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## **ADOPTIONS SECTION**

### **ENVIRONMENTAL PROTECTION**

### **WATER RESOURCE MANAGEMENT**

### **DIVISION OF WATER QUALITY**

#### **Notice of Administrative Changes**

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

#### **Fiscal Year 2024 Annual Fee Report and Assessment of Fees**

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

Effective Date: April 24, 2024.

**Take notice** that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2024 (FY24) New Jersey Pollutant Discharge Elimination System (NJPDDES) 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 FY24 budgeting and fee assessment process for the NJPDDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY24 budget and fee schedule was provided in the New Jersey Register on February 20, 2024, at 56 N.J.R. 297(a), and in the Trenton Times newspaper on March 6, 2024. Notice of availability of the Annual Fee Report on the Department's website at [www.nj.gov/dep/dwq/njpdessfees.html](http://www.nj.gov/dep/dwq/njpdessfees.html) was mailed to all NJPDDES permit holders.

The Department held two virtual public hearings on the FY24 NJPDDES Annual Fee Report. The first public hearing was held on March 21, 2024, at 10:00 A.M. Michele Christopher, Chief of the Division of Water Quality's Bureau of Ground Water, Residuals, and Permit Administration, served as the hearing officer. Eight people attended the first public hearing, and none gave oral testimony on the proposed NJPDDES budget and the fee schedules. Due to an error that resulted in the Trenton Times

newspaper notice not being published simultaneously with the New Jersey Register notice, the Department held a second public hearing on April 5, 2024, at 10:00 A.M. to satisfy the requirement at N.J.A.C. 7:14A-3.1(b)2i. Jason Lonardo, Administrative Analyst 4 for the Division of Water Quality's Bureau of Ground Water, Residuals, and Permit Administration, served as the hearing officer for the second hearing. One person attended the second public hearing, and none gave oral testimony on the proposed NJPDES budget and the fee schedules.

The public comment period for the FY24 Annual Fee Report closed on April 5, 2024. Two people submitted written comments, which are available for inspection by contacting the Department through email at [dwq\\_pas@dep.nj.gov](mailto:dwq_pas@dep.nj.gov) or by mail at:

Mail Code 401-02B

NJDEP – Water Pollution Management Element

Bureau of Ground Water, Residuals and Permit Administration

Permit Administration Section

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Trenton, New Jersey 08625-0420

After reviewing the record regarding the NJPDES Annual Fee Report, the Department adopted the Annual Fee Report, with no amendments.

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 FY24. There were no changes to the rates between proposal and adoption. The final rates and the permit category amounts to be billed for FY24 are as follows:

<b>CATEGORY</b>	<b>TOTAL ENVIRONMENTAL IMPACT</b>	<b>FINAL RATE</b>	<b>AMOUNT TO BE BILLED</b>
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Surface Water Municipal	47,670.40906	211.3833	\$7,438,336
Surface Water Industrial	385,684.65655	14.4601	\$4,487,436
Stormwater	---	---	\$5,314,600
Groundwater	1,320,474	1.2637	\$3,061,887
Significant Indirect User	23,161.44629	63.8772	\$1,289,390
Residuals	---	---	\$182,500
<b>TOTAL:</b>	<b>1,776,990.512</b>	<b>---</b>	<b>\$21,774,149</b>

As discussed in the Annual Fee Report, the Department developed a new fee category for the newly issued Wood Waste Recycling and Leaf Composting (WRC) general permit, deleted the minimum fee associated with the Residuals Category 04 Individual Permit, which is no longer issued by the Department, and modified the description of a permit fee category to remove reference to the Residuals Reed Bed (4G) general permit. The Department is reflecting these changes at N.J.A.C. 7:14A-3.1 Table III as an administrative change in accordance with N.J.A.C. 7:14A-3.1(b)3.

The following is a list of those persons who provided written comments concerning the Annual Fee Report and/or general comments concerning the NJPDES fee assessment methodology.

#### **Name and Affiliation**

1. Ernest DeGraw; Plant Superintendent; The Pequannock, Lincoln Park, and Fairfield Sewerage Authority
2. Dennis Hart, Executive Director, Chemistry Council of New Jersey

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 Pequannock, Lincoln Park, and Fairfield Sewerage Authority (Two Bridges SA) is requesting that the CBOD<sub>5</sub> effluent data from January and February 2022 not be included in the evaluation to calculate its FY24 NJPDES annual fee. These two months of loading were unusually high due to the planned treatment works approval maintenance granted by the Department on December 7, 2021. In addition, Two Bridges SA requested and received an affirmative defense from the Department on January 24, 2023, for all effluent excursions resulting from the planned shutdown of the second-stage aeration system. (1)

RESPONSE: The Department acknowledges that on December 7, 2021, it approved Two Bridges SA's request to perform certain maintenance activities at the treatment plant, and this planned maintenance ultimately led to effluent violations in January and February 2022. Thereafter, Two Bridges SA requested an affirmative defense for the two violations, which the Department granted on January 24, 2023. Accordingly, the Department agrees that the CBOD<sub>5</sub> data from the months of January and February 2022 should not be included in calculating the Total Pollutant Load consistent with N.J.A.C. 7:14A-3.1(c)1i, as well as the resulting FY24 annual NJPDES fee, for Two Bridges SA's NJPDES permit number NJ0029386 because the data was not representative. The forthcoming fee invoice for Two Bridges SA will reflect the necessary adjustments accordingly.

2. COMMENT: 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. The current procedures for assessing NJPDES fees based on meeting budget requirements are unfair when the

number of permittees and loading/emissions decrease while their discharge permit fees increase. The Department should be transparent and share all stakeholder comments and responses and how its NJPDES budget is calculated, discuss what is included and which costs are fixed or variable, and, specifically, explain why the industrial surface water permit fees drastically increased with less facilities being permitted. (2)

RESPONSE: In determining annual NJPDES fees consistent with the provisions at 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 (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 New Jersey Department of the 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. Details regarding the personnel and operating costs, as well as a three-year history of the inputs utilized to determine such costs, can be found on pages two through four and Appendices B and C of the FY24 Annual Fee Report and Assessment of Fees, available at [https://dep.nj.gov/dwq/permitting\\_information/permit\\_and\\_application\\_fees/](https://dep.nj.gov/dwq/permitting_information/permit_and_application_fees/).

The number of certain types of NJPDES permits can remain relatively constant over time, such as the number of sanitary Publicly Owned Treatment Works (POTWs). However, the Department acknowledges that there has been a downward trend in the industrial surface water permit universe. Increases in program costs have corresponded with increases in the annual FY24 NJPDES fees assessed for the current industrial surface water permit holders. These increases are due to two factors. First,

Department salaries, fringe costs, indirect costs, and/or operating costs have increased since last year's fee assessments. Second, evolving trends in the Department's regulatory priorities and policy considerations, including those related to Federal and State-level actions to address contaminants of emerging concern, have led to increased complexity in the administration of permits, which, in turn, has required a greater expenditure of Department resources and effort. The Department is currently re-evaluating the NJPDES fee structure at N.J.A.C. 7:14A-3 to develop a structure that would yield fees that are more transparent and predictable and provide for a more equitable distribution of fees to cover program costs. Any revision of the fee structure would be done through rulemaking and be subject to public comment and notice procedures.

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 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 and administer the NJPDES program through fees charged to permittees. 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.

3. COMMENT: The Department should take action to restructure its industrial fee calculations to make them more predictable and equitable. The Department should not move forward with the FY24 Annual Fee Report and Assessment of Fees until the much-needed improvements to the fee structure are made. (2)

RESPONSE: The FY24 NJPDES annual fees were assessed consistent with existing rules at N.J.A.C. 7:14A-3.1. The rules provide for the calculation of 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 in Table III at N.J.A.C. 7:14A-3.1 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.

Inasmuch as the Water Pollution Control Act requires the Department to establish and charge fees, the Department is unable to forego the assessment of fees. However, the Department is currently re-evaluating the NJPDES fee structure at N.J.A.C. 7:14A-3 to develop a structure that would yield fees that are more transparent and predictable and provide for a more equitable distribution of fees to cover program costs.

4. COMMENT: For further consideration, the Chemistry Council submitted a recap of its comments and feedback on the Department's questions posed at an April 20, 2022, stakeholder meeting and

attached to their January 12, 2023 letter regarding the Fiscal Year 2023 Annual Fee Report and Assessment of Fees. In restructuring the provisions of the NJPDES fee rule, it is reasonable for the Department to consider a simplified fee assessment process that uses a tiered fee approach using flow or some other factor to establish a permit fee. In addition, there is support for a reduction in the permit fee for facilities whose discharge is primarily non-contact cooling water or cooling tower blowdown and new minimal NJPDES fees for certain registrations, certifications, or general permit authorizations. There is opposition to an automatic annual increase in fees and, without further clarification, the addition of an “add-on” fee for Category B permits classified as “major facilities.” (2)

RESPONSE: The Department acknowledges receipt of the commenter’s feedback as part of the stakeholder process and is considering this information as part of its review of N.J.A.C. 7:14A-3. Any resulting rulemaking will be subject to public comment and notice procedures.

**Full text** of the changed rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 3. DETERMINATION OF PERMIT FEES

#### 7:14A-3.1 Fee schedule for NJPDES permittees and applicants

(a) - (m) (No change.)

Tables I and II

(No change.)

Table III

Minimum Fees



<u>Permit Fee Category</u> <sup>1</sup>	<u>Min Fee Code</u>	<u>Minimum Fee</u>
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1. - 10. (No change.)

**11. Stormwater – Wood Waste Recycling and Leaf Composting General Permit (WRC) <sup>5</sup>**

<b>SWL</b>	<b>\$3,100</b>
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Recodify existing 11. - 23. as **12. - 24.** (No change in text.)

[24.] <b>25.</b> Residuals – General Permit (ZG [and 4G])	RTG	\$500
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[25. Residuals – Category 04 Individual Permit <sup>5</sup>	RPH	\$850]
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26. – 37. (No change.)

<sup>1-4</sup> (No change.)

[<sup>5</sup> Refers to a Residuals – Reed Beds individual permit]

**<sup>5</sup> Fee is not applicable to permittees that are regulated pursuant to the Tier A MS4 (R9) Master General Permit (that is, NJ0141852).**

<sup>6-7</sup> (No change.)