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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **WATER RESOURCE MANAGEMENT**

### **DIVISION OF WATER QUALITY**

#### **Notice of Adoption**

#### **New Jersey Pollutant Discharge Elimination System (NJPDES)**

#### **Fiscal Year 2022 Annual Fee Report and Assessment of Fees**

#### **N.J.A.C. 7:14A-3.1**

**Take notice** that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2022 (FY22) New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Assessment of Fees (Annual Fee Report). In accordance with N.J.A.C. 7:14A-3.1, publication of this notice marks the completion of the FY22 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY22 budget and fee schedule was provided in the New Jersey Register on January 18, 2022, at 54 N.J.R. 184(b), and in the Trenton Times newspaper on January 18, 2022. Notice of availability of the Annual Fee Report, which can be found on the Department's website at [www.nj.gov/dep/dwg/njpdessfees.html](http://www.nj.gov/dep/dwg/njpdessfees.html), was mailed to all NJPDES permit holders.

The Department held a virtual public hearing on the FY22 NJPDES Annual Fee Report on February 17, 2022. Michele Christopher, Chief for the Bureau of Ground Water, Residuals, and Permit Administration in the Division of Water Quality, served as the hearing officer for the

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public hearing. Five people participated in the public hearing; at that time two people gave oral testimony and/or provided written comments on the proposed NJPDES budget and the fee schedules.

The public comment period for the FY22 Annual Fee Report closed on February 17, 2022. In addition to the comments received during the public hearing, two people submitted written comments. All comments submitted are available for inspection by contacting the Department via email through [dwq\\_pas@dep.nj.gov](mailto:dwq_pas@dep.nj.gov) or via the address as follows:

Mail Code 401-02B

NJDEP – Water Pollution Management Element

Bureau of Ground Water, Residuals, and Permit Administration

Permit Administration Section

PO Box 420

Trenton, New Jersey 08625-0420

After reviewing the record regarding the NJPDES Annual Fee Report, the Department adopted the Annual Fee Report, with the amendments discussed below.

As discussed in the Annual Fee Report, the Department used the existing fee assessment methodology established at N.J.A.C. 7:14A-3.1 in calculating permit fees for FY22. During the public comment period several permittees made telephone, written or electronic inquiries concerning their individual fee assessments, permit classifications or permit status. The Department addressed such facility-specific questions and explained the basis for the assessments directly to the inquiring permittees, and made adjustments where necessary.

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As a result of the facility-specific questions it received, and on its own initiative, the Department changed the fee schedules published in the Annual Fee Report. The below table summarizes the actions that have occurred since the proposed fee schedule was developed.

<b>CATEGORY</b>	<b># OF PERMITS WITH AN ENVIRONMENTAL VALUE REASSESSMENT</b>
Surface Water Municipal	---
Surface Water Industrial	---
Stormwater	---
Ground Water	1
Significant Indirect User	---
Residuals	---
<b>TOTAL:</b>	<b>1</b>

The final rates (as compared to the proposed rates) and the permit category amounts to be billed for FY22 (which remain unchanged) are as follows:

<b>CATEGORY</b>	<b>TOTAL ENVIRONMENTAL IMPACT</b>	<b>PROPOSED RATE</b>	<b>FINAL RATE</b>	<b>AMOUNT TO BE BILLED</b>
Surface Water Municipal	38,385.05007	228.3093	228.3093	\$7,457,897
Surface Water Industrial	390,299.05502	17.5713	17.5713	\$4,330,260
Stormwater	---	---	---	\$5,245,850
Ground Water	1,339,009	0.7009	0.7015	\$2,319,594
Significant Indirect User	20,090.30661	42.7121	42.7121	\$776,223

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Residuals	---	---	---	\$176,550
<b>TOTAL:</b>	<b>1787783.412</b>	---	---	<b>\$20,306,374</b>

The following is a list of those who provided oral or written comments concerning the Annual Fee Report:

**Name and Affiliation**

1. Martin L Ryan, Vice President – Engineering, Ocean County Landfill Corp.
2. Dennis W. Palmer, Executive Director, Landis Sewerage Authority
3. Dennis Hart, Executive Director, Chemistry Council of New Jersey
4. Peggy Gallos, Executive Director, Association of Environmental Authorities

The comments received and the Department’s responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

**Summary of Public Comments and Agency Responses:**

1. **COMMENT:** The fee detail sheet which was accessed on the Department’s website incorrectly states that 591,342.51 tons of solid waste were disposed at the Ocean County Landfill in 2020. The correct figure is 580,567.23 tons. Using this corrected figure results in a Pollutant Loading Factor of 1452, a Pollution Potential Factor of 1472, and an Environmental

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Value (EV) of 58,880. The corrected EV of 58,880 should be used in the calculation of the final

NJPDES annual fee for permit #NJ0080021 for FY22. (1)

**RESPONSE:** The Department agrees and has corrected the tons of solid waste deposited at the Ocean County Landfill facility in calendar year 2020 to be 580,567.23. Therefore, consistent with N.J.A.C. 7:14A-3, the Department performed a reassessment for FY22 which results in an updated EV of 58,880 and an updated annual NJPDES fee of \$48,203.40.

As a result of the change in the permittee's EV, a change in the Total Environmental Impact value utilized to calculate the rate for all permits assessed under the ground water budget (see equation at N.J.A.C. 7:14A-3.1(a)9ii) is necessary. As such, the ground water budget rate has increased from 0.7009 to 0.7015 (0.09 percent); resulting in slightly higher NJPDES fees for those NJPDES permits assessed under the ground water budget and whose fee is based on an EV.

**2. COMMENT:** The collection of unpaid NJPDES fees fell from 96.9 percent to 94.3 percent from 2020 to 2021. The Department is urged to strive to meet and exceed the 2021 collection percentage. (4)

**RESPONSE:** The rates referenced by the commenter reflect the collection of paid fees; not those of unpaid fees. Nevertheless, the Department strives to collect all NJPDES fees in accordance with State and Department policies. Since publication of the FY22 NJPDES Fee Report, the collection rate for NJPDES fees billed in FY21 has increased to approximately 96 percent. This is an improvement from what was reported in the FY22 report and is a rate that is consistent with the NJPDES program's historical fee collection rates.

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**3. COMMENT:** Although the number of industrial surface water permitted facilities

decreased, the total amount of the fees assessed significantly increased by over \$1 million.

Further, operating a facility in New Jersey where the NJPDES permit fee is in the hundreds of thousands of dollars with nothing comparable existing in other states is not sustainable and that the oppressive nature of these fees are driving business out of the State. The Department should be transparent and share how their NJPDES budget is calculated, discuss what is included and which costs are fixed/variable, and, specifically, explain why the industrial surface water permit fees drastically increased with fewer facilities being permitted. (3)

**RESPONSE:** In determining annual NJPDES fees consistent with the provisions of N.J.A.C. 7:14A-3.1(a)9ii, the budget used to calculate the rate for a category of discharge is equal to the sum of the personnel costs to implement the NJPDES program for that category of discharge plus a portion of the non-salary operating costs to implement the NJPDES program. Personnel costs are calculated by multiplying the total number of full-time equivalent positions (or FTEs) assigned to administer the NJPDES program by the average cost per FTE (including fringe and indirect costs). Non-salary operating costs are based on the amounts appropriated by the Department of Treasury to administer the NJPDES program and include material and supply costs, cost for non-personnel services, and maintenance and fixed charges. All inputs to the above costs are variable, with some inputs more variable than others. Despite a decrease in the industrial surface water permit universe, it is this cited variability that has led to increases in the annual FY22 NJPDES fees assessed for current industrial surface water permit holders. Details regarding the personnel and operating costs, as well as a three-year history of the inputs

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utilized to determine such costs, can be found on pages 2 through 4 and Appendices B and C of the FY22 Annual Fee Report and Assessment of Fees.

The Department surveyed other states in 2013 to determine how they fund their “NJPDES-equivalent” programs, and to what extent fees cover their budgets. The results showed that, other than New Jersey, only California covers 100 percent of its total costs through the assessment of fees; the costs of most other states’ programs are offset by revenue from other sources. This finding helps to explain why some states have lower permit fees. For example, the survey revealed that revenue from permit fees paid only 30 percent of the costs to administer the Pennsylvania program. Similarly, Delaware covered only 20 percent of the costs to administer its program through fees and had not adjusted most of its permit fees since 1991. The New Jersey Water Pollution Control Act authorizes the Department to “establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits.” See Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-9. The Water Pollution Control Act therefore anticipates that the Department will fund the NJPDES program through fees charged to NJPDES permittees.

**4. COMMENT:** The NJPDES fee structure for discharges to ground water (DGW) facilities is unjust and inequitable, especially through the application of the Environmental Impact (EI), when compared to the fee structure for other types of NJPDES permits. Surface water dischargers gain the benefit in a lower EI based upon the Total Pollutant Load (TPL). A discharger who operates their facility at a higher quality than their permit limits or experiences reduced flows due to dry weather or less use by customers is rewarded with a lower TPL and a

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lower NJPDES fee. The fee is based on actual loadings, which is logical and fair. In contrast, the

NJPDES fee for DGW facilities is based upon the design flow. Because of this, if facility operation results in a better quality of effluent, or flows drop off due to less use (for example, during the COVID pandemic), there is no adjustment or resulting benefit from the reduction in loading. The regulations should be updated to base DGW NJPDES fees on factual information like actual flow and actual loadings. (2)

**5. COMMENT:** The Department should amend the rules to allow for a more equitable distribution of fees among the permitted universe. Minimum fees have not been updated in several years. As a result, a higher financial burden has disproportionately been placed on a small percentage of permit holders (e.g. ground water dischargers) whose fees are derived based on the environmental impact associated with their discharge. Further, without an increase in minimum fees, facilities whose NJPDES fees are derived based on environmental impact are subsidizing those facilities whose fees are only based on minimum fees (e.g. commercial properties, camp grounds, State parks, and Department facilities permitted under general permits). The negative impact of minimum fees has become worse; the minimum fees comprised 50 percent of the total billing for DGW and landfill permits in FY 2021 and the percentage increased to 60 percent for the FY 2022 billing. (2) (4)

**6. COMMENT:** The Department needs to correct its NJPDES fee program with a view towards Environmental Justice by eliminating inequities in the fee formula and adjusting the minimum fees. A commenter remarks that many of their customers and a larger portion of their service area are in census blocks identified as overburdened communities. (2)



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**7. COMMENT:** The present system provides no level of predictability for future budget

planning purposes and contains many variables that result in swings in fees from year to year.

As authorities and other providers of water and wastewater service and facilities are to perform asset management plans to evaluate and predicate areas of repairs and improvements, the Department needs to do a NJPDES permit fee reform to provide a predictable and foreseeable permit program so dischargers can reasonably prepare budgets and operating costs that go out for several years. (2) (3)

**8. COMMENT:** The current procedures for assessing NJPDES fees based on meeting budget requirements is unfair when the number of permittees and loading/emissions decrease while their discharge permit fees increase. (3)

**9. COMMENT:** In 2014, the Department presented to NJPDES fee stakeholders a plan to reform the NJPDES fee rules at N.J.A.C. 7:14A-3. The plan sought to establish NJPDES fees that are transparent and predictable from year to year. In addition, the plan sought to develop a fee structure that was easy to understand and takes minimal resources to administer. Stakeholders are frustrated with the NJPDES fee program and the current fee structure. The NJPDES fee methodology is due for a review. Recently, the Department informed stakeholders of its intent to reconvene a stakeholder process for revising the NJPDES fee structure. However, this action has yet to occur. The Department is urged to leverage the progress made in 2014 and resume efforts to implement reform of the rules governing implementation of the NJPDES fees. (2) (3) (4)

**RESPONSE TO COMMENTS 4 THROUGH 9:** The FY22 NJPDES annual fees were assessed consistent with existing rules at N.J.A.C. 7:14A-3.1. The rule provides for the calculation of

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annual fees based on a minimum fee and, where applicable, a measure of environmental impact multiplied by a rate. The minimum fees are set forth at Table III of the rule and are based on the permittee's specific type (or category) of discharge. Depending on the type of discharge, one of several methods is used to determine a permittee's environmental impact. In some cases, the environmental impact is based on the nature of the discharge (for example, pollutant type); for others, the environmental impact is based on the quantity of pollutants discharged. In determining the additional fee associated with a permittee's environmental impact, a rate is calculated and applied to each category of discharge. This rate is a weighted unit of environmental impact and is calculated based on the total budget for a category of discharge, as well as the sum of minimum fees and the total environmental impact for all permittees in that category of discharge.

These rules do not include an express consideration of environmental justice concerns. However, as part of the Department's extensive self-assessment under Executive Order No. 23 (2020), and in consideration of the additional concerns raised regarding the NJPDES fee structure, the Department will consider and welcome suggestions and comments during the stakeholder process for a future rulemaking to amend N.J.A.C. 7:14A-3 that would yield predictable fees, provide a fair distribution of program costs, include elements from previous stakeholder meetings, and adequately address environmental justice concerns.