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ENVIRONMENTAL PROTECTION

Payment Schedule for Permit Application fees

Proposed Readoption with Amendments: N.J.A.C. 7:1L

Proposed Repeal: N.J.A.C. 7:1L-2.8

Authorized by: Bradley M. Campbell, Commissioner Department of
Environmental Protection

Authority: N.J.S.A. 13:1D-124

Calendar Reference: See Summary below for explanation of
exception to calendar requirement

DEP Docket Number: 09-05-04/504

Proposal Number: PRN-2005-

Submit written comments by August 5, 2005 to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 09-05-04/504

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or

CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The agency proposal follows:

Summary

Since the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to the requirements of Executive Order No. 66(1978), the Payment Schedule for Permit Application Fees rules, N.J.A.C. 7:1L, was scheduled to expire April 17, 2005. The filing of this proposal with the Office of Administrative law on or before that date automatically extended the expiration date 180 days, until October 14, 2005, in accordance with the Administrative Procedures Act. (See N.J.S.A. 52:14B-5.1(c).) As required by the Executive Order, the Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt this chapter, with the amendments and repeal discussed below.

The existing rules at N.J.A.C. 7:1L-1.1 through 2.7 establish a payment schedule for permit application fees that exceed \$1,000. The rules apply to permits issued under Federal law, or the following State laws: the laws governing waterfront and harbor

facilities (N.J.S.A. 12:5-1 through 11); Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq., including without limitation N.J.S.A. 13:1E-5 and 26); Comprehensive Regulated Medical Waste Management Act (N.J.S.A. 13:1E-48.1 through 48.25); the laws governing leaf composting facilities (N.J.S.A. 13:1E-99.21a through 99.21f); Statewide Mandatory Source Separation and Recycling Act (N.J.S.A. 13:1E-99.11 through 99.39, including without limitation 13:1E-99.21a through 99.21f); Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 through 18); Industrial Site Recovery Act (N.J.S.A. 13:1K-6 through 13); Toxic Catastrophe Prevention Act (N.J.S.A. 13:1K-19 through 32); Wetlands Act of 1970 (N.J.S.A. 13:9A-1 through 10); Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 through 30); Coastal Area Facility Review Act (N.J.S.A. 13:19-1 through 21); Air Pollution Control Act (N.J.S.A. 26:2C-1 through 19.5); Water Supply Management Act (N.J.S.A. 58:1A-1 through 17); the laws governing well drillers and pump installers (N.J.S.A. 58:4A-5 through 28); Water Pollution Control Act (N.J.S.A. 58:10A-1 through 14.6); the laws governing the underground storage of hazardous substances (N.J.S.A. 58:10A-21 through 37); Safe Drinking Water Act (N.J.S.A. 58:12A-1 through 25); and Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 through 66).

Under the fee payment schedule, one-third of the total fee is payable when the application for the permit is submitted; one-third is payable when the application is deemed complete for purposes of beginning a technical review; and the final third is payable when the Department takes final agency action on the permit application.

This payment schedule is mandated by N.J.S.A. 13:1D-120 through 124.

The Department proposes to readopt without change the rules relating to payment of fees in installments. The rules set forth definitions, procedural requirements for applicants seeking to use the installment protocol, and provisions regarding the processing of permit applications if fees are being paid in installments. The rules also provide at N.J.A.C. 7:1L-1.1(c) and 2.8 for a money-back guarantee in the event that the Department does not act on a permit application within the time periods set forth in the rules. This portion of the rules is not required by statute, but was added to the rules in 1997 (see 28 N.J.R. 242(a), 29 N.J.R. 3817(b)).

Under N.J.A.C. 7:1L-1.1(c), if the Department misses a deadline established under the rules, and if the applicant requests, the Department must refund the application fee and continue to work on issuing a decision on the application. The Department is proposing to amend N.J.A.C. 7:1L-1.1 to remove the money-back guarantee provision, and to repeal N.J.A.C. 7:1L-2.8. Over the more than seven years since the guarantee has been in effect, no member of the public has requested that the Department return his or her application fee. The Department continues to make its permitting process more efficient. One example is recent upgrades to the New Jersey Environmental Management System (NJEMS). Through NJEMS, the Department is consolidating its existing individual data management systems across many media, such as air, water, and land use. This represents a significant step toward an integrated Department-wide data management system to be used primarily for permitting, reporting, and enforcement activities.

Social Impact

The Department's implementation of the Legislature's mandate at N.J.S.A. 13:1D-120(d) and (e) to allow payment of permit fees of \$1,000 or more in three installments is intended to allow the regulated community to continue to make economic use of a portion of their permit application fee while the Department reviews their applications. Applicants subject to fees over \$1,000 do not have to pay the entire application fee at one time, thereby allowing those businesses with more limited cash flow to comply more easily with environmental regulations. Readoption of the rules will ensure the continuation of these beneficial impacts. The repeal of the guarantee provisions will have no impact, inasmuch as the provision has not been used in the more than seven years since its promulgation. Further, the Department continues, through other means, to make its permitting process more efficient.

Economic Impact

The rules allowing payment of permit fees of \$1,000 or more in three installments allow applicants to earn a return on the unpaid portion of the fee until it becomes due. The precise economic benefits to an applicant depend upon the amount of the fee, the amount of time between installments, and the return that the applicant is able to earn. The repeal of the provisions relating to the money back guarantee would have no economic impact, inasmuch as these provisions have not been used since their promulgation in 1997.

Environmental Impact

The rules proposed for re adoption will, by allowing applicants with fees over \$1,000 to pay in installments, encourage the regulated community to comply with environmental regulations and obtain required permits. Such compliance will assist the Department in its protection of the State's natural resources. The repeal of the provisions relating to the money back guarantee will have no environmental impact, since the Department would continue to process permit applications.

Federal Standards Statement

N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The rules proposed for re adoption and repeal have not been formulated in accordance with the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the rules proposed for re adoption or repeal will have any impact on job creation or retention in the State.

Agricultural Industry Impact

The Department does not anticipate that the rules proposed for re adoption or repeal will have any impact upon agriculture in New Jersey.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., the Department has determined that the rules proposed for re adoption do not impose reporting, recordkeeping, other compliance requirement on small business as defined under the Act. Payment of the fee in installments is optional for applicants. They are not expected to incur additional expense due to the rules. The repeal of the rules relating to the money back guarantee will also not result in a reporting, recordkeeping, or other compliance requirement on small business. Consequently, a regulatory flexibility analysis is not required.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan).

The rules proposed for re adoption or repeal do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1L.

Full text of the rule proposed for repeal may be found in a New Jersey Administrative Code at N.J.A.C. 7:1L-2.8.

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

TITLE 7. DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 1L. PAYMENT SCHEDULE FOR PERMIT APPLICATION FEES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1L-1.1 Purpose and applicability

(a) - (b) (No change.)

[(c) This chapter institutes a money-back guarantee for permit application fee for the permits listed at N.J.A.C. 7:1L-2.8. In the event the Department misses a deadline established under N.J.A.C. 7:1L-2.8, the permit application fee will be refunded upon request and the Department shall continue to work on issuing a decision on the application. The deadlines set forth at N.J.A.C. 7:1L-2.8 are based upon the completion of the Department's duties and responsibilities at specific stages of the application review process.]

Recodify existing (d) - (f) as **(c) - (e)**.