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## **ENVIRONMENTAL PROTECTION**

## **WATER RESOURCE MANAGEMENT**

## **DIVISION OF WATER QUALITY**

### **Notice of Adoption**

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

### **Fiscal Year 2014 Annual Fee Report and Assessment of Fees**

### **Notice of Administrative Changes**

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

**Take notice** that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2014 (FY 2014) 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 FY 2014 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2014 budget and fee schedule was provided in the New Jersey Register on March 17, 2014 at 46 N.J.R. 562(a) and in the Trenton Times newspaper on March 17, 2014. Notice of availability of the Annual Fee Report on the Department's website at <http://www.nj.gov/dep/dwq/njpdessfees.html> was mailed to all NJPDES permit holders. A paper copy of the Annual Fee Report was also provided to any person upon request.

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The Department held a public hearing on the FY 2014 NJPDES Annual Fee Report on April 16, 2014 at the Department's offices at 401 East State Street, Trenton, New Jersey. Four people attended the public hearing. Three of the attendees gave oral testimony, as well as submitted written comments. In addition, nine individuals submitted written comments on the proposed NJPDES budget and the fee schedules.

The following is a list of those persons who provided oral or written comments concerning the FY 2014 NJPDES Annual Fee Report and Fee Schedule and/or general comments concerning the NJPDES fee assessment methodology.

**Name and Affiliation**

1. Dennis Palmer, Executive Director, Landis Sewerage Authority
2. Peggy Gallos, Executive Director, Association of Environmental Authorities
3. Steve Chranowski, Director of Regulatory Affairs, Chemistry Council of New Jersey
4. Diane Alexander, Esq., Madison-Chatham Joint Meeting
5. Jane G. Chady, Executive Director, New Jersey Manufactured Housing Association
6. Nick Marucci, P.E., Sr. Project Manager, New Jersey Meadowlands Commission
7. Pamela J. Carolan, P.E., Executive Director, Mount Laurel Municipal Utilities Authority
8. Harry L. Wyant, Jr., Mayor, Town of Phillipsburg
9. Jerome Sheehan, Director, Burlington County Resource Recovery Complex
10. B. Sachau, New Jersey resident
11. Sara Bluhm, New Jersey Business & Industry Association

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12. Gary Ziegler, President, Wildwood Water Utility

Terry Beym, Acting Section Chief for Permit Administration, Division of Water Quality, served as the hearing officer at the April 16, 2014 public hearing. After reviewing the record regarding the NJPDES Annual Fee Report, the Department adopted the FY 2014 NJPDES Annual Fee Report, with the amendments discussed below.

The public comment period for the FY 2014 Annual Fee Report closed on April 16, 2014. The comments submitted are available for inspection by contacting the Department as follows:

Mail Code 401-02B

Terry Beym, Acting Section Chief

NJDEP – Water Pollution Management Element

Permit Administration Section

PO Box 420

Trenton, New Jersey 08625-0420

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 FY 2014. During the public comment period several permittees made telephone, written or electronic inquiries concerning their individual fee assessments, permit classifications or permit status. The

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Department addressed such facility-specific questions and explained the basis for the assessments directly to the inquiring permittees, and made adjustments where necessary.

The Department reviewed the list of permits identified as exempt from NJPDES permit fees pursuant to N.J.A.C. 7:14A-3.1(a)2, and found six that were misidentified, for which bills had not previously been issued. One of these six permits was added to the Municipal Discharge to Surface Water (DSW) fee schedule. This addition resulted in an average fee decrease of \$158.00, thereby decreasing the average fee to \$34,141. The remaining five misidentified permits were added to the Discharge to Groundwater (DGW)/Operating Landfill fee schedule, discussed below.

The Department removed from the Industrial DSW fee schedule three facilities for which permits were revoked, and added to the Industrial DSW fee schedule four facilities that were issued new permit authorizations. These adjustments to the Industrial DSW fee schedule resulted in an average fee decrease of \$38.00, thereby decreasing the average fee to \$11,977. The Department added to the Significant Indirect User (SIU) fee schedule two facilities that were issued new permits. The adjustments to the SIU fee schedule resulted in an average fee decrease of \$221.00, thereby decreasing the average fee to \$8,074.

One Transfer Station general permit authorization was added to the Residuals fee schedule. As a result, the total amount billed for this category increased \$500.00. Because the fees for the facilities in the Residuals fee schedule are fixed, the addition of the Transfer Station general permit authorization had no impact on the fees for the remaining facilities in the schedule.

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Sixteen facilities were added to the Discharge to Groundwater (DGW)/Operating Landfill fee schedule, since new permits were issued. One permit was revoked, and one permit was removed because the permit (for a landfill that ceased operations) should have been transferred to the Division of Solid and Hazardous Waste, as discussed in the Response to Comment 24 below. As noted above, five permits were added that had previously been incorrectly identified as exempt. The environmental values for 10 Aquifer Storage and Recovery (ASR) facilities in the DGW category were recalculated based on updated groundwater factors to reflect the relative risk of discharging potable water to an aquifer. See Response to Comment 25, below. The adjustments to the fee schedule because of these revisions resulted in a DGW average fee decrease of \$43.00, thereby decreasing the average DGW fee to \$2,480, and an Operating Landfill average fee increase of \$718.00, thereby increasing the average Operating Landfill fee to \$21,583.

Based on the above noted revisions, the Department has recalculated the proposed rates and assessments for the Municipal/Industrial Surface Water, Significant Industrial User, Land Application of Residuals, and Municipal/Industrial Ground Water/Operating Landfill categories. The final rates and the permit category amounts to be billed for FY 2014 are as follows:

Total				
Environmental				Amount
<u>Category</u>	<u>Impact</u>	<u>Proposed Rate</u>	<u>Final Rate</u>	<u>Billed</u>
Municipal Surface Water	36,562.43	239.0106	238.7997	\$7,442,818

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Industrial Surface Water	568,952.05	6.6547	6.6466	\$3,820,821
Pretreatment (SIU Permits)	17,168.51	13.3298	12.1595	\$605,545
Municipal/Industrial Ground	1,410,752	1.1214	1.1312	\$3,058,716
Water/ Operating Landfills				
Land Application of	-	-	-	\$167,550
Residuals				
Total:				\$15,095,450

The Department amended Stormwater Permitting Program fees to add eight facilities for which permits have been issued, and delete eight facilities for which permits were revoked. The fixed fees and the amount to be billed for FY 2014 are as follows:

<u>Discharge Category</u>	<u>Fee</u>	<u>Number</u> <u>of</u> <u>Permits</u>	<u>Amount</u> <u>Billed</u>
Basic Industrial Stormwater General Permit	\$800	1,950	\$1,560,000
Stormwater (Individual Permit)	\$4,100	185	\$758,500
Scrap Metal Stormwater General Permit	\$2,300	16	\$36,800
Vehicle Recycling General Permit	\$2,300	120	\$276,000
Scrap Metal Processing General Permit	\$2,300	111	\$255,300
Concrete Products Stormwater General Permit	\$2,300	109	\$250,700

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Newark Airport Stormwater General Permit	\$2,300	35	\$80,500
Hot Mix Asphalt Stormwater General Permit	\$2,300	37	\$85,100
Wood Recyclers General Permit	\$2,300	10	\$23,000
CAFO Stormwater General Permit	\$2,300	2	\$4,600
Mining & Quarrying General Permit	\$2,300	69	\$158,700
MSRP – Tier B General Permit	\$500	101	\$50,500
MSRP – Tier A General Permit (0 – 1000)	\$600	9	\$5,400
MSRP – Tier A General Permit (1001 – 5000)	\$1,050	104	\$109,200
MSRP – Tier A General Permit (5001 – 10000)	\$2,000	115	\$230,000
MSRP – Tier A General Permit (10001 – 15000)	\$3,000	68	\$204,000
MSRP – Tier A General Permit (15001 – 20000)	\$4,050	43	\$174,150
MSRP – Tier A General Permit (20001 – 25000)	\$5,250	30	\$157,500
MSRP – Tier A General Permit (25000 +)	\$9,000	87	\$783,000
MSRP – Public Complex General Permit (1000 – 2999)	\$900	38	\$34,200
MSRP – Public Complex General Permit (3000 – 5999)	\$1,500	12	\$18,000
MSRP – Public Complex General Permit (6000 – 8999)	\$2,600	6	\$15,600
MSRP – Public Complex General Permit (9000 +)	\$3,600	15	\$54,000
MSRP – Highway Agency General Permit (0-9)	\$550	6	\$3,300
MSRP – Highway Agency General Permit (10-199)	\$2,450	9	\$22,050
MSRP – Highway Agency General Permit (200-399)	\$5,100	13	\$66,300
MSRP – Highway Agency General Permit (400 +)	\$9,800	5	\$49,000

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Total FY 2014 Stormwater Billing: 3,305 \$5,465,400

As discussed in the Annual Fee Report, the Department developed new fee categories for Residual Sludge Quality General Permits. The Department is adding these fee categories to 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.

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

1. COMMENT: The groundwater permit fees have increased from \$1.7 million in FY 2013 to \$3.06 million in FY 2014, and it seems that the entire increase is being applied only to permittees that are above the minimum rate. The minimum rate has not changed. The distribution of increased fees among groundwater permittees should be applied more proportionately to the entire base, including the minimum fee rates. Utility authorities and towns are striving to stay within a two percent budget cap; anything in excess of two percent, such as a mandated State permit fee, puts stress on that objective. (2, 4)

2. COMMENT: There is a greater than four-fold increase in the fee (from \$19,563.01 to \$92,495.66) for our facility, which is blatantly unfair. The total NJPDES budget assessment is increasing from \$19.7 million to \$20.5 million (or approximately four percent), while the

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groundwater budget is increasing from \$1.7 million to \$3 million. Counties and municipalities are being limited to two percent budget increases and county and municipal utility authorities are using that two percent as a maximum target for their budgets. (1)

3. COMMENT: The NJPDES fee for our facility will increase from \$9,055 to \$36,403. The total NJPDES budget assessment is increasing from \$19.7 million to \$20.5 million (or approximately four percent) while the groundwater budget is increasing from \$1.7 million to \$3 million. The increase in the fee to our facility is even more disproportionate when viewed against other permit fees and their associated increases. The most problematic aspect of the fee assessment, however, is the Department's continued use of flawed and arbitrary assumptions upon which the permit fee is calculated. (4)

RESPONSE TO COMMENTS 1 THROUGH 3: The fees proposed in the NJPDES Annual Fee Report reflect the Department's current year workplans for the permitting, enforcement and other supporting programs, and include costs for all activities authorized for recovery under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (State Act). Pursuant to Section 9 of the State Act, the Department is authorized 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." The Department calculated the fees in accordance with the governing rules at N.J.A.C. 7:14A-3.1.

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The overall budget for the Nonpoint Pollution Control Program, which administers the stormwater, groundwater, and operating landfill permitting functions, increased from \$7.3 million in FY 2013 to \$8.6 million in FY 2014. The increase was due to reallocation of work efforts based upon the current workplans, as well as the increase in the fringe rate, as established by the State Department of Treasury. The groundwater portion of the Nonpoint Pollution Control Program's budget increased by \$500,000 from FY 2013 to FY 2014. Ordinarily, a portion of the revenue from fees for stormwater permits is applied to the groundwater and operating landfill programs, since the three programs share administrative and support functions. The revenue from the stormwater program decreased slightly in FY 2014, because there are fewer permits in the stormwater category and stormwater permits are charged only a minimum fee. At the same time, the cost of operating the stormwater program increased. Therefore, there was less net revenue from the stormwater program to apply to the groundwater and operating landfill budgets for shared functions. In order to fund the groundwater and operating landfill budgets, it was necessary for the Department to increase the fee assessment a total of \$1.3 million to those permittees, in accordance with N.J.A.C. 7:14A-3.1.

The Department acknowledges that the increase in the Nonpoint Pollution Control Program budget has resulted in significant increases to the fees assessed to some of the groundwater permittees. In accordance with N.J.A.C. 7:14A-3.1, the annual fee for all discharges is calculated by applying the following formula to each of the budget categories:  $\text{Fee} = (\text{Environmental Impact} \times \text{Rate}) + \text{Minimum Fee}$ . The rate is determined for each budget category by applying the formula:  $\text{Rate} = (\text{Budget} - \text{Sum of Minimum Fees}) / \text{Total}$

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Environmental Impact. As previously noted, the FY 2014 ground water portion of the budget was greater than the FY 2013 ground water budget. While the total minimum fees assessed for ground water in FY 2014 was greater than the amount assessed in FY 2013, the total ground water environmental impact value for FY 2014 was less than it was in FY 2013. Accordingly, the FY 2014 ground water rate calculated using the above formula was greater than the FY 2013 ground water rate; the FY 2014 final ground water rate is 1.1312, while the FY 2013 final ground water rate was 0.2122. This increased rate results in an increased fee, and permittees with larger environmental impact values are assessed a proportionally larger fee. Facilities with an environmental impact of zero pay only the minimum fee.

The Department will consider adjustments to all minimum fees as it undertakes rulemaking to amend the NJPDES fee rules. The Department is committed to developing a fee structure that continues to cover the cost of administering the program and appropriately distributes program costs across the universe of NJPDES permittees.

4. COMMENT: We pay the highest permit fee among all of the DGW permit facilities, but we have not received a corresponding level of customer service. Our existing permit expired on November 30, 2012 and we have not yet even seen a pre-draft of our renewal permit. (1)

RESPONSE: In accordance with N.J.A.C. 7:14A-2.8 and 4.2(e)3, if a permittee submits a NJPDES permit renewal application to the Department at least 180 calendar days prior to the expiration of an existing permit, the permittee may continue to discharge in accordance with the

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terms of the existing permit after its expiration. The Department received the renewal application for Landis Sewerage Authority on May 10, 2012, more than 180 days prior to the expiration of the facility's permit. Accordingly, the permittee may continue to discharge in accordance with the terms of the permit after the date of expiration. The application for renewal included a request for an expansion of flow, which requires a Technical Report justifying the expansion. The Department did not receive the necessary report from the permittee until June 17, 2013. The permit application was not deemed technically complete until February 4, 2014. A draft permit is currently being prepared.

5. COMMENT: Smaller, less sophisticated or less manned facilities generally generate greater enforcement effort and should require a higher fee. There is no reason to believe that facilities with a larger permitted flow create a greater strain on the resources of the Department. The minimum fees for groundwater dischargers have not been increased since 2007; consequently, the remaining groundwater dischargers have had to absorb any increase in the groundwater budget. The lowest minimum fee in groundwater is \$450.00 and is assessed to hundreds of groundwater dischargers. The \$450.00 fee is also the lowest minimum fee in all permit classes. The minimum fees must be raised to make up for no increases over the last seven years and the rising cost to administer all aspects of the program. A fee increase, if warranted, must be assessed against all users, not discriminatorily. The fee for one discharger cannot and should not go up by more than \$70,000, while the fee for hundreds of other dischargers has not changed.

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Similarly, the SIU minimum fee must be raised since it also has not been raised since 2007. (1, 4)

RESPONSE: The commenter provides no support for its assertion that smaller, less sophisticated facilities, or facilities with fewer employees require a greater enforcement effort and should pay a higher fee. In general, it is the Department's experience that the size of a permitted facility directly correlates to the resources that the Department expends to regulate the facility. The larger the facility, the greater the time and effort it requires from the Department.

The Department last amended the minimum fee schedule in 2007. Since that time, total program costs have increased. The Department will consider adjustments to all minimum fees as it undertakes rulemaking to amend the NJPDES fee rules. The Department is committed to developing a fee structure that continues to cover the cost of administering the program and appropriately distributes program costs across the universe of NJPDES permittees.

6. COMMENT: Support is given to the Department's decision not to increase the minimum fee for the Category T1 (Sanitary Subsurface Disposal) general NJPDES permit. (5)

RESPONSE: The Department acknowledges the commenter's support.

7. COMMENT: While the total Water Pollution Control budget and total NJPDES billings increased by nine percent and four percent, respectively, from FY 2013 to FY 2014, the total fees

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assessed for the groundwater discharge and operating landfill permits category increased by 76 percent during the same period. Within that category, the fees for each individual operating landfill increased an average of 91 percent from FY 2013 to FY 2014, with our fee increasing by 150 percent. It is not clear why the Department reallocated the percentage of assessment of fees to each discharge category within the program. (9)

RESPONSE: See Response to Comments 1 through 3, above.

8. COMMENT: Why is there such a dramatic increase in the annual fee for 13 of the 23 operating landfills included in the DGW/Operating Landfill Individual permit category? (9)

RESPONSE: The fees for all 23 operating landfills were increased. The budget for the Municipal/Industrial Groundwater/Operating Landfills category increased in FY 2014. Any program costs not covered by the minimum fees assessed in the category must be assessed to the individual permit holders and calculated in accordance with the rules. The environmental impact is one factor that affects the fee. Therefore, some landfills experienced a greater increase in the fee assessed due to their greater environmental impact values. See also Response to Comments 1 through 3.

9. COMMENT: Why is the total operating budget, found on page 41 of the FY 2014 Annual Fee Report and Assessment of Fees, increasing from \$2,052,341 in FY 2013 to \$2,356,992 in FY

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2014, and for what services is the budget item being increased by more than \$300,000 (more than 10 percent)? (1)

RESPONSE: The operating fund budget covers routine operational costs such as office supplies, printing, copiers, telephones, postage, vehicle rental and maintenance, and legal advertising. Other major operational costs funded through the operating budget include legal services, information technology services, and education and outreach initiatives. The Department was able to decrease the amount billed under the operating budget for FY 2013 because some operating costs could be covered using revenue available from the previous year. The Department was unable to apply similar revenue in FY 2014.

10. COMMENT: The Department's overhead factors (fringe and indirect costs) that are included as part of the costs billed to the regulated community are out of control. Please provide an explanation of what specifically is included in these costs and what vetting process is used to ensure that these costs should be applied to the regulated community. As an example, if health care costs are included, is the rate based on the gross cost or has the employee contributions over the past several years been considered. It is expected that the rates would be decreasing as a result of the increased employee contributions. Similarly, it is assumed that the indirect rate should be decreasing if the bonds for the Department's main building have been repaid. It is believed that the regulated community should not have to cover these costs and that these costs should be funded in some other way. The Department must also continue to improve systems

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and processes to streamline work to reduce the overall NJPDES budget. Funding for the NJPDES program should not be fee dependent. (1, 2, 3, 5, 11)

RESPONSE: The State 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-9. The Legislature, in accordance with the State Act, annually appropriates an amount equivalent to the amount anticipated to be collected as fees charged in support of the NJPDES program. The State Act, therefore, anticipates that the Department will fund the NJPDES program through fees charged to NJPDES permittees.

The fringe benefit rate is set by the Department of Treasury in its annual “Employee Benefit” Reimbursement Rates Circular, and is based on the State’s projected costs and based on negotiation with the US Department of Health and Human Services. The most recent Circular was issued April 15, 2014, retroactively effective to the fiscal year beginning July 1, 2013, and can be found at <http://www.state.nj.us/infobank/circular/cir1413.pdf>. For purposes of deriving the fringe benefit rate, net costs to the State are used, not the gross health benefit costs. Employee contributions are taken into account; without the increased employee contributions, the rate would be higher.

Indirect costs include management salaries, divisional indirect salaries, building rent, and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. The indirect rate used by the Department is

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negotiated annually between the Department and the Environmental Protection Agency to be used for all Federally funded programs, as well as all other Department programs that are supported by fees or other dedicated funding sources. The Department's indirect rate factors in Departmental indirect costs as well as the Department's share of Statewide indirect costs, as allocated by the Office of Management and Budget. The indirect rate includes the financing cost of the Department's building, which was fully paid in FY 2013. The indirect rate for FY 2014 is lower than the indirect rate for FY 2013.

The NJPDES program is continuously looking for ways to streamline operations. Between FY 2009 and FY 2014, the NJPDES Budget has been reduced by a total of 8.1 percent, the number of permits managed has increased by a total of 61.2 percent, and the number of FTEs has been reduced by a total of 26.6 percent.

11. COMMENT: The proposed increase in NJPDES fees comes in the middle of the fiscal year and budget. Operating budgets are already stressed by the extremely cold winter and the impacts from storms, including Irene, Lee and Sandy. A significant increase in fees jeopardizes and hinders the ability of facilities to implement resiliency and redundancy plans, as well as to improve efficiency and effectiveness. Excessive and arbitrary NJPDES fee increases severely undermine the ability of facilities to fulfill important objectives for which they have already budgeted. If this increase is some kind of one-time adjustment, then more specific explanation should be provided in the annual fee report. (1, 2, 4)

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RESPONSE: The Department recognizes the concerns of the regulated community regarding the timing of the adopted fees. Under the NJPDES rules, the Department will collect from the regulated community the annual fee for the billing year July 1 to June 30. See N.J.A.C. 7:14A-3.1(a)1.

The Department also recognizes that the magnitude of the fees assessed does have an impact on individual permittees. As discussed in the Response to Comments 1 through 3 above, the fees are not arbitrary, or a one-time adjustment, but are calculated in accordance with the formulas set forth in N.J.A.C. 7:14A-3.1. The Department is in the process of developing a new fee structure, which will be reflected in anticipated amendments to the NJPDES rules at N.J.A.C. 7:14A. The Department anticipates that the amended rules will enable permittees to readily project their annual fees and therefore accurately budget for this fee.

To the extent that a fee established under N.J.A.C. 7:14A-3.1 is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, the Department is able to offer installment payment schedules to help permittees minimize the impact of any fee increases. See N.J.A.C. 7:14A-3.1(m). Permittees can contact the Permit Administration Section at (609) 984-4428 to request a payment schedule.

12. COMMENT: In addition to rising production costs and burdensome State and Federal regulations, discharge fee inequities with other states is one reason why the cost of doing business in New Jersey is higher than in other states. NJPDES fees are not competitive with other states in our region that administer the same program. Pennsylvania processes more

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permits than New Jersey, yet its maximum fees are less than ours, as is their overall budget. Excessive NJPDES fees act as a disincentive for business to locate, expand or remain in New Jersey. (3, 11)

RESPONSE: As part of the Department's ongoing effort to revise the NJPDES fee structure through amendments to the NJPDES rules, the Department surveyed other states to determine how they fund their "NJPDES-equivalent" programs, and to what extent fees cover their budgets. The responses received by the Department indicated that no state other than California covers 100 percent of its total costs through the assessment of fees; therefore, 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, Pennsylvania does not have a requirement that 100 percent of its total program costs be covered through assessment of fees and, in fact, revenue from permit fees pays only 30 percent of the costs to administer the Pennsylvania program. Similarly, Delaware covers only 20 percent of the costs to administer its program through fees, and has not adjusted most of its permit fees since 1991. As discussed in the Response to Comment 10 above, the State Act directs the Department to assess fees to cover the cost of administering the NJPDES program.

13. COMMENT: The Department should expend more effort pursuing delinquent fees, as well as focusing those efforts on the years with the largest delinquency totals. The Department should also use these collection efforts to offset the costs for the current year, rather than increasing the

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rates for the regulated community, and should not pass on rate increases to permittees until these outstanding fees are collected. Please provide information quantifying how many Enforcement Orders or permit revocations have been issued for failure to pay permit fees. (1, 2)

RESPONSE: The Department has not historically revoked permits or issued enforcement orders for failure to pay the fee, but rather, in accordance with State and Department policies, has referred delinquent bills to the Department of Treasury for collection. Delinquent collections from prior years that have not been referred to a collection agency are added to current collections. As of October 31, 2013, the Department had an uncollected balance of approximately \$5.7 million from the FY 2006 through FY 2013 billings. This balance represents approximately 3.5 percent of the total adjusted billing for that time period. Due to the late billing of the FY 2013 fees, the third notice invoices were sent at the same time that the fee delinquency information was being compiled for the FY 2014 Fee Report and was subsequently followed by a referral to Treasury, resulting in additional collections that were not included in the FY 2014 Fee Report. As of May 8, 2014 the uncollected balance is approximately \$3.6 million from the FY 2006 through FY 2013 billings, which is approximately 1.9 percent of the total adjusted billing for that time period.

The State budget process provides an appropriation to the NJPDES program at the current NJPDES budget level. This appropriation must be repaid to Treasury from current fiscal year NJPDES revenue or collections. The collection of prior year delinquent fees is unreliable,

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and the use of delinquent fees to reduce or offset the current year billing would potentially place the NJPDES billing below the level necessary to repay the appropriation.

14. COMMENT: Even though the overall environmental impacts have been reduced for the industrial surface water and municipal/industrial groundwater categories, the rates calculated using the current fee formulas mostly resulted in increased fees. (1, 3)

RESPONSE: Individual permit fees are based on a number of factors: the facility's environmental impact (as determined based on monitoring and reporting), the billing rate for the category of discharge, and the minimum fee for the category of discharge. The existing rules establish the calculations and values used for determining the environmental impact specific to each program category. The billing distributes the cost of the program category not covered by minimum fees among permittees relative to their environmental impact. The rate is sensitive to changes in budgets, the universe of permittees in the budget category as well as the total individual permittees' environmental impact. Therefore, a lower environmental impact value for a permittee may not necessarily result in a lower fee due to the effect of the other factors that contribute to the fee. The Department is committed to developing a fee structure that continues to cover the cost of administering the program and provides a fair distribution of program costs across the universe of NJPDES permittees. The Department has engaged stakeholders as part of this process and encourages suggestions on how best to do this.

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15. COMMENT: While supportive of the FY 2014 NJPDES fee proposal due to the reduction in overall fees to the industrial sector, we continue to seek rule changes that produce a simple and predictable structure along with increased efficiencies. In addition, the NJPDES industrial permit fee calculations are flawed and set up a self-fulfilling process for the Department to meet its budget requirements while certain permittees continue to pay more even though they have lower loadings and emissions. While the overall environmental load from industrial surface water permittees has decreased by more than 75 percent, a comparable decrease has not been reflected in the fees. This does not seem like a fair and equitable fee structure as our industry has significantly improved our emission performance, but continues to be penalized to balance the NJPDES budget. (3)

RESPONSE: The Department recognizes that the NJPDES fee structure is complicated, includes multiple methods to calculate fees for different categories, and is resource intensive to administer. The Department is committed to developing a new fee structure that yields predictable fees, provides a fair distribution of program costs across the universe of NJPDES permittees and continues to cover the cost of administering the program. See also Response to Comment 14 for a discussion of the components of the fees.

16. COMMENT: Opposition was raised to the new rate noted on the table labeled, “Municipal/Industrial Groundwater/Landfill Rate Calculation” found on page 44 of the FY 2014 Annual fee Report and the Assessment of Fees. Specifically, the rate is being increased

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from 0.2101 in FY 2013 to 1.1214, a nearly six-fold increase. Looking back even further, the rate was 0.1405 in FY 2012, 0.1823 in FY 2011 and 0.1683 in FY 2010. Given the exponential increase in the rate over the past five years, the rate must be retracted and recalculated. Concern was also raised that the rate for the SIU class has also increased six-fold from 2.0958 in FY 2013 to 13.3298. One of the commenter's largest SIU customers has seen a proposed increase of 250 percent. (1, 6)

RESPONSE: The rate is proportional to the category budget and the sum of environmental impact values of the dischargers in the category. Thus, the rate is sensitive to changes in budgets, the universe of permittees in the budget category as well as the total individual permittees' environmental impact. In the commenter's case, the increase in the rate was the result of increased budgets for the Groundwater/Landfill category and the SIU category. The rate was calculated according to the existing rules. In response to comments received on the Annual Fee Report, a number of changes in both the universe of permittees and total individual permittees' environmental impact values have been made, resulting in a recalculation of the rate for the Groundwater/Landfill category. See also Response to Comment 14 for a discussion of the components of the fees.

17. COMMENT: The use of the permitted/design flow in the fee calculation for discharge to groundwater permits rather than actual flow as is used in the calculation for discharge to surface water and discharge to POTWs is arbitrary and capricious. While surface water permittees gain

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the benefit of having their fee calculated on actual flow and quality of discharge, groundwater permittees are not treated equally in the rules or this fee proposal. Groundwater permittees are discriminated against in that their fees are based upon the full design flow and an assumed secondary effluent standard. Groundwater permittees are punished in that neither the lower flow nor significantly higher quality effluent is reflected in the fee. In addition, using the permitted/design flow unfairly punishes a permittee who is trying to properly plan for the future.

(1, 4)

RESPONSE: The use of permitted or facility design flow in the calculation of groundwater discharge permit fees is specified at N.J.A.C. 7:14A-3.1(d)1iv and is beyond the scope of the Annual Fee Report process. The Department will consider the commenter's concern regarding the fee structure as it undertakes rulemaking to amend the NJPDES fee rules.

18. COMMENT: We were approved to expand our facility from 8.2 million gallons per day (MGD) to 10.75 MGD in a Water Quality Management Plan update, dated May 25, 2011. We are planning for year 2040 flows based upon a build-out analysis. We are deeply concerned that a permit will be issued for the requested interim expansion to 10.2 MGD and the NJPDES permit fees will then be calculated based on this higher permitted flow, even though our actual flow from the facility is only 5.5 MGD. We will be financially punished with continued exorbitant NJPDES fees because we are properly and prudently planning for the future and implementing the Water Quality Management Plan. (1)

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RESPONSE: The Department recognizes the commenter's concern that an increase in the permitted flow may cause a substantial increase in its NJPDES permit fees. However, the existing rule at N.J.A.C. 7:14A-3.1(d)1iv has four levels of flow factors: less than 1.0 MGD; 1.0 MGD to less than 3.0 MGD; 3.0 MGD to less than 5.0 MGD; and 5.0 MGD or greater. In this case, because the permitted flow is already greater than 5.0 MGD, the increased capacity would not affect the NJPDES fee. The Department will consider the commenter's concern regarding the fee structure as it undertakes rulemaking to amend the NJPDES fee rules.

19. COMMENT: The fee formula for operating landfills should consider leachate containment systems and other mechanisms to control leachate such as maximum side slopes, liners, and dense vegetation which reduces infiltration rate and or eliminates discharges when determining the discharge control factor. (6)

RESPONSE: The existing NJPDES rule identifies only two discharge control factors for operating landfills: completely lined (hydraulic conductivity less than  $10^{-7}$  cm/sec) and unlined or partially lined for use in the formula used to calculate permit fees. The use of additional discharge control factors is beyond the scope of the Annual Fee Report process. The Department will consider the commenter's concern regarding the fee structure as it undertakes rulemaking to amend the NJPDES fee rules.

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20. COMMENT: How many landfill categories are there and how does the Department distinguish between landfill categories “O” and “F”? (6)

RESPONSE: The Department currently identifies only two landfill categories, “O” and “F”, within the NJPDES program. The designation of Category “O” identifies the landfills that fall within Subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6941-6949a, and the designation of Category “F” identifies all other landfills. The category assigned to a landfill does not, however, affect the permit fee.

21. COMMENT: If a landfill no longer accepts solid waste, why is it in the list of operating landfills? (6)

RESPONSE: A landfill that is no longer authorized to accept solid waste should not be on the list of operating landfills. The NJPDES Permit for an operating landfill is administered by the NJPDES program within the Division of Water Quality until such time as the Department terminates the landfill’s authorization to accept solid waste. The Department will review the list of operating landfills to ensure that there are no terminated landfills whose permits have not been properly transferred to the Division of Solid and Hazardous Waste.

22. COMMENT: How did the Department determine that \$6,900 should be the minimum fee for a landfill? (6)

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RESPONSE: The Department calculates the minimum fee in accordance with the rules at N.J.A.C. 7:14A-3.1(a)9iii.

23. COMMENT: How are “orphan” landfills categorized? There are several landfills that are not on the operating landfill list, yet discharge to groundwater. (6)

RESPONSE: The NJPDES rules do not define “orphan landfill.” The Department does not issue a NJPDES permit to a facility that ceased accepting solid waste prior to January 1, 1982, unless the Department determines that the landfill is discharging pollutants into the State’s waters.

Sanitary landfills that accepted waste after January 1, 1982 (post-1982) are subject to both the Solid Waste rules, N.J.A.C. 7:26-2A, and the NJPDES rules, N.J.A.C. 7:14A, and must obtain a NJPDES-DGW permit. NJPDES permits for these post-1982 landfills that no longer have authorization to accept solid waste are administered by the Department’s Division of Solid and Hazardous Waste.

24. COMMENT: We oppose the increased fees for municipal landfills and believe that closed landfills, owned by municipalities, should either not be assessed a fee or only be assessed a minimal fee. The fee for a municipal landfill should be no more than \$500.00. Further, since our landfill never received municipal waste, it has no significant environmental concerns. The

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Department programs are duplicative since the former owner of the site is responsible for a sitewide groundwater monitoring program. (8)

RESPONSE: A landfill is considered an operating landfill and its NJPDES permit is administered by the NJPDES program within the Division of Water Quality until such time as the Department terminates the landfill's authorization to accept solid waste, at which time the NJPDES permit is transferred to the Division of Solid and Hazardous Waste. Department records show that the landfill owned by the commenter had its authorization to accept solid waste terminated on August 30, 2012, but the permit was not transferred to the Division of Solid and Hazardous Waste. The commenter's NJPDES permit will be transferred to the Division of Solid and Hazardous Waste. The Department will review the list of operating landfills to ensure that there are no other landfills that are no longer authorized to accept solid waste whose permits have not been properly transferred to the Division of Solid and Hazardous Waste.

Properly closed landfills are assessed a minimum fee of \$500.00. However, the total fee that the landfill is assessed includes the minimum fee plus an additional amount to address the environmental impact value, based on a formula in accordance with N.J.A.C 7:14A-3.1. The Department will consider the commenter's recommendation for a change to the fee structure for municipal landfills as it undertakes rulemaking to amend the NJPDES fee rules.

The Department's regulation of the commenter's site is not duplicative. The site consists of two separately regulated landfills that have permits from two separate Department programs.

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The landfill owned and operated by the commenter is overseen by the NJPDES program, while the other landfill on the site is under the Site Remediation Program.

25. COMMENT: Factors used in the calculation of fees for the NJPDES discharge to groundwater permit for an Aquifer Storage and Recovery (ASR) well are not reflective of the ASR operation. While concern has been raised that the discharge control and pollution potential factors are too high, it is also questioned why an environmental component is even charged for this type of permit. Benefits of the use of ASR include the reduction of movement of salt water in certain aquifers. In the rules, pollution potential factors vary depending upon the “pollution” attributable to the discharge. Presumably, a lower factor is indicative of a lower strength discharge. Despite the quality a discharge, the Department assigned ASR facilities a pollution potential factor of 300, the highest in the category. This factor is higher than potable water plant filter backwash and stormwater runoff. Potable water plant filter backwash is given a lower value of 200 and stormwater runoff is given a value of 100. We believe the factor assigned to ASR should at least be the lowest in the category, which is 100. The discharge control scenario factors appear to function similarly, that greater control equates to a lower factor and therefore a lower fee. ASRs were assigned a factor of 25. The only factors that are greater are from discharges from landfills. A factor of one or 10 appears to be more appropriate. (7, 12)

RESPONSE: ASR is a means of storing potable treated water by injecting the water into a confined aquifer. ASR wells are regulated under the Underground Injection Control (UIC)

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provisions of the NJPDES rules because the discharge is directly to the ground waters of the State. The injection of potable water into aquifers for future recovery requires a permit to ensure compliance with management practices of the injection process and the ground water quality standards. Although the discharge to ASR wells consists of water from potable water treatment systems, there are several parameters for which drinking water standards differ from the ground water quality standards. Consequently, there are times when the injection of potable water into the aquifer can have a negative impact on the quality of the ground water, resulting from the difference in chemical composition of the injected water and the chemical composition of the surrounding aquifer. This can occur whether or not the influent is treated with additives prior to injection. For these reasons it is appropriate to include an environmental component to the fee.

The NJPDES rules do not have a specific Pollutant Source Description or Discharge Control Scenario for Pollutant Source applicable to ASR discharges. Accordingly, the Department assigned the discharges to the categories applicable to unspecified discharges, which are the Pollutant Source Description of “industrial process wastewater (not otherwise specified)” (which has a Pollution Potential Factor of 300), and the Discharge Control Scenario for Pollutant Source of “designed for discharge to the ground (all other wastewater other than sanitary wastewater with at least secondary treatment)” (which has a Discharge Control Factor of 25).

Because the potable water is treated before it is injected into the confined aquifer, the potential for pollution is low. Accordingly, the Department is assigning the ASRs the lowest Pollution Potential Factor, 100, as would apply to stormwater runoff. The Department recognizes that water from ASR is not stormwater, but it is at least as clean as stormwater,

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because it has been treated to a potable standard. This treatment also justifies the change in the Discharge Control Scenario for Pollutant Source from “designed for discharge to the ground (all other wastewater other than sanitary wastewater with at least secondary treatment)” with a Discharge Control Factor of 25 to “designed for discharge to the ground (sanitary wastewater with at least secondary treatment)” with a Discharge Control Factor of 20.

The Department is reclassifying 10 ASR facilities, and adjusting fees accordingly. The adjustments to the fee schedule because of these and other changes to the groundwater permit universe resulted in a DGW average fee decrease of \$43.00, thereby decreasing the average DGW fee to \$2,480.

26. COMMENT: Agribusiness in New Jersey causes pollution and should be regulated by the Department and charged fees for that service. (10)

RESPONSE: The Department does regulate concentrated animal feeding operations (CAFOs) and designated animal feeding operations (AFOs). Surface water discharges from these types of operations are required to obtain a NJPDES permit pursuant to N.J.A.C. 7:14A-2.13, and pay applicable permit fees. Currently, there are only two such operations in New Jersey that require a permit.

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**Full text** of the changed rule follows (additions indicated in boldface **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>
1.-24. (No change.)		
<b>25. Residuals – General Permit Category SXG</b>	<b>RSX</b>	<b>\$750</b>
<b>26. Residuals – General Permit Category S1G</b>	<b>RS1</b>	<b>\$900</b>

Recodify existing 25. - 32. as **27. - 34.** (No change in text.)