homes in our area, the residents were told that the Spill Fund would pay for system maintenance as long as the water was contaminated. (1-12, 14-18, 20-42, 44, 46-52, 54-76, 78-113, 116-135, 138-153, 155-201, 203-231)

RESPONSE: It has been the Department's policy to pay for the installation of POETS and pay for the cost of operation and maintenance of those systems until the property is sold. The Department then allowed the buyer of the property to file a new claim for the operation and maintenance costs associated with the POET system. The Department has determined that it is not appropriate for the Fund to pay new claims in this circumstance for two reasons. First, N.J.A.C. 7:1J-2.5 establishes that claims are not eligible for compensation from the Fund when the Fund has already paid or settled another claim for the same damages. Therefore, a claim submitted by the buyer would be considered an overlapping claim.

Second, when a buyer purchases a property with a POET system the buyer is purchasing, as part of that property, a working water treatment system that was paid for by the Fund. The Department believes that, as with other costs associated with owning a home, the cost of operating the treatment system should be assumed by the buyer. In these cases, the Department does not consider the buyer of a property with a POET system to have suffered damages within the scope and purpose of the Spill Act and the Spill Fund and therefore, the buyer is not eligible to file his or her own claim against the Fund for costs related to the POET system.

The Department has the authority, through rulemaking, to promulgate settlement procedures and the terms thereof, including instituting methods and means for ensuring that Fund monies are properly spent. N.J.S.A. 58:10-23.11t authorizes the Department to promulgate rules to effectuate the purposes of the Spill Fund provisions of the Act. N.J.S.A. 58:10-23.11k provides that the Administrator shall prescribe forms and procedures for making claims. N.J.S.A. 58:10-23.11m, mandating attempted settlement of claims where the discharger is unknown, authorizes

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the Administrator to “enter and certify payment of such settlement subject to such proof and procedures contained in regulations promulgated by the administrator.” Accordingly, the Department promulgated the Spill Fund rules pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 58:14B-1 et seq., and is now adopting amendments to those rules that modify its procedures for addressing claims that involve the contamination of private potable wells. The Department had determined that adopting the proposed amendments will ensure that the limited monies in the Fund will be available to continue to pay claims in the future.

2. COMMENT: The Department should not adopt the changes it proposed to N.J.A.C. 7:1J-2.5(c), Overlapping claims. It is very important that the Spill Fund continue to be used to ensure that residents are not exposed to contaminants in their drinking water. Homebuyers may not be informed of the water contamination since it is not in the interest of home sellers or real estate salespeople to discuss the water contamination with potential buyers since the water quality issues could negatively impact the sale. If a buyer is properly educated about the costs involved in monitoring and maintaining the treatment equipment, he/she may elect to not purchase the house since the annual operating costs (based on current State protocols) range from \$1,200-\$1,500 per year depending on the monitoring requirements. (1-12, 14-18, 20-63, 65-201, 203-231)

3. COMMENT: Homebuyers who are not properly informed about the monitoring and maintenance requirements of their equipment are in physical jeopardy since the equipment has a limited ability to remove contaminants. If the media changes are not performed on time the homeowners will be exposed to contaminated drinking water. It is likely that many home buyers will not find out about the contamination issues until after they have closed on the house. They will be shown the Private Well Testing Act test and a clean, post-treatment test and believe that it is a non-issue since their treatment equipment has taken care of the problem. They will not be told that there is an ongoing need for monitoring and maintenance.

Poorer homeowners who cannot afford the financial burden of maintaining their systems may have no choice but to expose themselves and their families to carcinogens with the resulting health issues and preventable social costs. This change is a betrayal of the current homeowners

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who, when they initially submitted their Spill Fund applications, were told that the Spill Fund Program would be available to their buyers and therefore their groundwater contamination would not impact their home sale since there would be no money damages related to the contamination. (1-12, 14-18, 20-43-52, 54-63, 65-201, 203-231)

RESPONSE to COMMENTS 2 and 3: The Private Well Testing Act requires that, when property with certain types of drinking water wells (including private residences) is sold or leased, the well water must be tested for contaminants. Pursuant to the Private Well Testing Act Rules at N.J.A.C. 7:9E-2.3, the water sample must be collected on *untreated* water. If the plumbing in the building has a water softener, water filter, or other treatment unit installed, including a POET, the sample must be collected before the water goes through the unit. Under the Private Well Testing Act, the buyer and the seller must, at closing, certify that they have received and reviewed the results of the water testing. See N.J.S.A. 58:12A-27b In the case of a leased property, the lessor is required to test the water and provide a written copy of the test results to each rental unit on the property and to a new lessee of a rental unit on the property. Lessors of seasonal rentals must post the test results in a readily visible location inside the seasonal use or rental unit or provide a written copy of the most recent test results to the new lessee of a seasonal use or rental unit. N.J.S.A. 58:12A-32.

The Department does not believe that a home buyer will choose to stop operating and maintaining a treatment system if the Fund does not fund claims for the POET system after the property transaction is complete. It is the Department's experience that most people are very concerned about the quality of their drinking water and the potential health effects from consuming water that contains contaminants at concentrations above the health based standards. The cost of operating and maintaining POET systems is similar to the cost homeowners pay for maintaining other water treatment systems, which are not eligible for reimbursement from the Fund, such as water softeners, sediment filters and pH adjustment units.

4. COMMENT: It is unfair and inexplicable that the Department is proposing to not continue to pay for the operation and maintenance of a POET system when a property is sold and to not allow diminution of the property value. It lacks common sense and would fail to use the Fund to

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pay damage caused by the discharge of hazardous substances as required by the Spill Act. Such a change does not guarantee that the buyer of a home with a POET will always have clean water. (1-18, 20-52, 54-135-153, 155-231)

RESPONSE: As explained in a prior response, the Department determined that the procedures for addressing Spill Fund claims for damage to private wells should be amended.

The Fund is responsible to pay claims to a person who has suffered damages from a discharge of hazardous substances. When a potable well is impacted by contaminated ground water caused by a discharge, a claimant must submit a claim to the Department within one year from the date that the damage is discovered. The Department then uses the Fund to pay the claimant for the damage caused by the discharge. To date, the Department has, as a policy, paid for and supervised the installation, operation and maintenance of treatment systems. Because the Department has taken this approach, some claimants have concluded that the Department is mandated to address damages in this way.

The purchaser of a property with a POET system has not suffered damages from a discharge. That person is buying the property in its current condition, including the treatment system that was paid for by the Fund. The Fund does not have a continuing responsibility to pay for operation and maintenance for the POET system after the claim by the original claimant has been settled.

Commenters have expressed concern regarding the lowering of the value of property where a POET system has been installed. In the Department's experience, it is a very difficult and cumbersome process to accurately determine property value diminution due to the presence of a POET system. There are many reasons why one house in one neighborhood sells at one price while another comparable house sells for another price. The effect that POET systems have on property values is unknown, particularly in the current uncertain economic conditions.

The Department notes that it is evaluating potential ways to determine property value diminution based on estimates for operation and maintenance costs for POET systems. Based on the

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outcome of this evaluation, the Department may, in the future, propose appropriate amendments to these rules.

5. COMMENT: Homeowners who have active Spill Fund claims were not adequately informed of this rule change. If they were informed, the commenter is sure that there would have been an outcry and many newspaper articles blaming the State for interfering with home sales and creating a public health emergency. (181)

RESPONSE: In accordance with the Administrative Procedure Act, N.J.S.A. 58:14B-1 et seq., the Department published the proposed rules in the New Jersey Register and, in addition, provided notice of the proposal on its web site and in three newspapers of general circulation to ensure Statewide notice of the proposed changes. The Department received comments from 235 persons. Given the notice provided and the number of comments received, the Department believes that it provided notice that was sufficient to inform those persons most likely to be affected by or interested in the proposed rule.

6. COMMENT: The Department says that it is proposing N.J.A.C. 7:1J-2.5(c) because it considers installation of a POET to be the remediation of a contaminated potable well. I agree. The problem is that the remediation effect is limited to the life of the media contained in the treatment tanks. The Department recognizes this fact since it is not denying monitoring and maintenance services to the initial claimants. What is the justification for denying services to the buyers when their water is still contaminated? How many homes will sell if the buyer knows the added costs of maintaining the POET system and the health impacts of not maintaining the system? (1-12, 14-18, 20-43-52, 54-63, 65-231)

7. COMMENT: The Department should not adopt N.J.A.C. 7:1J-2.5(c) because it is in opposition to the original intent of the Spill Fund Program which was designed to protect innocent victims impacted by the discharge of hazardous substances from man-made contaminants at the expense of companies that profit from the sale of these contaminants. To impose additional obstacles to home sales and create a potential public health issue for the sake of the cost savings involved is certainly not justifiable. We are currently in a housing crisis and

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an economic recession. Implementing the “Overlapping Claims” section of the proposed rule changes would exacerbate both. (1-12, 14-18, 20-43-52, 54-63, 65-231)

RESPONSE to COMMENT 6 and 7: The Legislature established the Fund to pay damages caused by the discharge of hazardous substances. The Department intends to continue its policy to install and maintain POET systems to current claimants, as a service. When contamination is first identified in potable wells via the claims process it is important for the Department to be involved. Initially, the Department works with local health departments to identify the nature and extent of the ground water contamination by finding and sampling all potentially impacted potable wells in the area. The Department uses this information to investigate possible sources of the contamination with the goal of identifying a responsible party to stop the discharge, clean up the ground water and ensure that people are not exposed to contaminants. Whether or not a responsible party is identified, the Department oversees the selection and installation of the appropriate treatment system at properties that have been affected by the discharge. Periodic sampling of the system ensures that the system is effective in the treatment of the type and concentration of contaminants in the ground water.

As explained in prior responses, the Department has determined that it is not appropriate to continue to use the Fund to pay for operation and maintenance costs claimed by new owners of properties serviced by a POET system. The Department recommends that a purchaser of a property serviced by a POET system contact their local health agencies to determine the appropriate water treatment and testing protocol. The Department provides technical guidance on its web site at <http://www.nj.gov/dep/srp/finance/> for such home buyers and for the public, in general.

8. COMMENT: It is inappropriate for the Department to try to save money from the Spill Fund by discontinuing payment for the operation and maintenance of POET systems. Instead, the Department should consider reducing the frequency of monitoring of low levels of ground water contamination from four times a year to two times a year. This change will have a positive financial impact in the short term as well as the long term. The Department should authorize

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semi-annual testing for all active claimants whose raw water VOC results are below 10 ug/L for all regulated contaminants combined.

At present there is no official rule regarding testing intervals. There are many POET systems with very low influent levels that are monitored quarterly because that was the standard when the program began. The commenter states that, a few years ago, a Department employee instructed the commenter, who was a county health official, to schedule semi-annual monitoring for new claimants whenever the combined contamination level was below 10 ug/L. The commenter does not believe that this reduced sampling protocol has been implemented for older claims. The proposed amendments to N.J.A.C. 7:1J-2.5(c) would only save one or two percent of Spill Fund costs annually, while reducing monitoring schedules would save 20 to 25 percent immediately and every year thereafter. Quarterly monitoring constitutes approximately half of the operation and maintenance costs of a POET system. (137)

RESPONSE: The Department agrees that for most POET installations, a reduced sampling schedule will save money and be protective of human health. The Department is in the process of evaluating all of its active contaminated ground water claims to reduce the monitoring frequency where the Department determines that based on its technical expertise that less frequent monitoring is warranted.

9. COMMENT: If the proposed change to N.J.A.C. 7:1J-2.5(c) is adopted, future homeowners could seek to install new, deeper potable wells. The installation of a new well could cost \$5,000 to \$6,000 and could cause contamination in a shallow aquifer to travel to deeper aquifers and thereby dramatically exacerbating the ground water problem. (1-12, 14-18, 20-42, 44, 46-52, 54-56, 57-76, 78-107, 109-113, 116-135, 138-153, 155-188, 189-203, 204-231)

RESPONSE: When the Department uses the Fund to pay for the installation of a POET system, it does so because it has been determined to be the cost-effective way of providing clean drinking water to the subject property. New subsection N.J.A.C. 7:1J-2.5(c) provides only that buyers of the property are not eligible to submit a claim for reimbursement for the cost of maintaining and monitoring the POET system. The cost of the POET installation has already been paid with

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Fund monies to the current property owner. Prospective buyers must be informed of the water quality of the potable well and the presence of the POET system before they purchase the property. With this information prospective buyers can make informed decisions before purchasing affected properties.

N.J.A.C. 7:1J-2.5(c) should have no bearing on whether a new property owner installs a deeper well. When the Department evaluates environmentally protective and cost effective alternatives for providing clean drinking water, new, deeper wells are generally not recommended. The Department's well permitting processes restrict the installation of new wells within an area where migration of ground water contamination is a concern. The Department encourages anyone who is seeking to install a new or replacement well to contact his or her county health agency and the Department for appropriate guidance and specifications for new wells.

10. COMMENT: The projected fines should be increased by two thousand percent. They are much too low, encouraging polluters to pollute. It is time that our State makes sure that pollution is stopped. (182)

RESPONSE: Neither the proposed readoption nor the Spill Fund Claims rules contain enforcement provisions or fines. Consequently, this comment is beyond the scope of this rulemaking.

11. COMMENT: According to the Department's Ground Water Quality Standards, the safe level in ground water appropriate to the Pinelands is "natural background." The Department should continue to use the Spill Fund to ensure that people who buy homes with POET systems located in the Pinelands will continue to have clean drinking water. (1-12, 14-18, 20-42, 44, 46-52, 54-56, 57-76, 78-107, 109-135, 138-153, 155-188, 189-203, 204-231)

RESPONSE: As explained in response to prior comments, the Department does not believe that it is appropriate to allow buyers of homes with existing POET systems to submit new claims to the Fund.

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The commenter is correct that the Department's Ground Water Quality Standards (GWQS) at N.J.A.C. 7:9D-1.5 establish "natural background" as the appropriate quality for ground water in the Pinelands. The Department's Ground Water Remediation Standards are established at N.J.A.C. 7:26D and are based on the Ground Water Quality Standards at N.J.A.C. 7:9C. The Department uses natural background quality as the remediation standard for contaminated ground water within the Pinelands (Class I-PL) and in other areas of special ecological significance (Class I-A) in the State.

For the purposes of determining whether a claimant has a valid claim against the Spill Fund for contaminated drinking water, the Department uses the Class II ground water standards, whether the well is located within the Pinelands, or elsewhere in the State. This is because Class II ground water is water that is designated primarily for potable use. N.J.A.C. 7:9C-1.5(e). For some contaminants the standard for the protection of areas of special ecological significance are more stringent than the standards for Class II ground water in order to protect ecosystems that are more sensitive to those contaminants than are humans.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The readoption of N.J.A.C. 7:1J is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Full text of the readoption follows:

(No change from proposal.)

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of this adoption. I hereby authorize this adoption.

Date: _____

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection