

**CAUSING OR RISKING WIDESPREAD INJURY OR DAMAGE
(HAZARDOUS DISCHARGE)
N.J.S.A. 2C:17-2(a)(2)**

Count _____ of the indictment charges the defendant with causing widespread injury or damage in violation of a statute which provides as follows:

A person who, purposely or knowingly, unlawfully causes a hazardous discharge . . . commits a crime. . .

In order for the defendant to be found guilty of causing widespread injury or damage, the State must prove the following elements beyond a reasonable doubt:

- (1) that the defendant unlawfully caused¹ a hazardous discharge; and
- (2) that the defendant acted purposely or knowingly.²

The first element the State must prove beyond a reasonable doubt is that the defendant unlawfully caused a hazardous discharge.

“Discharge” means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.³

“Hazardous substance” means [one of the “environmental hazardous substances” on the environmental hazardous substance list adopted by the Department of Environmental Protection]

¹ If causation is in issue, charge N.J.S.A. 2C:2-3.

² To convict of this crime, the jurors need not be unanimous in their findings that the described conduct was committed either “purposely” or “knowingly.” Some jurors could find the conduct to have been purposeful, while others found it to be knowing, and the conviction would still be valid.

³ N.J.S.A. 58:10-23.11b.

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[such elements and compounds, including petroleum products, which are defined as hazardous substances by the Department of Environmental Protection] [a substance set forth in the list of hazardous substances adopted by the federal Environmental Protection Agency] [a substance set forth on the list of toxic pollutants designated by Congress or the federal Environmental Protection Agency] [a substance set forth on the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980]⁴.

Here the “hazardous discharge” alleged by the State is _____.

[However, sewage and sewage sludge are not considered “hazardous substances.”]

The second element the State must prove beyond a reasonable doubt is that the defendant acted purposely or knowingly.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with

⁴ N.J.S.A. 58:10-23.11b.

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respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

Purpose and knowledge are conditions of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular purpose or knowledge. It is within the power of the jury to find that the proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

If the State has failed to prove any one or more of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of causing widespread injury or damage. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of causing or risking widespread injury or damage.

**[RECKLESSLY CAUSING WIDESPREAD INJURY OR DAMAGE
USE IF APPLICABLE]**

If you find the defendant not guilty of purposely or knowingly causing widespread injury or damage, you must consider whether or not the State has proven him/her guilty of recklessly causing widespread injury or damage.

In order for the defendant to be found guilty of recklessly causing widespread injury or damage, the State must prove the following elements beyond a reasonable doubt:

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- (1) that the defendant unlawfully caused⁵ a hazardous discharge⁶ ; and
- (2) that the defendant acted recklessly.

The first element the State must prove beyond a reasonable doubt is that the defendant unlawfully caused a hazardous discharge.

“Discharge” means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.⁷

“Hazardous substance” means [one of the “environmental hazardous substances” on the environmental hazardous substance list adopted by the Department of Environmental Protection] [such elements and compounds, including petroleum products, which are defined as hazardous substances by the Department of Environmental Protection] [a substance set forth in the list of hazardous substances adopted by the federal Environmental Protection Agency] [a substance set forth on the list of toxic pollutants designated by Congress or the federal Environmental Protection Agency] [a substance set forth on the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980]⁸.

⁵ If causation is in issue, charge N.J.S.A. 2C:2-3.

⁶ See N.J.S.A. 58:10-23.11b(k) and N.J.S.A. 58:10-23.11c.

⁷ N.J.S.A. 58:10-23.11b.

⁸ N.J.S.A. 58:10-23.11b.

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Here the “hazardous discharge” alleged by the State is _____.

[However, sewage and sewage sludge are not considered “hazardous substances.”]

The second element the State must prove beyond a reasonable doubt is that the defendant acted recklessly. A person acts recklessly with respect to the nature of his/her conduct or a result thereof when he/she consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of the actor’s conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation.⁹

Recklessness is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she acted or was acting recklessly. It is within the power of the jury to find that the proof of recklessness has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

If the State has failed to prove any one or more of the elements as I have described them to you beyond a reasonable doubt, you must find the defendant not guilty of recklessly causing widespread injury or damage. If the State has proven each element beyond a reasonable doubt, you must find the defendant guilty of the crime of recklessly causing widespread injury or damage.

⁹ See N.J.S.A. 2C:2-2b(3).