

SPILL ACT LIENS AND THE PROCEDURES FOR A PROPERTY OWNER TO CONTEST A SPILL ACT LIEN

A. Purpose

The purpose of this administrative guidance is to explain what a Spill Act lien is and to describe the procedures for an owner of property against which the Department has filed a lien pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f (“Spill Act lien”), to receive timely notice of the Department’s filing of the lien and to have an opportunity to contest the reasonableness of the Department’s decision to file the lien.

B. Procedures

1. Definitions

The following words and terms, when used in these procedures, shall have the following meanings:

- “Administrator” means the chief executive of the Spill Compensation Fund or that person’s designee.
- “Department” means the New Jersey Department of Environmental Protection.
- “Lien filing record” means the documents and information that the Department relied upon in making its decision to file the lien.
- “Neutral Agency Officer” means a State employee, who has no prior involvement in the decision making concerning the initial filing of a Spill Act lien, and who has no prior involvement with the affected site and property owner. The Neutral Agency Officer evaluates, in accordance with these procedures, a Spill Act lien that has been contested.
- "Real property" means land and any structure or appurtenance affixed permanently thereto.
- “Spill Act” means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a through 23.11z.
- “Spill Compensation Fund” means the Fund that provides compensation for damages to property and persons resulting from the discharge of hazardous substances.
- “State” means the state of New Jersey.

2. Scope and Purpose of Guidance

The purpose of this administrative guidance is to explain what a Spill Act lien is and to describe the procedures for a property owner to contest the basis of the Department's filing of a Spill Act lien. The Department has been applying these procedures to the Spill Act liens it has filed since mid-2014. Nothing in these procedures shall prevent the Department from taking any other action to recover public funds it has expended to clean up and remove a discharge.

3. Explanation of Spill Act Liens

A **lien** is a notice attached to property providing notice to the public that a creditor claims the owner of the property owes the creditor money. In the case of Spill Act liens, the Department is the **creditor** in that it has spent public funds, such as from the Spill Compensation Fund, to cleanup a property that has been contaminated by the discharge of a hazardous substance. The person who owns the property is the **debtor**. The Department conducts the cleanup of the property because the person responsible for the discharge has failed to do so. The Department uses public funds to remediate the contamination at the property to ensure that the contamination does not pose a threat to public health and the environment. The Spill Act, which is the law governing the filing of Spill Act liens, provides that any expenditure of costs made by the Department to cleanup contamination from the discharge of hazardous substances shall constitute a debt of the person in any way responsible for the discharge. The Spill Act further states that the debt shall constitute a lien on the property.

The person(s) affected by the lien is any owner of the property at which the Department has filed a lien. The property is identified in the lien by the Lot(s) and Block(s) description provided by the municipality or municipalities in which the property is physically located. The Spill Act provides that the lien is not only on the property on which the discharge occurred, but on all property owned by the debtor. If a person purchases property upon which the Department has filed a lien, that person is also affected by the lien in that sale of the property does not extinguish the lien, unless someone pays the debt that is the basis of the lien.

4. Pre-filing Notice

The first step in the procedure is for the Department to provide the property owner, at least 30 days before filing a Spill Act lien, with notice of the Department's intent to file a Spill Act lien. The Department will include in this notice:

- i. A description of the property(ies) on which a discharge(s) has occurred and on which the Department has spent public funds to clean up and remove the discharge(s), including the street address, tax lot(s) and block(s), the municipality(ies) and the county(ies);
- ii. The dollar amount of the cleanup and removal and related costs the Department has incurred to clean up and remove the discharge(s), including any hazardous substances that are emanating from or that have migrated off the property on which the discharge(s) occurred; and

- iii. The Department's intent to file a Spill Act lien. The notice will specify the dollar amount of the lien, which will include the dollar amount of the Department's cleanup and removal and related costs, on the property against which the Department has filed the lien.

5. Notice of Opportunity to Contest a Lien

The Department will, within 30 days after filing a Spill Act lien, provide owner(s) of property against which the Department filed the lien written notice sent by certified mail that the Department has filed a lien against that owner's property. In this notice the Department will include:

- i. The street address and the block(s) and lot(s) of the property upon which the discharge(s) occurred, and the municipality(ies) and county(ies) in which the property is located;
- ii. The dollar amount of the lien for the cleanup and removal and related costs the Department has expended to clean up and remove the discharge(s), including any hazardous substances that are emanating from or that have migrated off the property on which the discharge(s) occurred;
- iii. Notice of the property owner's opportunity to contest, pursuant to these procedures, the reasonableness of the Department's filing of the lien; and
- iv. The procedures for the property owner to access the lien filing record by filing a request pursuant to the Open Public Records Act. See the Department's Record Access Program at www.nj.gov/dep/opra.

6. Lien Filing Record

The Department will identify to the property owner the documents and information that the Department relied upon in making its decision to file the lien.

This lien filing record shall include, at a minimum:

- i. The pre-filing notice the Department issued pursuant to Section 4 of this procedure;
- ii. The name and address of each current owner of the real property on which there was a discharge(s) that caused contamination of the property that the Department cleaned up with public funds and is the subject of the Spill Act lien;
- iii. The name and address of each current owner of the real property against which the Department filed the Spill Act lien;

- iv. A description of the contaminated property at which the Department incurred cleanup and removal, and related costs that form the basis of the Spill Act lien;
- v. A summary of the cleanup and removal and related costs the Department performed at the contaminated property; and
- vi. A cost invoice summarizing all of the cleanup and removal and related costs the Department incurred to clean up and remove the discharge(s), including any hazardous substances that are emanating from or that have migrated off the property on which the discharge(s) occurred.

7. Contesting a Lien

If a property owner wants to contest a Spill Act lien the Department filed against the owner's property, then the property owner must submit a written request to the Department within 60 days after the property owner's receipt of the notice of opportunity to contest the lien referenced in Section 5 above. The written request should be sent to:

New Jersey Department of Environmental Protection
Site Remediation & Waste Management Program
Office of Direct Billing and Cost Recovery
Mail Code 401-06L
401 East State Street
PO Box 420
Trenton, NJ 08625-0420

ATTN: Contested Spill Act Lien

- a. In the request the property owner must include:
 - i. The property owner's name, address, telephone number, and email address;
 - ii. The name, address, telephone number, and email address of the property owner's attorney, if applicable; and
 - iii. A statement of the specific reasons that the property owner believes, based upon the factual information in the lien filing record, that the Department did not have a reasonable basis for filing the Spill Act lien;
- b. The Department shall deny a property owner's request to contest a Spill Act lien if the property owner does not include in the notice to the Department all of the items that are listed in 7.a.(i) through (iii) above;
- c. Within 30 days after the Department receives the property owner's request for an opportunity to contest the Spill Act lien, the Department through its attorney, may elect to respond to the

issues the owner raised in its request for an opportunity to contest by making a written submission to the Neutral Agency Officer, with a copy to the property owner.

- d. Within 10 days after receipt of the Department's response to the owner's request, the property owner may submit a written reply to the Department's response to the Neutral Agency Officer at the following address:

New Jersey Department of Environmental Protection
Site Remediation & Waste Management Program
Office of Direct Billing and Cost Recovery
Mail Code 401-06L
401 East State Street
PO Box 420
Trenton, NJ 08625-0420

ATTN: Neutral Agency Officer - Contested Spill Act Lien

The response shall be no more than 10 typed pages, with a copy to the Office of Direct Billing and Cost Recovery noted at the beginning of this section.

8. Neutral Agency Officer Recommendation

The Neutral Agency Officer will review the lien filing record and the written submissions of the party or parties pursuant to Section 7, and determine whether to supplement the lien filing record with any of the information or documents the parties submitted.

Once the lien filing record is closed, the Neutral Agency Officer will then review the lien filing record and make a recommendation to the Administrator whether the Department had a reasonable basis to file a Spill Act lien against the property based upon substantial credible evidence in the lien filing record.

9. Administrator's decision

The Administrator will review the recommendation of the Neutral Agency Officer on the Spill Act lien contest and then adopt, reject, or modify that recommendation. The Administrator's decision will be sent to the property owner(s). If the Administrator determines that the Department did not have a reasonable basis to file the Spill Act lien, then the Administrator will remove the lien from the owner's property. If the Administrator determines that the Department had a reasonable basis to file the Spill Act lien, then the lien stays in place. The decision of the Administrator is a final agency action.