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DEPARTMENT OF ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

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

Proposed Readoption: N.J.A.C. 7:1J

Proposed 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

Authorized by: Lisa P. Jackson, Commissioner

Department of Environmental Protection

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 13-08-08/653

Proposal Number: PRN 2008- _____

Submit written comments by November 14, 2008 to:

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Attn.: DEP Docket No. _____

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.state.nj.us/dep/rules>.

The agency proposal follows:

Summary

As the Department is providing a 60-day comment period on this notice of proposal, this proposal is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to readopt, with amendments, its Processing of Damage Claims Pursuant to the Spill Compensation and Control Act rules (Spill Fund rules), N.J.A.C. 7:1J. These rules are scheduled to sunset on August 4, 2008, pursuant to the provisions of Executive Order No. 66 (1978). The expiration date was extended by 180 days to January 31, 2009 pursuant to N.J.S.A. 52:14B-5.1c as a result of the timely filing of this proposal to readopt the rules. As required by the Administrative Procedure Act, the Department has evaluated these rules and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated, as proposed herein and discussed below.

The Legislature established the New Jersey Spill Compensation Fund (the Spill Fund) when it enacted the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., (the Spill Act) in 1976. The Spill Act prohibits the discharge of petroleum and other hazardous substances, provides for the cleanup and removal of any such discharge and establishes a spill compensation fund in order to protect the economy and environment of the State of New Jersey.

The purpose of the Spill Fund is to provide swift and adequate compensation to persons damaged by the discharge of hazardous substances. See N.J.S.A. 58:10-23.11a. Pursuant to the Spill Act, such damages include 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 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 costs 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.

In January 1993, the Department adopted comprehensive rules at N.J.A.C. 7:1J for the processing of claims under the Spill Act for damages resulting from discharges of a hazardous substance. These 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 implementation of N.J.A.C. 7:1J has resulted in the elimination of many of the delays inherent in case-by-case decision making on individual claims, and has ensured consistency in the decision-making process of evaluating claims.

The following is a summary of each subchapter that is proposed for readoption.

N.J.A.C. 7:1J-1, General Provisions, sets forth the general provisions of these rules including their scope, construction and severability, all the definitions for the chapter, the delegation authority of the Administrator, signatory, certification and other communication requirements, and the computation of time under the chapter.

N.J.A.C. 7:1J-2, Claims Generally, sets forth the general requirements for a person submitting a claim for damages to the Department. In general, a claim is eligible for compensation only if the claimant has actually suffered damages and the claimant has exercised reasonable diligence and ordinary care to prevent the damages from increasing or being aggravated. In addition, N.J.A.C. 7:1J-2 sets forth the restrictions on claims by responsible parties or by owners or operators of property from which a discharge has emanated, and the

procedure by which the Administrator may administratively close a claim.

N.J.A.C. 7:1J-3, Water Supply System Claims, establishes eligibility requirements and procedures for evaluating water supply system claims for construction costs associated with providing an alternative supply of water. In general, this subchapter outlines how the minimum required capacity of the water supply system is to be calculated, and provides that only the cost of replacing, restoring or repairing that existing water supply will be compensable from the Spill Fund. In addition, this subchapter establishes the method by which the Department will delineate a Spill Fund Claims Area within which claims may be eligible for compensation from the Spill Fund.

N.J.A.C. 7:1J-4, Property Value Diminution Claims, establishes the criteria for measuring and processing claims for any reduction in the value of property damaged or destroyed by a discharge, provided that the reduction was caused by the discharge. Subchapter 4 also establishes requirements that must be satisfied if a property value diminution claim is to be eligible for compensation, including the requirements for appraisals of the subject property and other information affecting the property value.

N.J.A.C. 7:1J-5, Emergency Response Claims by Local Units, provides a procedure by which local units such as local fire, ambulance, first aid, emergency, or rescue squads may make a claim to the Spill Fund for reimbursement for monies spent on activities such as clean up, removal, prevention, containment or mitigation of a discharge.

N.J.A.C. 7:1J-6, Claims Procedure, sets forth the procedure for submission and initial processing of claims. As provided in this subchapter, claims shall be filed with the Administrator no later than one year after the date of discovery of damages. In addition, Subchapter 6 outlines the rights of the Department, the Board of Arbitration, or other persons designated by the Administrator or the Board to inspect, copy and audit documents supporting the claim, and to inspect the damaged real and personal property and other property to which the claimant can provide access.

N.J.A.C. 7:1J-7, Settlement of Claims between Claimant and Potentially Responsible Parties, establishes the procedure through which the Administrator may arrange for a neutral third party to work with the potentially responsible parties and the claimant to promote and arrange a settlement. If efforts to settle the claim with the potentially responsible parties are unsuccessful, the claimant may request payment from the Spill Fund under N.J.A.C. 7:1J-8.

N.J.A.C. 7:1J-8, Settlement of Claims between Claimant and Fund, establishes the procedure through which the Administrator will process a claim if the source of the discharge is unknown or cannot be determined. In these cases, the Administrator will attempt to arrange a settlement between the claimant and the Spill Fund. Subchapter 8 also sets forth the process for the claimant to request payment from the Spill Fund when one or more potentially responsible parties have been identified but, despite the claimant's good faith efforts, no settlement has been reached within the time allocated under N.J.A.C. 7:1J-7. In addition, Subchapter 8 provides that a potentially responsible party may contest the validity or amount of the claim by requesting that the Administrator submit a claim to arbitration, and also authorizes the Administrator to make a settlement offer to the claimant in certain circumstances.

N.J.A.C. 7:1J-9, Boards of Arbitration, sets forth the process used by the Administrator to convene a Board of Arbitration (Board) when persons alleged to have caused the discharge, the Administrator, or other persons contest the validity or amount of damage claims. Subchapter 9 addresses when and how the Board is formed, the jurisdiction of the Board, and the rules of conduct for the arbitration proceeding.

Summary of proposed amendments

Definitions

The Department proposes to amend the definition of the term “Applicable contaminant standard” at N.J.A.C. 7:1J-1.4. Instead of defining the applicable contaminant standard as the maximum contaminant level established under the State and Federal drinking water quality standards at N.J.A.C. 7:10 and 40 CFR Part 141, respectively, and alternatively, as the “applicable remediation standard” under N.J.A.C. 7:26E, the Department proposes to define this term as the remediation standard developed pursuant to the Remediation Standards rules,

N.J.A.C. 7:26D and site-specific remediation standards that are developed pursuant to the remediation standards provision of the Brownfield and Contaminated Site Remediation Act (Brownfield Act) at N.J.S.A. 58:10B-12. The applicable contaminant standard is used in determining the nature and extent of damage caused by a discharge. The Remediation Standards rules are based on more current toxicity information and testing methods than the drinking water standards cross-referenced in the current definition.

The Department proposes to delete the phrase “or other applicable maximum level” from the definition of “most probable pollutant transport rate” at N.J.A.C. 7:1J-1.4, because the Department proposes to no longer use the maximum contaminant level established under the State and Federal drinking water quality standards to determine the nature and extent of damage caused by a discharge for the purposes of evaluating claims submitted for compensation from the Spill Fund.

The Department proposes to correct the citation to the Department Oversight of the Remediation of Contaminated Sites rules in the definition of "No further action letter" at N.J.A.C. 7:1J-1.4.

The Department proposes to add a definition for “point-of-entry water treatment system or POET” at N.J.A.C. 7:1J-1.4 because the Department is proposing to add rule provisions that are specific to Spill Fund claims for POETs. A POET is a water treatment system used to remove contaminants from the water entering a structure from a potable well.

The Department proposes to amend the definition of potable water at N.J.A.C. 7:1J-1.4 to add the phrase “or for other non-potable purposes” to the definition of “potable water” to clarify that potable water does not include water used for any non-potable use, and not just non-potable uses such as firefighting and agricultural purposes.

The Department proposes to amend the definition of "Water Supply System Claim," or "WSSC" to ensure that operation, maintenance and monitoring costs for a water system that was installed with Fund monies are ineligible for compensation from the Spill Fund. The Spill Fund

does not pay claims for operation, maintenance and monitoring costs of water supply systems because the water purveyors already bill their customers for this work. In order to preserve the limited amount of money in the Spill Fund, and in light of the fact that water purveyors generate funds that can be used for the operation, maintenance and monitoring of water systems, the Department proposes to make operation, maintenance and monitoring costs ineligible for compensation from the Spill Fund.

Notices and Other Communications

The Department proposes to amend N.J.A.C. 7:1J-1.7(a) to correct the address of the Environmental Claims Administration office.

Electronic submission requirements related to POET claims

The Department proposes to add new provisions to N.J.A.C. 7:1J-1.7 concerning electronic submission of invoices for costs related to the installation and maintenance of POETs and for analytical monitoring data generated for those systems. The Department is in the process of setting up a system by which POET invoices may be submitted electronically through its website. The Department proposes to notify the public when this system is fully functional by publishing a notice to that effect in the New Jersey Register and to thereafter require that all invoices and analytical data related to POET claims be submitted electronically on a date that is 60 days from the date of publication of that notice. See proposed new subsection (c). Note that invoices and data related to claims other than POET claims will still be required to be submitted in writing and sent by certified mail pursuant to the existing rules, which are to be recodified at N.J.A.C. 7:1J-1.7(a).

The Department proposes to recodify the single paragraph containing the existing requirements for submitting claims that is currently codified at N.J.A.C. 7:1J-1.7 as new subsection (a). Further, the Department proposes to amend this subsection to add “subject to subsection (c),” so that, until electronic submission is available, all claimants will continue to submit their invoices and data in writing to the indicated addresses until the Department publishes notice in the New Jersey Register that the electronic for the submittal of POET claims

is functioning. Thereafter, all invoices and data for POET claims will be required to be submitted electronically.

The Department proposes to add a new subsection (b) that requires the claimant to submit the documentation to the Department electronically, subject to the availability of electronic submission capabilities. This new subsection also provides that invoices for the cost of installation of a POET shall be submitted within 60 days after the installation of the POET, invoices for the cost of operation and maintenance of the POET shall be submitted within 60 days of each service date, and the results of all analytical monitoring required by the Department be submitted within 60 days of sampling event. See proposed new N.J.A.C. 7:1J-1.7(b)1 through 3.

Proposed new N.J.A.C. 7:1J-1.7(b)4 provides that the water treatment vendor chosen by the claimant to install and service the POET may submit the electronic invoices and analytical monitoring data related to the POET to the Department on the claimant's behalf.

Requiring electronic data submittal in connection with POET claims will allow the Department's Spill Fund program to manage the program more efficiently. The vast majority of claims to the Spill Fund concern POETs. Electronic submittals will reduce the labor involved in processing invoices and reviewing data and will speed up the payment of claims. It will also enable water treatment vendors and water testing laboratories to utilize their electronic data management systems.

Provisions Applicable to All Claims

Residential claims

The Department is proposing to add new N.J.A.C. 7:1J-2.2(b) that will require the Administrator to prioritize two categories of claims, namely those for potable water restoration and vapor intrusion mitigation at residential properties, and at schools and child care facilities, over other claims made pursuant to this chapter. The Spill Act established the Spill Fund to provide swift and adequate compensation to persons damaged by the discharge of hazardous substances, N.J.S.A. 58:10-23.11a, and gives the Administrator broad authority to prescribe

appropriate procedures for administering damages claims. See N.J.S.A. 58:10-23.11k. The Department has determined that residential and school/child care claims concerning mitigation of potable water contamination and the intrusion of contaminated vapors should take precedence over other claims because the health of individuals may be directly impacted.

Calculation of cost-effective remediation

The Department proposes to add the phrase “the Department’s administrative costs” to N.J.A.C. 7:1J-2.4(e) so that the Department’s cost to administer the Fund is included in the determination of whether a selected remediation is cost-effective. The Department’s administrative costs are an expense to the Department; thus, including these costs in the calculation will provide for a more accurate evaluation of the total cost of remediation.

Overlapping Claims

POET claim and property transfer

The Department proposes to add new subsection N.J.A.C. 7:1J-2.5(c), which provides that on or after effective date of this proposed amendment, the purchaser of a property on which a POET has been installed and maintained at the expense of the Fund may not make a claim for compensation from the Fund for ongoing POET operation, monitoring and maintenance costs. This proposed subsection will also require that the seller of a property on which a POET has been installed and maintained at the expense of the Fund notify the Department in writing that the property has been sold within 30 days of a binding contract of sale. The Department is proposing these amendments because it considers the installation of a POET to be the remediation of a contaminated potable well.

Water Supply Systems Claims

The Department proposes to add the phrase “the Department’s administrative costs” to N.J.A.C. 7:1J-3.3(b) to allow the Department’s cost to administer the Fund to be considered as part of the determination that a selected remediation for a water supply systems claim (WSSC) is cost-effective. The Department’s administrative cost is an expense to the Department; thus, its inclusion will provide for a more accurate calculation of the remediation cost.

The Department proposes to add a new section at N.J.A.C. 7:1J-3.3(c) that provides that operation, maintenance and monitoring costs for a WSSC are not to be included as a part of the water system alternative evaluation. In the proposed companion amendment to the definition of WSSC at N.J.A.C. 7:1J-1.4 discussed above, the Department proposes to make operation, maintenance and monitoring costs for a WSSC for a municipal water system ineligible for compensation from the Fund. The Fund currently does not pay claims for operation and maintenance and monitoring cost of water systems because water purveyors bill their customers for this work. Since the water purveyors have a source of funds to pay for this work and the Fund has limited assets, it is proposed that the Fund not be liable for these costs since there is another revenue stream capable of paying for system operation, maintenance and monitoring. The Department also proposed recodifying subsection (c) of this section as subsection (d), with no change in text.

Computation of the capacity

The Department proposes to add the phrase “or future demand” to N.J.A.C. 7:1J-3.4(a)2ii and (b)2ii to ensure that the calculation of a Spill Fund Claims Area (SFCA) does not include areas planned for future development. The purpose of the water supply alternative analysis is to evaluate the cost of a water system that will be used in place of residential wells in an SFCA. An SFCA serviced by residential wells must not include water for use in fire protection or extra capacity for future expansion because these uses are not eligible for compensation from the Fund. Since the Fund-eligible cost of the water line is for replacing contaminated drinking water from individual wells, neither fire flow nor future growth should be included in the replacement cost for the residential wells. Firefighting capacity has been ineligible for some time, and the Department is proposing to also specify that future demand also be a cost that is ineligible for reimbursement.

The Department proposes to amend the method of calculating the eligible compensation from the Fund for water lines for a WSSC claim in section N.J.A.C. 7:1J-3.4(c). The proposed amendment will delete the formula at N.J.A.C. 7:1J-3.4(c)1 and the accompanying text at N.J.A.C. 7:1J-3.4(c)1i through iii, as well as N.J.A.C. 7:1J-3.4(c)2 through 3, and replace this text with a requirement that limits the eligible cost of water lines to lines that consist only of

either 6 or 8 inch diameter pipes. The proposed amended language also provides that a claimant will be responsible for the cost differential if that claimant installs a larger water line.

The Department's experience with installing waterlines over the last twenty years has shown that 6 to 8 inch pipes are sufficiently large to supply water to WSSC areas without accounting for fire flow and future development. By limiting these types of claims to the installation of 6 or 8 inch pipes, the Department will provide funding sufficient for ensuring that areas impacted by discharges have adequate quantities of potable water, while effectively simplifying the claims application process. If a claimant wishes to install a larger sized pipe to allow for fire protection or future expansion, the claimant may pay the difference in the cost of a larger water line. The Department is also proposing recodifying N.J.A.C. 7:1J-3.3(c)4 as (c)2, with no change in text.

Calculation of claims

N.J.A.C. 7:1J-3.5(a) codifies a formula that was established by the Board of Public Utilities, and that the Department uses to determine the amount that a claim submitted by a water supply system that is operated by a private water purveyor must be reduced. In 2004, the Board repealed the rules containing this formula, effective December 20, 2004, and operative March 20, 2005. See 36 N.J.R. 276(a) (January 20, 2004), 36 N.J.R. 5928(a) (December 20, 2004). As stated in the proposal for those new rules, "the . . . new rules replace various existing rules governing extensions of service with one consolidated, comprehensive set of new extension rules that reflect the State's smart growth policies for addressing the problems of sprawl development. . . . The existing rules make no distinction between extensions serving smart growth development in areas designed for growth under the State Plan, and extensions serving sprawl development. This has resulted in subsidies to development in outlying areas, and has perpetuated barriers to development and redevelopment in areas designated for growth under the State Plan. The . . . amendments, repeals and new rules . . . replace this outdated regulatory scheme with one that ensures that the cost of all extensions of infrastructure will reflect State smart growth policy."

The Board repealed and replaced Subchapter 8, Suggested Formulae for Extension of Utility Service, with a new Subchapter 8, Extensions to Provide Regulated Services. According to the proposal summary, existing Subchapter 8 provided voluntary suggested formulae to be used to distribute the cost of a residential overhead extension provided at the request of a land developer or an individual applicant, but did not differentiate between designated growth areas and areas not designated for growth. Instead, the then existing rules provided suggested formulae based on the type of utility and the type of applicant. New Subchapter 8 provides a consolidated, coherent regulatory scheme applicable to all extensions made by all entities regulated by the Board. New Subchapter 8 sets forth differing cost requirements for where and when a regulated entity may bear the cost of constructing an extension.

To ensure that the Department continues to utilize the most current rules concerning cost calculations for water supply systems, the Department is proposing to delete the existing, outdated formula, and the provision that requires prorating where a system will supply only part of users' needs, from the Spill Fund rules. Instead, the Department proposes to cross-reference the revised Board of Public Utilities' All Utilities rules at N.J.A.C. 14:3-8.

The Department is proposing to amend N.J.A.C. 7:1J-3.5(e) to add that the installation of a water meter is eligible for compensation from the Fund. A water meter is an integral part of a water service connection, from a water line to a home. Water meters are required by the Department's Safe Drinking Water program to ensure appropriate billing and water conservation. For these reasons, the Department believes that it is appropriate to allow compensation from the Fund for the installation of water meters.

N.J.A.C. 7:1J-3.6 requires the Department to include both the current known extent of contamination and the most probable pollution migration zone when it delineates a spill fund claims area (SFCA). It has been the Department's experience that, for the majority of situations, it is not necessary to include the most probable migration zone in the SFCA delineation, particularly when contaminant concentrations are low and where, because of the nature of the contaminants and/or site geology, the contaminants do not tend to migrate.

Accordingly, the Department proposes to delete the phrase “combined with” and add that the Department “may” include the most probable migration zone in the calculation of the SFCA. This amendment will simplify the delineation of the SFCA, and will allow the Department to calculate the most probable migration zone only when needed.

Sealing of contaminated wells

N.J.A.C. 7:1J-3.10 provides that the Administrator may require as a condition of receiving compensation from the Fund for an alternate water supply that a claimant seal his/her private well. The Department proposes to amend this section to clarify that wells in impacted areas must be dismantled and permanently sealed in accordance with N.J.A.C. 7:9D-3. Additionally, the Department is proposing that the sealing of the well must occur within 60 days after the connection to a water supply system. It is important for the protection of public health that wells in impacted areas be sealed. However, the owner of an impacted well will not be required to seal the well if it is being used for a geothermal heating and cooling system. Because geothermal systems use ground water in a closed loop, there is no potential for people to become exposed to contaminated water.

Property Value Diminution Claims

Requirements for eligibility

The Department proposes to add a new section at N.J.A.C. 7:1J-4.2(e) to specify that it will not approve claims for property value diminution when the Fund has already paid for the installation and maintenance a POET or a water line connection at property that is the subject of the claim. The Department is proposing this new subsection because, once the claimant’s property receives a POET, the Department considers the damage caused to the potable well to have been remediated and the claimant made whole. The Department does not consider a property with a POET or a water line connection to continue to be damaged; the value of such a property would not be diminished because of a discharge and thus the property owner would not be entitled to file a claim for property diminution. The Department also proposes to deny a property diminution claim if the claimant had declined the Department’s offer to install a POET or provide a water line connection. This disqualification would be effective on or after the effective date of these proposed amendments.

Social Impact

The Spill Fund rules proposed for readoption will continue to have a positive social impact by providing claimants with the means to obtain reimbursement for losses suffered in connection with discharges of hazardous substances. The proposed readoption will continue to have a positive social impact upon claimants by providing them with specific, orderly procedures for making claims against the Spill Fund and for the continued timely processing of claims. In addition, the rules proposed for readoption will continue to serve as a source of relief in addressing damages to innocent parties arising from discharges of hazardous substances. Through the Spill Fund's claim mechanism, the Department has been able to provide New Jersey's residents with a clean source of drinking water shortly after the Department receives notice that a claimant has a contaminated drinking water supply.

The Department's proposed amendments at N.J.A.C. 7:1J-1.7(b), which establish requirements for the electronic submittal of invoices and analytical monitoring data associating with the installation of POETs, will also have positive social benefits. The submittal of electronic forms will be simpler and faster for the vendors that install and maintain POETS and for laboratories that analyze drinking water samples. The electronic submittal of invoices and data will allow the Department to more efficiently obtain and manage the information that is needed to ensure that POETs are working properly, and will allow the Department to pay invoices for claims more quickly and efficiently, thereby freeing Department staff to process other Spill Fund claims.

The Department believes that there will be positive social impacts from the proposed amendment at N.J.A.C. 7:1J-2.2, which will allow the Administrator of the Fund to prioritize residential claims over payment of other types of claims. This amendment will ensure that Fund monies are first expended to ameliorate potential and realized impacts to the health of individuals who may not otherwise be able to take actions necessary to mitigate those impacts.

Proposed amendments to the definition of water supply system claims at N.J.A.C. 7:1J-1.4 and the proposed amendments to N.J.A.C. 7:1J-3.3(c) provide that the Department will not pay claims from a water purveyor for the operation, maintenance and monitoring costs

associated with a water supply system claim. When a water system has been damaged by a discharge the Fund will pay claims for those damages. For example, the Fund will pay for the installation of treatment systems necessary to ensure that the water meets standards established by the Department and is protective of human health. However, because water purveyors distribute the cost of operating their treatment systems across all of their customers, the Department does not believe that it is appropriate or necessary for operation, maintenance and monitoring costs to be paid for by the Fund.

Additional amendments proposed by the Department will also cause positive social impacts by continuing to ensure that the limited assets available in the Fund are allocated to eligible claimants in a fair, responsible manner. Proposed amendments to N.J.A.C. 7:1J-3.4(a)2ii specify that future demand for water cannot be included in the engineer's computation of an adequate potable supply of public water. There have been circumstances where a town or purveyor wants the Fund to pay for a larger water line or wants to include future development in its water calculations. The Department has determined that it is inappropriate for the Fund pay for water for future development. Towns and developers must consider water demand when planning for new development and these considerations should be included in the budget for the future development. The Fund was established to pay for damages actually incurred, which are caused by discharges of hazardous substances. Future water demand, by definition, is speculative, because it does not exist at the time the claim is filed.

The Department anticipates that amendments to N.J.A.C. 7:1J-4.4(c), which limit reimbursement from the Fund for the cost of the construction of water transmission lines to the cost of a 6 or 8 inch diameter water line, will have positive social benefits. The Department has determined that 6 or 8 inch lines are generally adequate to provide potable water to impacted areas. Specifying the size of water lines rather than requiring the calculation of the appropriate line size will enable claimants to prepare their claims more quickly and easily, and will help to reduce the Department's review time.

Economic Impact

N.J.A.C. 7:1J has had a positive economic impact upon persons who have suffered damages caused by discharges of hazardous substances by providing a method for these persons to obtain compensation for such damages. By clarifying the claims processing rules, case-by-case decision making will be reduced, and those who have been damaged by the discharge of hazardous substances will be assured of prompt compensation. In addition, by clarifying which claims will be compensable, these rules will help the Administrator to preserve the assets of the Spill Fund so that funds are available to pay other eligible claims. The rules proposed for re-adoption will continue these positive economic impacts by continuing to provide specific processing procedures.

The economic impacts on persons filing claims are limited and will vary depending upon the nature and complexity of the damages. For example, there should be little or no economic or financial impact to claimants filing for contaminated well damages because the proofs necessary to file the claim include records which a claimant would normally have on hand. The Department requires a copy of a deed or recent property tax bill and two lab tests are required to be eligible for compensation. The first test is usually performed for routine monitoring by the property owner. The second test is reimbursable by the Fund if the first test shows contamination over State standards.

For more complex cases, the cost to perform environmental investigations will probably be necessary pursuant to other Department or Federal regulations. Therefore, there should be no significant additional cost imposed by filing a Spill Fund claim. Most information requested by the Fund is basic to good recordkeeping and accounting practices.

Claims filed for property value diminution should not entail any extra costs to the claimant because the information and records required of the claimant are those records normally filed and maintained in general real estate transactions. In all cases there is no fee to file a Spill Fund claim.

The Department anticipates that several of the proposed amendments will have both positive and negative economic impacts. Amendments at N.J.A.C. 7:1J-1.4 will enable the Department to use ground water remediation standards that are more stringent than the drinking water quality standards that are currently used to determine whether and to what extent ground water has been impacted by a discharge. The Department anticipates that the number of eligible claims for the cost of remediating wells that are impacted by contaminants will increase under the more stringent standards, but the cost of testing and remediation will vary for different contaminants. For example, if a well is contaminated with toluene, the drinking water standard that is currently used is 1,000 ppb. The ground water remediation standard for toluene is 600 ppb. When the cross-reference to the Remediation Standards Rules is adopted into the Spill Fund rules, claims for wells that contain concentration of toluene between 600 ppb and 1,000 ppb will become eligible for reimbursement from the Fund. The change in the standard used may also affect the duration for which the Fund will be required to pay for water treatment. Generally, it will take longer for ground water to be remediated to the 600 ppb level than it would take for it to be remediated to the 1,000 ppb level. The Department believes that the increased demands on the Fund are warranted and necessary for the protection of human health.

The proposed amendments at N.J.A.C. 7:1J-1.7(b), which establish requirements for the electronic submittal of POET invoices and analytical monitoring data, will have positive economic impacts on vendors and analytical laboratories because they will simplify the submittal of information to the Department and should result in the more rapid payment of vendor invoices.

The proposed amendment to N.J.A.C. 7:1J-2.5 that provides that the Fund will not pay a purchaser of property for the operation and maintenance costs of a POET that was installed and maintained at the cost of the Fund, will have a positive economic impact on other claimants because it will ensure that Fund monies will be available for a greater number of current property owners.

The proposed amendments to N.J.A.C. 7:1J-3.4(a)2ii specify that future demand for water cannot be included in the engineer's computation of an adequate potable supply of public water. This amendment will result in positive economic impacts to the Fund by ensuring that Fund assets be used exclusively to address damages that have occurred as the result of a discharge. The cost of future growth, including the cost of supplying potable water, should be borne by the developers and not by the Fund.

Amendments to N.J.A.C. 7:1J-4.4(c) limit reimbursement for the costs of construction of water transmission lines to the cost of a 6 or 8 inch diameter water line. These proposed amendments will simplify the application process for these types of claims, thereby saving claimants time preparing their claims and saving the Department's time reviewing these claims. The Department has determined that 6 or 8 inch lines are generally adequate to provide potable water to impacted areas. If a town or purveyor determines that they need a larger line to address future development needs, the Department would provide funding for a 6 or 8 inch line, and the town or the purveyor may choose to fund a larger water line.

Amendments proposed at N.J.A.C. 7:1J-3.5(a) delete a formula that was established by the Board of Public Utilities that is used to determine the appropriate amount of a claim submitted by a water supply system that is operated by a private water purveyor. As the Board of Public Utilities has recently revised its rule, including this formula, the Department will provide a reference to the Board of Public Utilities rules, N.J.A.C. 14:3-8 in these rules. The Board of Public Utilities rules provide different formulae to determine the amount of the rebate that a water purveyor must refund to a developer. The Department has determined that the new formulae in general, will lessen the magnitude of the adjustment of claim amounts. As a result the Fund will pay more for these types of claims than it did under the formula historically used by the Department.

The proposed amendment at N.J.A.C. 7:1J-3.10, which will enable the Administrator require that contaminated wells be sealed within 60 days after a property is connected to a municipal water supply, may negatively impact people who have, in the past, chosen to keep their wells open for various non-potable uses. Additional costs will be associated with the cost

of paying for water supplied by a water purveyor as compared to the cost of operating a private well. As an example, people who wish to irrigate their lawns may incur higher bills from their water purveyor for the extra water used in that billing cycle that they would otherwise have saved if they could use onsite well water for those purposes.

The Department proposes to add a new section at N.J.A.C. 7:1J-4.2(e) to specify that it will not approve claims for property value diminution when the claimant has already received payment for either a POET or a water line connection from the Fund. This amendment will ensure that claimants will not submit what is essentially two claims for the same damage. When the Fund provides a POET, the damage caused by the discharge has been addressed. Therefore, there is no residual property diminution. As these property value diminution claims will not be compensable, the assets of the Spill Fund may be used to pay other claims.

Environmental Impact

The rules proposed for readoption set forth the Department's procedures for processing, approving and paying claims against the Spill Fund for damages caused by a discharge of a hazardous substance. Spill Fund claim payments primarily cover the costs of potable waterline installation, potable filter system installation and maintenance, the remediation of contaminated sites and business losses caused by a discharge. Accordingly, the Spill Fund provides a source of money for environmental cleanups as well as compensation to innocent parties who have been damaged by a discharge of a hazardous substance. Insofar as the rules serve to mitigate the effects of environmental harm, the rules proposed for readoption will continue to have a positive environmental impact.

Two of the proposed amendments will have positive environmental impacts by ensuring the protection of human health from exposure to contaminated drinking water. Amendments to the term "applicable contaminant standard" at N.J.A.C. 7:1J-1.4 will allow the Department to use its Remediation Standards, N.J.A.C. 7:26D, and site-specific remediation standards developed pursuant to the Brownfield Act, N.J.S.A. 58:10B-12, to determine the extent of damage caused by a discharge of hazardous substances for the purposes of Spill Fund Claims. The Department has historically used the State and Federal drinking water quality standards for

this purpose. The recently adopted ground water remediation standards (GWRS) (codified in the Remediation Standards rules) are based on more current toxicity information and testing methods than are the drinking water standards that are referenced in the current definition. Twenty-four GWRS are more stringent than the drinking water maximum contaminant levels.

The proposed amendments at N.J.A.C. 7:1J-3.10, will allow the Administrator to require that contaminated wells be sealed within 60 days after a property is connected to a municipal water supply. The Department is aware that some property owners continue to use their wells even though the wells are contaminated and even after the properties have been connected to a clean potable water supply. Because many types of contamination are not readily detectable, people may want to continue to use their wells, even if only for irrigation and other non-potable uses. People can become exposed to contaminants that may volatilize out of water or by swallowing water when swimming in pools are filled with contaminated water; it is therefore important that contaminated water not be used for these purposes. The exemption from the requirement to seal a contaminated well, namely where the well is being used for a geothermal heating and cooling system, will also have a positive environmental impact by encouraging the use of alternative, non-carbon fuel based heating and cooling systems.

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 proposed 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.

Jobs Impact

The existing rules have had a positive effect on jobs within the State by providing funding which has permitted certain businesses to be reimbursed for the costs of providing themselves with potable water and for diminution in the value of their property or business.

This means that these costs ultimately do not affect the business' bottom line, including its ability to provide jobs. In addition, the rules that have governed the processing of Spill Fund claims have assisted in determining the extent of funding eligible for construction of small and large projects related to the mitigation or remediation of a hazardous discharge. Such projects have created employment opportunities for individuals performing a wide range of activities relating to the mitigation or remediation of a discharge. Included are such jobs as laborers excavating a waterline, consultants preparing workplans and reports, vendors who install and maintain POETs, laboratories that conduct sampling and testing, and engineers who design project plans. Readoption of these rules will continue to provide for continued employment in these areas.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the proposed readoption with amendments and determined that agricultural operations will not be impacted by the proposed readoption with amendments. The current rules have not had an impact upon agriculture in New Jersey, and the proposed amendments are not expected to have an impact on the State's agricultural industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees. Many of the claimants and potentially responsible parties affected by the proposed readoption of the existing rules may be small businesses, as defined under the Regulatory Flexibility Act. A person becomes a claimant or a potentially responsible party as a result of a discharge, not as a result of the nature of the person's business. Accordingly, the Department considers a claim from a small business to be the same as any other claim and, if eligible, will provide financial relief to the business in the form of reimbursement for its damages.

The provisions of the rules proposed for readoption concerning water supply systems claims impose certain record keeping, reporting, and compliance requirements upon small

businesses. These provisions may require those businesses to obtain professional services in order to submit documentation from accounting, engineering, and/or business services to support the subject business's claim for damages against the Spill Fund. For example, pursuant to N.J.A.C. 7:1J-3.4, a claimant making a water supply system claim concerning contaminated supply wells, water storage facilities or water transmission and distribution lines is required to submit a report certified by a licensed professional engineer. There are approximately 200 water purveyors in New Jersey that can be classified as "small businesses." The rules proposed for readoption do not distinguish between water purveyors, that qualify as small businesses and those that do not. However, because the reasonable cost of these professional services will be compensable from the Spill Fund, the Department does not expect that these rules will adversely affect small businesses. Compliance with the rules proposed for readoption will not require any initial capital costs or annual costs to small businesses to pursue their claims. The rules proposed for readoption make no special provisions for claimants who qualify as small businesses because any special provisions would impair the Administrator's ability to perform his/her fiduciary duty to the Spill Fund in processing property value diminution claims.

With respect to property value diminution claims, the owners of properties that are the subject of such claims may be small businesses. The rules proposed for readoption require property value diminution claimants to submit several documents to be eligible for compensation from the Spill Fund. (See N.J.A.C. 7:1J-4.5, Evidence of good faith sale.) Claimants must also obtain professional services from real estate brokers that are members of a multiple listing service (or its commercial equivalent, for claims involving commercial property or other property not normally sold through a multiple listing service). (See N.J.A.C. 7:1J-4.5, Evidence of good faith sale.) However, the Department does not believe that this requirement imposes substantial costs upon small business claimants, because it is likely that such claimants would retain a real estate broker to market their properties even if the rules did not so require. Compliance with the rules proposed for readoption will not require any initial capital costs or annual costs to small businesses to pursue their claims. The rules proposed for readoption make no special provisions for property value diminution claimants who qualify as small businesses because any special provisions would impair the administrator's ability to perform his or her fiduciary duty to the Spill Fund in processing property value diminution claims.

Potentially responsible parties participating in settlement negotiations with claimants under N.J.A.C. 7:1J-7, Settlement of claims between claimant and potentially responsible party, or in arbitration under N.J.A.C. 7:1J-9, Board of Arbitration, may need or elect to retain an attorney or other professional to assist in such negotiations or arbitrations. The extent of the professional services that may be necessary depends upon the nature and complexity of the issues arising in the negotiations or arbitrations, and not upon requirements imposed under the proposed readoption. For this reason, the rules proposed for readoption do not contain different requirements for small businesses.

Two of the proposed amendments will reduce the amount of paperwork associated with certain claims and will benefit venders that install and maintain POETs, and analytical laboratories that conduct periodic potable water monitoring. Both of these are generally small businesses. The proposed amendments to N.J.A.C. 7:1J-1.7(b) and (c) will establish the submittal of invoices and monitoring data electronically. Electronic submittal of invoices and data will reduce the time and effort expended by venders and laboratories in preparing and submitting invoices and analytical data to the Department. The Department also anticipates that electronic submittals will allow the Department to process invoices and data more efficiently and will result in prompter payments from the Fund.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed readoption on smart growth and the implementation of the State Plan. The rules proposed for readoption only involve land use policies or infrastructure development to the extent that the Department has provided a cross-reference to the revised Board of Public Utilities rules at N.J.A.C. 14:3-8. The new formulae established by BPU provide differing cost requirements for where and when a regulated entity may bear the cost of constructing a water line extension. The BPU rules

differentiate between designated growth areas and areas not designated for growth and will provide incentives for development in smart growth areas.

Other Spill Fund Claims rule requirements are smart growth-neutral because they neither encourage nor discourage the achievement of smart growth. The rules proposed for readoption with amendments are intended to protect public and environmental health, which are goals of the State Plan. Their purpose is to mitigate the effects of environmental harm on homeowners and businesses whose properties and potable water have been affected by offsite discharges.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the Spill Fund rules proposed for readoption with amendments to determine what, if any, impact they will have on the affordability of housing. The Department has determined that the rules may have some positive impact on the affordability of housing because these rules help to ensure that there is no change in the average costs associated with housing impacted by a discharge. The Fund compensates eligible homeowners for, among other things, the cost of installing and maintaining a water treatment system or being hooked up to a water supply system. Any homeowner may submit a claim for compensation for damages. The Department currently reimburse for the ongoing operation and maintenance of approximately 1,800 POET claims, and pays for the installation of approximately 250 new POETs and for the connection of several hundred residences to water supply systems each year.

Because the Fund effectively returns a property to its pre-damaged condition at no cost to the property owner, the rules have no impact on the average cost of housing. However, absent Spill Fund compensation, housing prices may be negatively impacted because a potential purchaser may offer a lower purchase price to offset the out of pocket cost of water treatment system installation and maintenance.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed readoption of the Spill Fund rules with amendments to determine what, if any, impact these rules will have on smart growth development. Because these rules provide for the treatment or replacement of existing potable water sources that have been damaged by a discharge of a hazardous substance, they do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rule proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1J.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, N.J.A.C. 7:1J

Subchapter 1. General Provisions 7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...

“Applicable contaminant standard” means the remediation standard developed pursuant to N.J.A.C. 7:26D or N.J.S.A. 58:10B-12, 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].

...

"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).

...

"No further action letter" means a letter as defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.

...

"Point-of-entry water treatment system" or "POET" means a water treatment system used to remove contaminants from the water entering a structure from a potable well.

"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, or for other non-potable purposes.

...

"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. Ancillary costs shall not include the cost of operation, monitoring and maintenance.

7:1J-1.7 Notices and other communications

(a) [All] Subject to (c) below, all claims, notices, requests and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All [such] communications submitted pursuant to this subsection shall be sent to the Department by certified mail [shall be sent] to the following address:

Department of Environmental Protection
Environmental Claims Administration

PO Box [028]413

Trenton, New Jersey 08625-[0028]0413

All such communications sent to the Department by means for which a street address is required by the carrier shall be sent to the following address:

Department of Environmental Protection

Environmental Claims Administration

401 East State Street

Trenton, New Jersey 08609

All such communications to the claimant shall be sent to the mailing address set forth in the claim under N.J.A.C. 7:1J-6.3(a)3, unless the claimant directs otherwise under N.J.A.C. 7:1J-6.7.

(b) Subject to (c) below, all invoices for compensation for POET installation, operation and maintenance shall be submitted in an electronic format acceptable to the Department, and in accordance with the following:

1. Invoices for the cost of the installation of a POET shall be submitted within 60 days after the installation a POET;

2. Invoices for the cost of the operation and maintenance of the POET shall be submitted within 60 days after each date on which the POET is serviced;

3. The results of all analytical monitoring for POETs required by the Department shall be submitted within 60 days after each sampling event; and

4. Any invoices and analytical monitoring data submitted electronically under this subsection may be submitted to the Department by a water treatment vendor or laboratory that is chosen by the claimant to provide these services.

(c) Electronic submittal of invoices and analytical monitoring data for POET claims as required pursuant to (b) above shall be required on or after the date that is 60 days from the date that the Department publishes a notice in the New Jersey Register that the Department's system for receiving electronic submittals is functioning. All claims other than POET claims shall continue to be submitted in accordance with subsection (a) above.

Subchapter 2. Claims Generally

7:1J -2.2 Provisions applicable to all claims

(a) (No change in text.)

(b) The Administrator shall prioritize the categories of claims that are eligible for compensation in the following order:

1. Potable water restoration and vapor intrusion mitigation at residential properties;

2. Potable water restoration and vapor intrusion mitigation at schools and child care facilities; and

3. All other categories of claims.

7:1J-2.4 Damages actually incurred; mitigation

(a) - (d) (No change.)

(e) A claim shall be eligible for compensation from the Fund only to the extent that the claim is for costs associated with remediation which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge, and cost effective. Environmentally sound remediation is remediation conducted in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. To determine if the remediation is cost-effective, the Department shall consider initial capital costs, 20-year operation and

maintenance costs, monitoring costs, the Department's administrative costs, reliability and feasibility of implementation.

7:1J-2.5 Overlapping claims

(a) - (b) (No change.)

(c) On or after (effective date of this amendment), the purchaser of a property on which a POET has been installed and maintained at the expense of the Fund may not make a claim for compensation from the Fund for ongoing POET operation, monitoring and maintenance costs. The seller of a property on which a POET has been installed and maintained at the expense of the Fund shall notify the Department in writing within 30 days of executing a binding contract of sale for that property.

Subchapter 3. Water Supply Systems Claims

7:1J-3.3 Most cost-effective environmentally sound alternative

(a) (No change.)

(b) A WSSC shall be eligible for compensation from the Fund only to the extent of the cost (as such cost is determined by the Department) of the most cost-effective means which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge. To determine what remedy is the most cost-effective, for each alternative the Department will consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, the Department's administrative costs, reliability, feasibility of implementation, and acceptability to the public.

(c) Operation, maintenance and monitoring costs for a WSSC by a water purveyor shall not be included as part of the evaluation of water system alternatives.

Recodify existing (c) as (d) (No change in text.)

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

(a) If a WSSC is a claim for compensation for the cost of a water well or wells, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. (No change.)

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. (No change.)

ii. The design and specifications of the water well or wells that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting or future demand. The engineer's report shall contain a calculation of the minimum necessary capacity of the wells determined in accordance with (a)1 above.

(b) If a WSSC is a claim for compensation for the cost of water storage facilities, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. (No change.)

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. (No change.)

ii. The design and specifications of the water storage facilities that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting and future demand. The engineer's report shall contain a calculation of the minimum useful storage capacity necessary to supply potable water to the users described in (d) below.

(c) If a WSSC is a claim for compensation for the cost of water transmission and distribution lines, [the amount otherwise eligible for compensation from the Fund shall be reduced as follows:] the following restrictions apply:

1. The amount eligible for compensation from the Fund [shall be reduced by the following amount:] for the cost of the construction of a water transmission and distribution line shall be limited to the cost of a 6 or 8 inch diameter water line. If the claimant chooses to install a larger diameter water line, the claimant must pay the difference between the cost of the 6 or 8 inch diameter water line and the cost of the larger water line.

$$[RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines) of the water transmission and distribution lines actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines), estimated by the Department after consideration of the report submitted under (c)2 below, of constructing the water transmission and distribution lines with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be determined as follows:

$$\text{Minimum necessary capacity} = (\text{RC} + \text{NRC})$$

where:

(1) RC is the capacity, expressed in GPM and computed pursuant to (C)3 below, of water transmission and distribution lines required to serve the number of residences listed in (d)1 below; and

(2) NRC is the capacity, expressed in GPM and computed pursuant to (c)3 below, of water transmission and distribution lines required to serve all nonresidential and multifamily users listed in (d)2 and (d)3 below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.7(c), with respect to the water transmission and distribution lines actually installed; and

ii. The design and specifications of the transmission and distribution line or lines that would be required to provide an adequate supply of potable water to

all of the users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the lines (designated as "(RC ;11 NRC)" in the formula set forth in (c)1 above), computed in accordance with (c)3 below.

3. RC and NRC shall not include such additional capacity as may be necessary for use in firefighting. RC and NRC shall be computed in accordance with the following:

i. Instantaneous water demands for residential service connections to the types of residences not listed in (d)2 below shall be based upon a flow of 12 gpm per residence for the first 14 residences, and three gpm for each additional residence, not multiplied by any peaking factor. Instantaneous water demands for service connections to the types of establishments listed in (d)2 below shall be equal to the requirements set forth in (d)2 below, multiplied by the peaking factor of 10 (unless the Department determines that a different peaking factor would be more accurate), and expressed in gpm. For the purposes of (c)1 above, (RC + NRC) shall equal the total instantaneous water demands, adjusted pursuant to (c)3vi below;

ii. The maximum velocity in the water main shall not exceed five feet per second;

iii. The coefficient of friction "c" value as used in the Hazen-Williams formula shall be 100;

iv. The residual pressure in the main at the street level under the maximum flow condition as indicated herein shall not be less than 20 pounds per square inch;

v. The hydraulic analyses shall be performed using the Hazen-Williams formula for determining friction losses and the Hardy-Cross method for determining flow conditions for multiple piping systems; and

vi. If the maximum water demands, maximum velocity, "c" value, residual pressure, and hydraulic analysis pursuant to (c)3i through v above require a diameter of water pipe which is not a commonly commercially available size, then the total instantaneous water demands shall be adjusted to reflect the use of the next largest commonly commercially available diameter of water pipes.]

4. Recodify as 2. (No change in text.)

(d) (No change.)

7:1J-3.5 Other reductions in amount eligible for compensation from the Fund

(a) If the water supply system which is the subject of the claim is to be operated by a private water purveyor, the aggregate amount eligible for compensation from the Fund for such water supply system shall be reduced by an [amount equal to five times the aggregate expected average annual water bill of all residential and nonresidential users within the affected area. If the water supply system which is the subject of the claim will supply only part of the needs of such residential and nonresidential users, the reduction described above shall be prorated to the percentage of such needs which the system will serve] amount calculated in accordance with the Board of Public Utilities' All Utilities rules at N.J.A.C. 14:3-8.

(b) - (d) (No change.)

(e) Costs required under Board of Public Utilities (BPU) regulations: No costs which a water purveyor is required to incur under regulations promulgated by the BPU (including, without limitation, [the cost of meters required to be provided under N.J.A.C. 14:3-4.1, and]the

cost of the work to be done under N.J.A.C. 14:9-2.1 upon making service connections) shall be eligible for compensation from the Fund. The cost of the installation of a water meter is eligible for compensation from the Fund.

(f) - (g) (No change.)

7:1J-3.6 Delineation of Spill Fund Claims Area (SFCA)

The Spill Fund Claims Area (SFCA) is the geographic area delineated by the Department, consisting of the currently known extent of ground water pollution determined by the Department pursuant to N.J.A.C. 7:1J-3.7[, combined with]. The Department may include in the SFCA the most probable pollution migration zone determined by the Department pursuant to N.J.A.C. 7:1J-3.8.

7:1J-3.10 Sealing of well

The Administrator [may] shall require as a condition of receiving compensation from the Fund for an alternate water supply, that [a] within 60 days after the connection to a water supply system, the claimant shall decommission and permanently seal the contaminated well pursuant to N.J.A.C. 7:9D-3[seal his or her private well in accordance with the Department's requirements]. The Administrator may approve an exemption from this requirement for a well that is used in a geothermal heating and cooling system.

Subchapter 4. Property Value Diminution Claims

7:1J-4.2 Requirements for eligibility

(a) - (d) (No change.)

(e) On or after (the effective date of this amendment), a claim for property value diminution shall not be eligible for compensation from the fund where, at the expense of the Fund, a POET has been installed and maintained at the property that is the subject of the claim, or where the property that is the subject of the claim has been connected to a public or private municipal water system at the expense of the Fund. Additionally, a claim for property value

diminution shall not be eligible for compensation from the Fund where such claimant was offered, but declined, a POET or a water line connection as compensation from the Fund.