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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 2015 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 2015 (FY 2015) 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 2015 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2015 budget and fee schedule was provided in the New Jersey Register on March 16, 2015, at 47 N.J.R. 666(a) and in the Trenton Times newspaper on March 16, 2015. Notice of availability of the Annual Fee Report on the Department's website at www.nj.gov/dep/dwq/njpdesfees.htm was mailed to all NJPDES permit holders. A paper copy of the Annual Fee Report was also provided to any person upon request.

The Department held a public hearing on the FY 2015 NJPDES Annual Fee Report on April 15, 2015, at the Department's offices at 401 East State Street, Trenton, New Jersey. Three

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people attended the public hearing. Two of the attendees gave oral testimony, one of whom also provided written comments. One attendee who did not give oral testimony provided written comments. In addition, three other individuals submitted written comments on the proposed NJPDES budget and the fee schedules.

Terry Beym, Supervisor for Permit Administration, Division of Water Quality, served as the hearing officer at the April 15, 2015, public hearing. After reviewing the record regarding the NJPDES Annual Fee Report, the Department adopted the Annual Fee Report, with the amendments discussed below.

The public comment period for the FY 2015 Annual Fee Report closed on April 15, 2015. The comments submitted are available for inspection by contacting the Department as follows:

Mail Code 401-02B

Terry Beym, Supervisor

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 2015. 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.

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 Department made no changes to the Municipal Discharge to Surface Water (DSW) fee schedule. Two facilities were removed from the Industrial DSW fee schedule due to permit revocations. These adjustments to the Industrial DSW fee schedule result in an average fee increase of \$70.00, thereby increasing the average fee to \$13,858. The Department made no changes to the Significant Indirect User (SIU) fee.

The Department removed one Residuals Reed Bed general permit authorization and two Land Application/Food Processor general permit authorizations from the Residuals fee schedule due to permit revocations. As a result, the total amount to be billed for this category decreased \$2,100. Because the fees for the facilities in the Residuals fee schedule are fixed, the removal of the general permit authorizations had no impact on the fees for the remaining facilities in the schedule.

One facility was removed from the Discharge to Ground Water (DGW)/Operating Landfill fee schedule, due to permit revocation. The adjustment to the fee schedule because of this revision results in a DGW average fee decrease of \$7.00, thereby decreasing the average DGW fee to \$2,133. The adjustment had no effect on the Operating Landfill average fee, which remained at \$24,443.

Based on the above noted revisions, the Department has recalculated the rates and assessments for the Industrial Surface Water and Municipal/Industrial Ground Water/Operating

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Landfill categories. The total amount to be billed is unchanged; however, the rates are changed.

The final rates (as compared to the proposed rates) and the permit category amounts to be billed for FY 2015 are as follows:

Total				
Environmental				Amount
<u>Category</u>	<u>Impact</u>	<u>Proposed Rate</u>	<u>Final Rate</u>	<u>to be Billed</u>
Municipal Surface Water	36,151.91	197.2536	197.2536	\$6,715,813
Industrial Surface Water	535,118.17	7.5913	7.6294	\$3,833,069
Pretreatment (SIU Permits)	18,613.78	2.3774	2.3774	\$475,502
Municipal/Industrial Ground	1,349,573	0.8825	0.8894	\$2,571,559
Water/ Operating Landfills				
Land Application of	-	-	-	\$163,750
Residuals				
Total:				\$13,759,693

The Department amended Stormwater Permitting Program fees to remove six facilities for which permits were revoked. One facility category changed, but the change did not affect the annual fee. The fixed fees and the amount to be billed for FY 2015 are as follows:

<u>Discharge Category</u>	<u>Fee</u>	<u>Number</u>	<u>Amount to</u>
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		of	<u>be Billed</u>
		<u>Permits</u>	
Basic Industrial Stormwater General Permit	\$800	1,906	\$1,524,800
Stormwater (Individual Permit)	\$4,100	180	\$738,000
Scrap Metal Stormwater General Permit	\$2,300	15	\$34,500
Vehicle Recycling General Permit	\$2,300	121	\$278,300
Scrap Metal Processing General Permit	\$2,300	109	\$250,700
Concrete Products Stormwater General Permit	\$2,300	104	\$239,200
Newark Airport Stormwater General Permit	\$2,300	33	\$75,900
Hot Mix Asphalt Stormwater General Permit	\$2,300	36	\$82,800
Wood Recyclers General Permit	\$2,300	12	\$27,600
CAFO Stormwater General Permit	\$2,300	2	\$4,600
Mining & Quarrying General Permit	\$2,300	59	\$135,700
Sand & Gravel General Permit	\$1,250	9	\$11,250
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

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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
Total FY 2015 Stormwater Billing:		3,247	\$5,379,550

As discussed in the Annual Fee Report, the Department developed a new fee category for the Sand and Gravel Stormwater General Permits. The Department is adding this fee category 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.

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

Name and Affiliation

1. Jane G. Chady, Executive Director, New Jersey Manufactured Housing Association

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2. Steve Chranowski, SHEC Manager, SIMS Metal Management
3. Peter Jastrzebski, Frank's Auto Wreckers, Inc.
4. Kathy Klein, President, Water Resources Association of the Delaware River Basin
5. Thomas Leach, Director of Government Relations, Chemistry Council of New Jersey
6. Dennis Palmer, Executive Director, Landis Sewerage Authority

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 existing NJPDES permit fee structure is unpredictable and contains a convoluted annual calculation that has many varying parameters. Permittees cannot budget and plan for future permit fees with the existing fee system that is unpredictable and at times inequitable. Permittees are concerned and disappointed that the September 2014 roll out of the proposed NJPDES fee reform has not been implemented. The reforms would provide a predictable and straightforward calculation of fees. Permittees request implementation of the NPDES fee reform, and the predictability contained therein, as soon as possible. (4, 5, 6)

RESPONSE: The Department recognizes that the NJPDES fee structure is complicated and includes multiple methods to calculate fees, each method associated with a different permit category. The Department continues to evaluate alternatives in order to develop a new fee structure that yields predictable fees, provides a fair distribution of program costs across the

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universe of NJPDES permittees, and continues to cover the cost of administering the program.

See the Response to Comment 2 for a discussion of the Department's September 2014 presentation to stakeholders.

2. COMMENT: The proposed increase in the NJPDES fees comes in the fourth month of our fiscal year and budget. The authority budgeted for a NJPDES fee of \$45,000 based upon the September 2014 presentation by the Department of the NJPDES fee reform, which was not implemented as indicated at the presentation. This increase is to a budget already stressed by extreme cold weather and jeopardizes and hinders our resiliency and redundancy plan. In addition, we would like to exercise the 10 percent rule in that the total DGW municipal budget is \$522,500 and our fees should not be higher than \$52,250, which we still object to given the value presented at the September 2014 presentation. (6)

RESPONSE: The Department met with stakeholders in September 2014 in order to discuss alternatives to the existing methods of calculating fees. As part of those meetings, the Department circulated a possible fee schedule based upon the alternative method of calculating fees that was being considered at that time. As the commenter is aware, as of the date of this notice, the Department has not proposed to amend the rules to change the method of calculating fees. All fees and billings are based on the adopted rules in place at the time of billing. The Department provides an installment payment schedule to permittees, if requested.

The 10 percent provision to cap NJPDES fees in the rule is applied when a facility's calculated fee exceeds 10 percent of the category budget. The category budget/assessment for

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discharges to ground water and landfills, and the value used to determine the 10 percent cap, was \$2,581,909 for FY 2015, not \$522,500 as indicated in the comment. As such, the maximum fee for the DGW category for FY 2015 would be \$258,190, not \$52,250 as requested. As the commenter's calculated fee for FY 2015 was less than the 10 percent maximum for the category, the Department did not exercise the 10 percent option as to the commenter.

3. COMMENT: The program must become more efficient and reduce headcount to maintain budgetary control, and continue to improve systems and processes to streamline work and reduce the overall NJPDES budget. (5)

RESPONSE: The NJPDES program is continuously looking for ways to streamline operations. Between FY 2009 and FY 2015, the NJPDES budget has been reduced by a total of 14.5 percent, the number of permits managed has increased by a total of 68.0 percent, and the number of full time employees has been reduced by a total of 27.9 percent.

4. COMMENT: Excessive NJPDES fees act as a significant disincentive for manufacturing to locate, expand, or remain in New Jersey. 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. (5)

RESPONSE: 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

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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, 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. The State's 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.

5. COMMENT: The regulated community alone cannot support the permitting program. The NJPDES budget continues to rise. We encourage efforts to fund overhead factors using sources other than NJPDES permit fees. These overhead factors include ongoing costs for physical space and for prior program employees. A complete review of the budget to work toward the removal of any items that include a component not solely related to the current operations of the program is also requested. (1)

RESPONSE: As discussed above in the Response to Comment 4, the Water Pollution Control Act requires the Department to "establish and charge reasonable annual administrative fees,

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which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits,” which includes the overhead items referenced in the comment. From FY 2014 to FY 2015 the annual NJPDES budget decreased from \$20.6 M to \$19.2M, primarily as a result of a decrease in the fringe benefit and indirect rates. See the Response to Comment 3 for a discussion of further reductions in the NJPDES program.

6. COMMENT: The Department has not increased the minimum fees for NJPDES ground water dischargers since 2007. This is a clear departure from the regulations at N.J.A.C. 7:14A-3.1(a)9, which requires the Department to annually calculate discharge fees, including the minimum fee. The Department’s own reports indicate that the fringe factor has surged from 34.75 percent to 50.75 percent then back to 40.15 percent, and the average salary has gone from \$59,500 to \$84,795, yet the minimum fee has not changed. The Department, in an arbitrary and capricious manner has not followed its own regulations. Not increasing minimum fees places a burden on larger permittees, is unfair, and is inequitable. (6)

RESPONSE: The Department acknowledges that minimum fees have not been recalculated since 2007. The Department will consider adjustments to all minimum fees as it continues to evaluate alternatives in order to develop a new fee structure.

7. COMMENT: What is the reason for the 8.1 percent increase in the amount included in the NJPDES/Enforcement Water Pollution Control budget to cover the legal assistance provided by

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the Division of Law and Public Safety and the Office of Administrative Law? A total of \$525,633 has been included in the FY 2015 budget, while \$485,939 was included in the FY 2014 budget. (6)

RESPONSE: The New Jersey Department of the Treasury increased the amount allocated to the Department in the FY 2015 budget to cover water pollution control services other than personnel. Historically, a percentage of these non-personnel services has been allocated in the NJDPES budget to cover legal fees for activities associated with permit adjudications, and general legal assistance for rulemaking and enforcement action adjudications. While the actual percentage of the allocation did not increase, the amount of the appropriation did, resulting in an overall increase of 8.1 percent to support the activities identified above. The amount billed is consistent with costs anticipated for legal services for the NJPDES program.

8. COMMENT: The Department has reduced the amount of uncollected fees between the fiscal year 2014 fee report and this year's fee report. Nevertheless, rather than taking effective action to collect more of those funds and/or revoking the permit of the offenders, even temporarily, the Department has effectively passed through these fees to the dischargers, such as Landis Sewerage Authority. There is no provision in the Water Pollution Control Act that permits the Department to shift the burden of these costs in this manner. This is another example of the Department selecting which mandate it will follow and which it chooses to ignore. (6)

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RESPONSE: The Department continues its efforts to collect delinquent fees in accordance with State and Department policies. The Department has not historically revoked permits or issued enforcement orders for failure to pay the fee, but rather has referred delinquent bills to the Department of the Treasury for collection.

Each fiscal year's budget is established based on the Department's projected costs to administer the NJPDES program for that year, and is independent of previous fiscal years' budgets and fee assessments. Therefore, the Department does not include or take into consideration delinquent or previously uncollected fees when establishing its current fiscal year budget.

9. COMMENT: We have pursued prudent planning over a span of 20 years to achieve a complete Wastewater Management Plan, a NJPDES permit, and a treatment works approval for increased capacity from 8.2 million gallons per day (MGD) to 10.2 MGD. We will be penalized for proper planning due to the use of permitted flow for calculating fees for discharges to ground water rather than actual flow, which is used for discharges to surface water. (6)

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 commenter's permitted flow is already greater than 5.0 MGD, the increased capacity would not affect the NJPDES fee. However, the Department will consider the

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commenter's concern regarding the flow aspects of the existing fee structure as it continues to evaluate alternatives in order to develop a new fee structure.

10. COMMENT: Facilities with permits to discharge to ground water are being treated in an arbitrary, capricious, and discriminatory manner with respect to the use of permitted flow, rather than actual flow for sanitary sewerage wastewater. The existing provisions of N.J.A.C. 7:14A-3.1(a)(7) and (d)1 are inconsistent with each other. (6)

RESPONSE: The provisions at N.J.A.C. 7:14A-3.1(d)1 are distinct from N.J.A.C. 7:14A-3.1(a)(7). The provisions of N.J.A.C. 7:14A-3.1(a)(7) clarify which 12 months the Department will use when calculating Environmental Impact for dischargers whose fees are calculated using a 12 month average. The provisions at N.J.A.C. 7:14A-3.1(d)1 pertain to calculating Environmental Impact for discharges to ground water that are not based on a 12 month average.

11. COMMENT: The new Municipal/Industrial Ground Water/Operating Landfill Permit rate of 0.8825 is a four-fold increase over the rate in FY 2013, which was 0.2101. Rates from 2010 through 2013 were equal or less than 0.21. The exponential increase in 2014 must be retracted and recalculated. (6)

RESPONSE: The Department disagrees that the current rate should be retracted and recalculated; the rate of 0.8894 in the final fee schedule was calculated in accordance with the governing rules at N.J.A.C. 7:14A-3.1(a)9. However, the Department acknowledges the

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variability in the rates over previous fiscal years, and will consider the commenter's concern as the Department continues to evaluate alternatives in order to develop a new fee structure.

12. COMMENT: Please identify the Department of the Treasury's Office of Management and Budget (OMB) Circular, by number, establishing the 2015 fringe benefit rate of 40.15 percent.

(6)

RESPONSE: Each year when it prepares the Annual Fee Report, the Department contacts the Office of Management and Budget (OMB) for the applicable fringe benefit rate. If the fringe benefit rate for the relevant fiscal year has not yet been published in an OMB circular, the OMB provides the appropriate rate to the Department. OMB provided the Department with FY 2015 fringe benefit rate of 40.15 percent, which has not yet been published in the circular; accordingly, the Department is unable to provide the circular number.

13. COMMENT: The industrial NJPDES fee calculations need to be changed to produce a simple and predictable structure. In particular, the NJPDES industrial fee permit calculations are flawed and set up a self-fulfilling process for the Department to meet the NJPDES budget requirements, while the remaining permittees continue to pay more even though they have a lower loading and reduced discharges compared to historical numbers. This does not seem like a fair and equitable fee structure, as industry has significantly improved its discharge performance, but continues to be penalized to balance the NJPDES budget. (5)

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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. However, the Department acknowledges the concerns raised in this comment and will continue to evaluate alternatives in order to develop a new fee structure.

14. COMMENT: We are pleased that the Department has maintained the annual fee of \$2,300 for a stormwater general permit. We are aware that the Department may propose to increase future annual general stormwater permit fees up to \$3,000. This would result in an approximate 30 percent increase in the annual fee, and we request that the Department consider phasing in this increase if this change occurs. (2)

RESPONSE: A future annual general stormwater permit fee of \$3,000 and the suggested phasing in of future general permit fee increases are beyond the scope of the Annual Fee Report. However, the suggestions regarding future stormwater general permit fees and the phasing in of

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fee increases will be considered as the Department continues to evaluate alternatives in order to develop a new fee structure.

15. COMMENT: It is our understanding that the Department is considering renewing the existing stormwater general permit as a stormwater individual permit for those scrap metal facilities with shredders. We believe that operations at the scrap metal facilities with shredders still fall squarely under the current general permit for metal recycling processing, and should be treated identically. If there is a metal recycler's stakeholders group to work on this item, we would like to be a participant of the group. (2)

RESPONSE: This comment is beyond the scope of the Annual Fee Report. However, Department will keep this comment on file with the intention of including the commenter in such a stakeholder group, should one be formed.

16. COMMENT: The Department has indicated that it is evaluating an alternate fee structure that consists of "tiers" in an effort to gain efficiencies in the program. In the case of manufactured housing communities, the cost of these fees to homeowners can be quite significant. (1)

RESPONSE: The possible creation of "tiers" as part of a future rulemaking is beyond the scope of the Annual Fee Report. However, the Department will take the comment into account as it continues to evaluate alternatives in order to develop a new fee structure.

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17. COMMENT: Due to Superstorm Sandy and other weather related issues, we are experiencing operational difficulties and an associated financial burden. (3)

RESPONSE: The Department is sympathetic to those permittees still experiencing financial impacts from Superstorm Sandy and other weather related difficulties. The Department provides an installment payment schedule to permittees, if requested.

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> ¹	<u>Min Fee Code</u>	<u>Minimum Fee</u>
1. - 8. (No change.)		
9. Stormwater - Sand and Gravel General Permit (RSG)	R14	\$1,250

Recodify existing 9. - 34. as **10. - 35.** (No change in text.)

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¹⁻⁷ (No change.)