

## **ENVIRONMENTAL REGULATION**

### **Division of Water Quality**

#### **Notice of Adoption**

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

#### **FY2004 Annual Fee Report and Assessment of Fees**

**Take notice** that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2004 (FY2004) 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 FY2004 budgeting process for the NJPDES permit program including the Stormwater Permitting Program.

Notice of the public hearing and opportunity to comment on the proposed FY2004 budgets and fee schedules was provided in the New Jersey Register on March 15, 2004, at 36 N.J.R. 1613(a). Copies of a condensed version of the NJPDES Annual Fee Report and Assessment of Fees were mailed to all NJPDES permit holders and provided to other interested parties upon request. The full version of the Annual Report and Fee Schedule was made available on the Department's website at <http://www.nj.gov/dep/dwq/njpdessfees.html>.

The Department held a public hearing on the FY2004 NJPDES Annual Fee Report and Assessment of Fees, on April 28, 2004 at the Department's offices at 401 East State Street, in Trenton, New Jersey. No one from the public attended the hearing. Written comments on the proposed NJPDES budget and the fee schedules were received from the individuals listed below as of the close of the comment period.

#### Name – Affiliation

1. James F. Wadon – Astaris, LLC
2. Stephen J. Bonanni, Sr. – Township of Galloway
3. Clifford Lindholm – Falstrom Company
4. George J. Tyler – on behalf of Automotive Recyclers Association of New Jersey

William F. Boehle, Chief of the Bureau of Permit Management, Division of Water Quality, served as the hearing officer at the April 28, 2004 public hearing on the FY2004 NJPDES Annual Fee Report and Fee Schedule. After reviewing the record regarding the NJPDES Annual Fee Report and Fee Schedule (including the Stormwater Permitting Program), Mr. Boehle recommended that the Department adopt the FY2004 NJPDES Annual Fee Report and Fee Schedule.

The transcript of public hearing is available for inspection by contacting the Department as follows:

William F. Boehle, Chief  
Bureau of Permit Management  
Division of Water Quality  
PO Box 029  
Trenton, New Jersey 08625

As discussed in the NJPDES Annual Report and Fee Schedule, the Department used the existing fee assessment methodology established at N.J.A.C. 7:14A-3.1 in calculating permit fees for FY2004. During the public comment period, a number of permittees asked questions concerning their individual environmental impact calculations, fee assessments, permit classifications or permit status. In response to these questions, the Department verified the environmental impact calculations and made adjustments, if necessary, based on the updated information. The Department addressed individual questions and explained the basis for the assessments directly to the inquiring permittees. Seven Municipal Discharge to Surface Water (DSW) permit environmental values were recalculated to account for mid-year changes in the parameter reported for oxygen demand. One Municipal DSW permit environmental value was recalculated based upon corrected data. One Municipal DSW permit was removed from the fee schedule because the permit was no longer needed and had been recently revoked. The resulting adjustment to the rate for the Municipal DSW category because of all of these revisions is minor and resulted in an average increase of \$16 to the remaining permit fees for this category, raising the average fee to \$22,907. Environmental values for three Industrial Discharge DSW permits were recalculated because the permittees had stopped discharging during the billing period. Two

Industrial DSW permits were removed from the fee schedule because the permits were no longer needed and were revoked. The resulting adjustment to the rate for the Industrial DSW category because of all of these revisions is minor and resulted in an average increase of \$28 to the remaining permit fees for this category, raising the average fee to \$10,023. Eleven new Discharge to Groundwater (DGW) permits were added and two were revoked. The subsequent adjustment to the rate resulted in an \$19 average decrease in permit fees for this category with an average permit fee of \$1,876.

Based on the above noted revised information, the Department has recalculated the proposed rates and assessments for the Municipal Surface Water, Industrial Surface Water, and Municipal/Industrial Ground Water categories. The final rates and the permit category amounts to be billed for FY2004 are as follows:

<u>Category</u>	Total		<u>Final Rate</u>	<u>Amount Billed</u>
	<u>Environmental</u>	<u>Impact</u>		
Municipal Surface Water	49,058.84	99.9148	100.2220	\$5,200,000
Industrial Surface Water	1,460,823.35	3.3176	3.3271	\$4,350,000
Pretreatment (SIU Permits)	21,422.06	1.0340	1.0340	\$420,000
Municipal/Industrial Ground Water	170.56	2130.9242	2073.9910	\$1,570,000
Land Application of Residuals	-	-	-	\$211,450
Operating Landfills	95,981.70	5.6923	5.6923	\$400,000
Total:				\$12,151,450

For the Stormwater Permitting Program the fixed fees and the amount to be billed for FY2004 are as follows. The only changes were the addition of 99 new permits and the deletion of 25 billable facilities due to permit revocations.

<u>Discharge Category</u>	<u>Fee</u>	<u>Amount Billed</u>
Basic Industrial Stormwater General Permit	\$750	\$1,467,750
Stormwater (Individual Permit)	\$3,550	\$692,250
Scrap Metal Stormwater General Permit	\$2,000	\$470,000
Concrete Products Stormwater General Permit	\$2,000	\$206,000
Newark Airport Stormwater General Permit	\$2,000	\$84,000

CAFO Stormwater General Permit	\$2,000	\$10,000
MSRP – Tier B General Permit	\$167	\$16,867
MSRP – Tier A General Permit (0 - 1000)	\$200	\$1,600
MSRP – Tier A General Permit (1001 - 5k)	\$350	\$36,050
MSRP – Tier A General Permit (5001 - 10k)	\$667	\$76,038
MSRP – Tier A General Permit (10001 – 15k)	\$1,000	\$70,000
MSRP – Tier A General Permit (15001 - 20k)	\$1,350	\$59,400
MSRP – Tier A General Permit (20001 - 25k)	\$1,750	\$52,500
MSRP – Tier A General Permit (25000 +)	\$3,000	\$258,000
MSRP – Public Complex General Permit (1k - 2999)	\$300	\$8,100
MSRP – Public Complex General Permit (3k - 5999)	\$500	\$6,000
MSRP – Public Complex General Permit (6k - 8999)	\$867	\$6,936
MSRP – Public Complex General Permit (9000 +)	\$1,200	\$20,400
MSRP – Highway Agency General Permit (0-9)	\$183	\$366
MSRP – Highway Agency General Permit (10-199)	\$817	\$6,536
MSRP – Highway Agency General Permit (200-399)	\$1,700	\$18,700
MSRP – Highway Agency General Permit (400 +)	\$3,267	\$16,335
Total FY2004 Stormwater Billing:		\$3,583,828

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

1. COMMENT: Astaris disagrees with the method presently used by the NJDEP to calculate loadings for NJPDES permit parameters having net limits and contends that the value used by NJDEP is a meaningless, arbitrary value. Astaris supports the historical (pre-1998) method used for calculating net loadings. Based on this past method (which calculates a true 12-month average net loading), the total 2003-2004 NJPDES permit fee for the Astaris Carteret facility is \$5888.28. The present NJDEP method for calculating net loadings was implemented in 1998 as a reinterpretation of the existing NJPDES permit fee regulations, without appropriate public notice and consequent opportunity for public comment.

RESPONSE: The Astaris Carteret facility's NJPDES/DSW permit contains net limits. Some of the net loadings reported on the facility's Departmental Monitoring Report Forms are positive values and some of them are negative values. The permittee contends that the rules require that the reported positive and negative values be averaged to calculate the annual average monthly

load used in the Total Pollutant Load calculation. The Total Pollutant Load calculation is used in the determination of their NJPDES annual fee. The permittee further contends that if the annual average load is a negative value, then a zero should be used in place of the negative average value. The Department disagrees with the Astaris interpretation of the rules and with its contention that the method it supports was the historical method used by the Department. In only one year (FY1998), when the Department relied upon data and calculations provided by Astaris (or its predecessor, FMC Corporation), was the methodology supported by Astaris used for the Astaris annual fee.

N.J.A.C. 7:14A-3.1(c)1.i(1) states that “Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee **reports** (emphasis added) a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.” This requirement clearly states that the **reported** negative load be adjusted to zero before the average load is calculated and used in the Total Pollutant Load calculation. The individual values **reported** on a facility’s Departmental Monitoring Report Forms are what are adjusted, if warranted, not the annual average load **calculated** from those reported individual values. This is the procedure followed by the Department. There was no change that necessitated rulemaking.

The language of the existing rule at N.J.A.C. 7:14A-3.1(c)1.i(1) has remained unchanged since its adoption in 1991. The method of calculation contained in the rule is clear and is supported by responses to comments made by the Department in the New Jersey Register on April 15, 1991 at 23 N.J.R. 1155. These responses state in part:

- A negative pollutant loading will be considered a zero in the calculation of the total weighted pollutant loading.
- This proposal will only eliminate a loophole for permittees with net limitations which reduced the overall environmental impact for a discharger. .... The Department will replace a pollutant load that is reported by the permittee as a negative value (or no pollutant discharges) with a zero load for that pollutant.

Astaris has raised this issue in fee recalculation requests pursuant to N.J.A.C. 7:14A-3.1(a)6 on its FY2000, FY2001, FY2002 and FY2003 NJPDES fee invoices. In each instance the Department denied the fee recalculation request. The Department notes that Astaris filed an

appeal with the Appellate Division of the Superior Court on the FY2002 denial of fee recalculation, which was withdrawn by Astaris on May 14, 2003.

2. COMMENT: Astaris believes that the existing NJPDES permit fee regulations need to be revised, to improve both clarity and equitability. Among the suggested revisions is documentation of the NJDEP practice of using 12-month average loadings for NJPDES permit fee calculations, and assurance that the actual average loading will be determined for net values. These changes also address the fee determination for the storm water component of a consolidated individual NJPDES permit, which is unclear in the current regulations.

RESPONSE: The Department is on record as opposing the interpretation of the net loading calculation methodology proposed by Astaris and does not agree with its suggestions concerning the level of stormwater fees. Additionally, the NJPDES fee rules themselves are not open to comment during this annual fee review process.

3. COMMENT: The Township of Galloway objects to the FY2004 NJPDES fee since it was not assessed prior to the adoption of the 2004 Township budget. The Township requests that the implementation of this fee not take effect until January 2005.

RESPONSE: The fees proposed in the NJPDES Annual Fee Report are reflective of the current year workplans for the permitting and enforcement 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 assessment of fees for the NJPDES permit program has historically taken place in the second half of the state fiscal year. It is not timed to any municipal budget cycle. The fees for the current state fiscal year program cannot be deferred as requested.

4. COMMENT: Falstrom Company objects to the proposed increase to the fee schedule for Stormwater Permits. The company states that the proposed fee change is motivated to avoid having the full cost of the Department paid for out of the State's General Funds.

RESPONSE: The last comprehensive overhaul of the minimum fee schedule was undertaken in 1995. The basis of the updated minimum fee schedule was discussed on page 5 of the NJPDES Fee Report. It was determined that it was necessary to normalize the minimum fee schedule to a common base year to adjust the existing minimum fees for salary inflation since the fees were originally adopted. Since 1995 the Total Personnel Cost increased from \$36.28 per hour to the current rate of \$54.60 per hour. The revised minimum fees more equitably distributes the base costs of the NJPDES Program.

The cost of the NJPDES Program is authorized by law to be recovered through the assessment of permit fees. Pursuant to Section 9 of the State Act, the Department shall "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. Said fees shall be deposited to the credit of the State and be deemed as part of the General State Fund." As stated in the Fee Report, in light of current budget constraints it is now necessary that the Department recover a greater percentage of its billable NJPDES program costs through fee revenues than it has in the past.

5. COMMENT: The Automotive Recyclers Association of New Jersey (ARANJ) contends that the Scrap Metal general permit is self-administered by the permittees and that the time spent by the Department is limited. This should keep costs down to the Department and that these savings should offset the need for a fee increase on this general permit.

RESPONSE: The Department acknowledges that it expends fewer resources on the administration of a general permit than on an individual permit. The fee for the Scrap Metal general permit is therefore not equivalent to the fee for an individual stormwater permit. All general permits are assessed a minimum fee calculated as specified in N.J.A.C. 7:14A-3.1(a)9.iii. The methodology takes into account the number of hours allocated for the administration of the permit, including permit issuance, inspection, and data management. The minimum fee for this general permit has not been increased since the fee was established in 1995. Department costs have increased since that time. See Response 4 above for additional information on why the minimum fee schedule was revised this year.

6. COMMENT: The ARANJ states that there are a significant number of facilities in the State eligible for the Scrap Metal general permit that have not been issued an authorization by the Department. If these facilities were permitted, the additional fee revenue would negate the need for a fee increase in this particular fee category.

RESPONSE: The Department has been making efforts to bring unpermitted scrap metal facilities into compliance with the requirement to obtain a NJPDES permit for their activities. This effort is accomplished through a series of mailings and enforcement site visits. Since January 1, 2003, 42 additional facilities have received permit authorization as a result of these outreach activities. The Department will continue to identify and follow up on any unpermitted facilities. However, having more facilities authorized under the general permit does not reduce the resources spent managing each permit authorization (including, but not limited to, annual inspections, mailings, compliance assistance, and permit renewals). Accordingly, an overall lowering of fees for this permit category is not indicated. If the ARANJ is aware of any unpermitted facilities, it should provide that information to the Department's Bureau of Nonpoint Pollution Control.

7. COMMENT: The ARANJ contends that the fee schedule proposal lacked a proper economic analysis, as required by the Administrative Procedures Act.

RESPONSE: The revised minimum fees were listed in the Annual NJPDES Fee Schedule Report for public comment in accordance with the procedure specified in the fee rules. The annual fee revision process is not formal rulemaking, and consequently the impact analyses required under the Administrative Procedures Act do not apply. However, the revision to the minimum fees was calculated as specified in N.J.A.C. 7:14A-3.1(a)9.iii, and the Department explained the basis for the minimum fee increases in the Fee Schedule and Report. The fee schedule updated the NJPDES Minimum Fee Schedule to reflect the current Total Personnel Cost applicable to the program. The minimum fees had not been updated since 1995. Updating the minimum fees was necessary to normalize the minimum fee schedule to a common base year to adjust the existing minimum fees for salary inflation since the fees were originally adopted. The hours associated with permit issuance, compliance inspections and data management were not changed.