

## **ENVIRONMENTAL REGULATION**

### **Division of Water Quality**

#### **Notice of Adoption**

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

#### **FY2005 Annual Fee Report and Assessment of Fees**

**Take notice** that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2005 (FY2005) 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 FY2005 budgeting process for the NJPDES permit program including the Stormwater Permitting Program.

Notice of the public hearing and opportunity to comment on the proposed FY2005 budget and fee schedule was provided in the New Jersey Register on November 15, 2004, at 36 N.J.R. 5171(c). 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 FY2005 NJPDES Annual Fee Report and Assessment of Fees, on December 15, 2004 at the Department's offices at 401 East State Street, in Trenton, New Jersey. Three persons from two organizations attended the hearing. Written comments on the proposed NJPDES budget and the fee schedules were received from the individuals listed below.

#### Name – Affiliation

1. James F. Wadon – Astaris, LLC
2. Dennis W. Palmer – Landis Sewerage Authority
3. George Harley – Albion Auto Parts
4. Mark A. Lemoine – Tuckahoe Road Auto Sales, LLC
5. William G. Franklin – Hillside Spinning & Stamping Co., Inc.
6. Janice S. Mironov – Township of East Windsor

7. William G. Dressell, Jr. – New Jersey State League of Municipalities

William F. Boehle, Chief of the Bureau of Permit Management, Division of Water Quality, served as the hearing officer at the December 15, 2004 public hearing. 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 FY2005 NJPDES Annual Fee Report and Fee Schedule.

The transcript of the public hearing and written comments submitted are 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 FY2005. During the public comment period, a number of permittees asked questions concerning their individual environmental impact calculations, fee assessments, permit classifications and/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. Three Industrial Discharge to Surface Water (DSW) permits were removed from the fee schedule because the permits were no longer needed and were revoked. Six new Industrial DSW permits were added. The resulting adjustment to the rate for the Industrial DSW category because of all of these revisions is minor and resulted in an average decrease of \$160 to the permit fees for this category, lowering the average fee to \$11,026. The environmental value for one Significant Indirect User (SIU) permit was recalculated to account for corrected flow values. The resulting adjustment to the rate for the SIU category because of this revision is minor and the fees for the remaining permittees in this

category remain essentially unchanged. One Land Application of Residuals permit was added and one was revoked. The resulting differential in the fixed fees increased the total amount billed for this category by \$300. Eleven new Discharge to Groundwater (DGW) permits were added and one was revoked. One DGW permit environmental value was recalculated to account for a revised ground water use factor (see Comment 4) and one was revised to adjust an incorrectly assigned waste type. The subsequent adjustment to the rate resulted in a \$30 average decrease in permit fees for this category with an average permit fee of \$2,095.

Based on the above noted revisions, the Department has recalculated the proposed rates and assessments for the Industrial Surface Water, SIU Permit, Land Application of Residuals, and Municipal/Industrial Ground Water categories. The final rates and the permit category amounts to be billed for FY2005 are as follows:

<u>Category</u>	Total		<u>Proposed Rate</u>	<u>Final Rate</u>	<u>Amount Billed</u>
	Environmental	Impact			
Municipal Surface Water	59,307.99	83.6014	83.6014	\$5,240,000	
Industrial Surface Water	2,662,365.01	3.1895	3.1833	\$4,620,000	
Pretreatment (SIU Permits)	24,770.24	1.0412	1.0597	\$435,000	
Municipal/Industrial Ground Water	205.13	2981.8230	3048.3599	\$1,800,000	
Land Application of Residuals	-	-	-	\$221,900	
Operating Landfills	95,981.70	5.6923	5.6923	\$400,000	
Total:				\$12,716,900	

For the Stormwater Permitting Program the fixed fees and the amount to be billed for FY2005 are as follows. The only changes were the addition of 38 new permits and the deletion of 16 facilities due to permit revocations.

<u>Discharge Category</u>	<u>Fee</u>	<u>Amount Billed</u>
Basic Industrial Stormwater General Permit	\$750	\$1,464,000
Stormwater (Individual Permit)	\$3,550	\$631,900
Scrap Metal Stormwater General Permit	\$2,000	\$460,000
Concrete Products Stormwater General Permit	\$2,000	\$242,000
Newark Airport Stormwater General Permit	\$2,000	\$84,000

Hot Mix Asphalt Stormwater General Permit	\$2,000	\$52,000
CAFO Stormwater General Permit	\$2,000	\$12,000
MSRP – Tier B General Permit	\$500	\$50,500
MSRP – Tier A General Permit (0 - 1000)	\$600	\$5,400
MSRP – Tier A General Permit (1001 - 5000)	\$1,050	\$111,300
MSRP – Tier A General Permit (5001 - 10000)	\$2,000	\$230,000
MSRP – Tier A General Permit (10001 – 15000)	\$3,000	\$207,000
MSRP – Tier A General Permit (15001 - 20000)	\$4,050	\$178,200
MSRP – Tier A General Permit (20001 - 25000)	\$5,250	\$157,500
MSRP – Tier A General Permit (25000 +)	\$9,000	\$801,000
MSRP – Public Complex General Permit (1000 - 2999)	\$900	\$36,000
MSRP – Public Complex General Permit (3000 - 5999)	\$1,500	\$19,500
MSRP – Public Complex General Permit (6000 - 8999)	\$2,600	\$20,800
MSRP – Public Complex General Permit (9000 +)	\$3,600	\$61,200
MSRP – Highway Agency General Permit (0-9)	\$550	\$3,300
MSRP – Highway Agency General Permit (10-199)	\$2,450	\$22,050
MSRP – Highway Agency General Permit (200-399)	\$5,100	\$71,400
MSRP – Highway Agency General Permit (400 +)	\$9,800	\$49,000
Total FY2005 Stormwater Billing:		\$4,970,050

### **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 2004-2005 NJPDES permit fee for the Astaris Carteret facility is \$7,755.13. 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 its 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 in calculating the Astaris annual fee.

N.J.A.C. 7:14A-3.1(c)1i(1) states, “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 and there was no change that necessitated rulemaking.

The language of the existing rule at N.J.A.C. 7:14A-3.1(c)1i(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. On June 4, 2004, Astaris submitted a letter to the Division of Revenue along with a partial payment of its FY2004 NJPDES fee invoice. In that letter Astaris stated that it believes the amount due was incorrect for the same reasons the Department has rejected every year. Furthermore, it stated that “discussions are in progress with NJDEP, in order to resolve these NJPDES permit fee issues.” No such discussions are in progress, and no fee recalculation request by Astaris pursuant to N.J.A.C. 7:14A-3.1(a)6 is pending. The Department notes that under N.J.A.C. 7:14A-16.6(a)8, the failure to pay applicable permit fees is cause for suspending or revoking a permit during its term, or for denying a permit renewal.

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. Astaris requests that these changes should also address the fee determination for the storm water component of a consolidated individual NJPDES permit, which they claim 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 that are appropriate for individual stormwater permits, regardless of whether they are consolidated or not. Individual and general permits require a different level of effort that is reflected in their different minimum fees. Additionally, the NJPDES fee rules themselves are not open to comment during this annual fee review process.

3. COMMENT: The Landis Sewerage Authority objects to the increases in its NJPDES fees over the last five years. The Authority questions the differences in minimum fees for new permits (charged for the first five years of a permit) versus those charged for permits that are renewed or continued and asks if these are the proper values.

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 permit fee for the Landis Sewerage Authority has increased over the last five years due to a combination of factors. (1) Landis is one of the largest groundwater discharge permittees in the State and flow is one of the major factors influencing the amount of the NJPDES fee for groundwater discharge facilities. (2) Legislative appropriations to subsidize NJPDES fees have been decreasing over the last five years. As a result, the percentage of costs that must be recovered through fees has increased. Starting in FY2005, 100 percent of the NJPDES program costs will be recovered through the assessment of fees. These two factors are mainly responsible for the growth in the Landis fee. Due to its size, Landis was assessed a large proportion of an expanding and less subsidized groundwater program budget.

Regarding the different minimum fees charged to new versus existing groundwater facilities, those minimum fees were calculated as specified in N.J.A.C. 7:14A-3.1(a)9iii. The methodology took into account the number of hours allocated for the administration of the permit, including permit issuance, inspection, and data management. In calculating the minimum fees for the various types of NJPDES permits, the Department recognized that new permits usually take more hours to administer than existing permits in the groundwater program.

4. COMMENT: The Landis Sewerage Authority questioned some of the factors used in the calculation of the Environmental Value used to determine its NJPDES fee. The Authority presented information in support of its claim that a different groundwater use rating would be more appropriate to its situation. Additionally, the Authority contends that the risk rating for its waste type might be wrong and believes it should be a 1 rather than a 2, corresponding to a waste type of sanitary wastewater with at least secondary treatment.

RESPONSE: The Department has reviewed the information provided by the Landis Sewerage Authority supporting its request to revise the Ground Water Use factor based upon site-specific

conditions at the facility's site. The Department agrees with the request to revise the factor assigned from "high use" with a rating of 5 to "low use" with a rating of 1. This revision results in reducing the Landis Environmental Value (EV) from 21.00379 to 18.73311. Regarding the rating assigned for risk based upon waste type, the rating factor the Department used in calculating the Authority's fee is not a 2. The Department correctly used a rating factor of 1, which corresponds to a waste type of sanitary wastewater with at least secondary treatment.

5. COMMENT: Two Scrap Metal General Permit facilities (Albion Auto Parts and Tuckahoe Road Auto Sales, LLC.) object to the \$2,000 permit fee assessed for this category of stormwater permit. They contend that this fee is a financial hardship on small businesses and question as to why should they have to pay the same fee as large scrap metal facilities.

RESPONSE: A minimum fee is assessed for all general permits. The fees are calculated as specified in N.J.A.C. 7:14A-3.1(a)9iii. The methodology takes into account the number of hours allocated for the administration of the permit, including permit development, issuance, inspection, and data management. The minimum fee for this general permit had not been increased since the fee was established in 1995. Department costs have increased since that time. As a result, the entire minimum fee schedule was comprehensively overhauled last year (FY2004). 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." The revised minimum fees were calculated to more equitably distribute the base costs of the NJPDES Program. All facilities holding a particular general permit are charged the same minimum fee established for that category of general permit. The size of the facility was not a factor in the minimum fee determination for the Scrap Metal General Permit.

6. COMMENT: One Scrap Metal General Permit facility asked that if all fees go into the State's general account and the Department is given an annual budget, is there a profit going to the State?

RESPONSE: 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, these fees shall be based upon,



and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits and 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 continuing budget constraints it is now required that the Department recovers 100 percent of its billable NJPDES program costs through permit fees. Since the Department can only recover and not exceed its costs, there is no profit going to the State.

7. COMMENT: Hillside Spinning & Stamping Company contends that the State of New Jersey is levying an unfair tax on small business in that the \$750 minimum tax for its stormwater general permit is exorbitant.

RESPONSE: The NJPDES annual permit fee is not a tax. The NJPDES permitting program is necessary for protection of the environment and the permit fees are authorized by law to recover the costs of administering the NJPDES permits. A minimum fee is assessed for all general permits. The fees are calculated as specified in N.J.A.C. 7:14A-3.1(a)9iii. The methodology takes into account the number of hours allocated for the administration of the permit, including permit development, issuance, monitoring, and data management. The minimum fee for the Basic Industrial Stormwater General Permit is one of the lowest permit fees assessed by the NJPDES program. All permittees subject to this general permit are assessed this fee. If the permittee believes that its operations are not subject to the stormwater permitting program, it should contact the Bureau of Nonpoint Pollution Control for a determination. If the Department determines that a facility has no outdoor operations that expose raw materials or processes to stormwater runoff (i.e., permanent no exposure), a NJPDES permit would not be required for the stormwater discharges from the site. If a NJPDES permit is not required, no permit fee would be assessed.

8. COMMENT: The Township of East Windsor objects to the minimum fee which resulted from the Department's adoption of the federally mandated stormwater regulations as well as the increased costs associated with the implementation of the program. The Township contends that the recovery of these costs should be levied against new development and not against existing storm drainage systems. The League of Municipalities submitted a letter in support of the Township of East Windsor's position.

RESPONSE: The Department recognizes the commenters' concerns about both the fees and the other costs associated with the implementation of the federally mandated stormwater regulations and related permits. In adopting the new regulations, the Department discussed at length the financial impacts of the program on municipalities and other affected entities (see 36 N.J.R 830, January 5, 2004, response to comments 115 to 188) and committed to finding ways to mitigate those financial impacts. Accordingly, the State made \$6 million in grants available during FY2004, and an additional \$6 million was budgeted for grants in FY2005. The Department is continuing its efforts to identify additional sources of grant funds.

The permit fee is necessary to cover the cost of many different Departmental activities costs including permit issuance and management, compliance assistance, and enforcement activities. The Department has conducted more than 20 seminars and workshops, as well as produced extensive guidance materials, to assist permittees in complying with the municipal permits. The Department will be offering additional workshops. The Department has also assigned a case manager to each municipal entity to provide direct compliance support. The fee also covers activities that would have been the responsibility of municipal entities had the Department not undertaken the activities including statewide public education, and the issuance of stormwater construction permits for activities disturbing one to five acres. The minimum fee structure for permits resulting from the Municipal Stormwater Permitting Program was proposed and adopted as part of the FY2004 NJPDES Annual Fee process. The Department has not proposed to change the minimum fee structure adopted in FY2004, because the need to defray the cost of the program through those fee revenues has not changed.