

**CAUSING OR RISKING WIDESPREAD INJURY OR DAMAGE
(HAZARDOUS WASTE)
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 release or abandonment of hazardous waste. . .or a toxic pollutant . . . 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 release or abandonment of [hazardous waste] [a toxic pollutant] ; 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 release or abandonment of [hazardous waste] [a toxic pollutant].

["Hazardous waste" means any waste or any combination of waste which poses a present or potential threat to human health, living organisms or the environment. "Hazardous waste" shall include, but not be limited to, waste material that is toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable.³]

["Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage,

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.

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refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State. The term “pollutant” includes both hazardous and nonhazardous pollutants.^{4]}

[“Toxic pollutant” means any pollutant identified pursuant to the Federal Water Pollution Control Act Amendments of 1972,⁵ or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the Commissioner of Environmental Protection or his or her authorized representative⁶, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.^{7]}

Here the [hazardous waste] [toxic pollutant] alleged by the State to have been released or abandoned is _____.

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)

³ N.J.S.A. 13:1E-38c.

⁴ N.J.S.A. 58:10A-3n.

⁵ N.J.S.A. 58:10A-3g; 33 U.S.C. § 1251 et seq.

⁶ N.J.S.A. 58:10A-3c.

⁷ N.J.S.A. 58:10A-3r.

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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 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 had a particular purpose or knowledge. It is within the power of the jury to find that the proof of purpose 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 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:

- (1) that the defendant unlawfully caused⁸ a release or abandonment of [hazardous waste] [a toxic pollutant]; 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 release or abandonment of [hazardous waste] [a toxic pollutant].

[“Hazardous waste” means any waste or any combination of waste which poses a present or potential threat to human health, living organisms or the environment. “Hazardous waste” shall include, but not be limited to, waste material that is toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable.⁹]

[“Pollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State. The term

⁸ If causation is in issue, charge N.J.S.A. 2C:2-3.

⁹ N.J.S.A. 13:1E-38c.

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“pollutant” includes both hazardous and nonhazardous pollutants.^{10]}

[“Toxic pollutant” means any pollutant identified pursuant to the Federal Water Pollution Control Act Amendments of 1972,¹¹ or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the Commissioner of Environmental Protection or his or her authorized representative¹², cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.^{13]}

Here the [hazardous waste] [toxic pollutant] alleged by the State to have been released or abandoned is _____.

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

¹⁰ N.J.S.A. 58:10A-3n.

¹¹ N.J.S.A. 58:10A-3g; 33 U.S.C. § 1251 et seq.

¹² N.J.S.A. 58:10A-3c.

¹³ N.J.S.A. 58:10A-3r.

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conduct that a reasonable person would observe in the actor's situation.¹⁴

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 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.

¹⁴

See N.J.S.A. 2C:2-2b(3).