

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

DIVISION OF WATER QUALITY

Notice of Adoption

New Jersey Pollutant Discharge Elimination System (NJPDES)

Fiscal Year 2016 Annual Fee Report and Assessment of Fees

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

Take notice that the Department of Environmental Protection (Department) hereby adopts the Fiscal Year 2016 (FY 2016) 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 2016 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2016 budget and fee schedule was provided in the New Jersey Register on January 4, 2016, at 48 N.J.R. 88(a) and in the Trenton Times newspaper on January 11, 2016. Notice of availability of the Annual Fee Report on the Department's website at www.nj.gov/dep/dwq/njpdessfees.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 the first of two public hearings on the FY 2016 NJPDES Annual Fee Report on February 3, 2016, at the Department's offices at 401 East State Street, Trenton, New Jersey. Two people attended the first public hearing. One person who attended this public

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

hearing gave oral testimony and also provided written comments on the proposed NJPDES budget and the fee schedules. The Department held a second public hearing on February 10, 2016 at the Department's offices at 401 East State Street, Trenton, New Jersey. No one attended the second public hearing. In addition to the person who gave oral and submitted written comments at the first public hearing, two other people submitted written comments.

Terry Beym, Project Manager for Permit Administration, Division of Water Quality, served as the hearing officer for the public hearings. 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 2016 Annual Fee Report closed on February 10, 2016. The comments submitted are available for inspection by contacting the Department as follows:

Mail Code 401-02B

Terry Beym, Project Manager

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 2016. During the public comment period several permittees made telephone, written or electronic inquiries

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

concerning their individual fee assessments, permit classifications or permit status. The 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 removed one facility from the Municipal Discharge to Surface Water (DSW) fee schedule due to a permit revocation. This adjustment to the Municipal DSW fee schedule results in an average fee increase of \$154.00, thereby increasing the average fee to \$33,600. Five facilities, four minor and one major, were removed from the Industrial DSW fee schedule due to permit revocations. One facility was added after a new permit was issued. These adjustments to the Industrial DSW fee schedule result in an average fee increase of \$175.00, thereby increasing the average fee to \$12,262. Two facilities were removed from the Significant Indirect User (SIU) fee schedule due to permit revocations. These adjustments to the Significant Indirect User (SIU) fee schedule result in an average fee increase of \$217.00, thereby increasing the average fee to \$7,918.

The Department added one facility to the Residuals fee schedule. As a result, the total amount to be billed for this category increased \$4,000. Because the fees for the facilities in the Residuals fee schedule are fixed, the addition of this permit had no impact on the fees for the remaining facilities in the schedule.

Three facilities were removed from the Discharge to Ground Water (DGW)/Operating Landfill fee schedule, due to permit revocation. Nine facilities were issued new permits and added to the schedule. The adjustments to the fee schedule because of this revision results in a

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

DGW average fee decrease of \$14.00, thereby decreasing the average DGW fee to \$2,339, and an Operating Landfill average fee increase of \$20.00, thereby increasing the average Operating Landfill fee to \$35,491. Based on the above noted revisions, the Department has recalculated the rates and assessments for the Municipal and Industrial Surface Water, Significant Indirect Users and Municipal/Industrial Ground Water/Operating Landfill categories. The final rates (as compared to the proposed rates) and the permit category amounts to be billed for FY 2016 are as follows:

<u>Category</u>	<u>Total</u>			<u>Amount</u> to be <u>Billed</u>
	<u>Environmental</u> <u>Impact</u>	<u>Proposed</u> <u>Rate</u>	<u>Final</u> <u>Rate</u>	
Municipal Surface Water	36,447.51515	210.4360	211.0212	\$7,291,185
Industrial Surface Water	519803.78199	8.6243	8.7768	\$ 3,384,426
Pretreatment (SIU Permits)	24092.02	9.3151	10.4797	\$562,203
Municipal/Industrial Ground Water/ Operating Landfills	1,402,143	1.1362	1.1370	\$2,967,235
Land Application of Residuals	-	-	-	\$164,350
Total:				\$14,369,399

The Department amended the Stormwater Permitting Program fee schedule to remove twenty-five (25) facilities for which permits were revoked. Twelve (12) permits were added to the fee schedule. Two (2) permits were reissued under different categories, one of which had the

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

fee reduced from \$2,300 to \$800. The fixed fees and the amount to be billed for FY 2016 are as follows:

<u>Discharge Category</u>	<u>Fee</u>	Number of <u>Permits</u>	<u>Amount to be Billed</u>
Basic Industrial Stormwater General Permit	\$800	1,892	\$1,513,600
Stormwater (Individual Permit)	\$4,100	179	\$733,900
Scrap Metal Stormwater General Permit	\$2,300	12	\$27,600
Vehicle Recycling General Permit	\$2,300	122	\$280,600
Scrap Metal Processing General Permit	\$2,300	101	\$ 232,300
Concrete Products Stormwater General Permit	\$2,300	101	\$ 232,300
Newark Airport Stormwater General Permit	\$2,300	29	\$ 66,700
Hot Mix Asphalt Stormwater General Permit	\$2,300	35	\$80,500
Wood Recyclers General Permit	\$2,300	11	\$25,300
CAFO Stormwater General Permit	\$2,300	2	\$4,600
Mining & Quarrying General Permit	\$2,300	58	\$133,400
Sand & Gravel General Permit	\$1,250	10	\$12,500
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

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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
Total FY 2016 Stormwater Billing:		3,213	\$5,319,500

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. Peggy Nolting Gallos, Executive Director, Association of Environmental Authorities

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. Samantha L. Jones, Director of Regulatory Affairs, Chemistry Council of New Jersey
3. 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 when the existing fee system 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. (1, 2, 3)

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 will consider a 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 as part of any future rulemaking related to NJPDES fees. See the Response to Comment 2 for a discussion of the Department's September 2014 presentation to stakeholders.

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. COMMENT: The proposed increase comes after the start of our fiscal year and budget. The authority, based on what we thought was a good faith representation by the Department, 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. (3)

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 will provide an installment payment schedule to permittees, if requested.

3. COMMENT: Our two adjudicatory hearing requests appealing our NJPDES Permit fees from FY 2014 and FY 2015 are still outstanding, and they are continued and reaffirmed by this letter. (3)

RESPONSE: By letter dated January 19, 2016, Landis Sewerage Authority's requests for adjudicatory hearings on the FY 2014 and FY 2015 permit fees were denied. The basis provided in the denial letter was that the NJPDES rules at N.J.A.C. 7:14A-17.4(b)5 state the Department

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

“shall deny a request for an adjudicatory hearing if . . . (5) The request challenges duly promulgated regulations and not the Department’s application of the regulations.” The denial letter was sent by certified mail to the attorney for Landis Sewerage Authority, and records show it was delivered on January 22, 2016.

4. COMMENT: The program must become more efficient and reduce staff to maintain budgetary control, and continue to improve systems and processes to streamline work and reduce the overall NJPDES budget. (2)

RESPONSE: The NJPDES program is continuously looking for ways to streamline operations. Between FY 2009 and FY 2016, the NJPDES budget has been reduced by a total of 12 percent, the number of permits managed has increased by a total of 76 percent, and the number of full time employees has been reduced by a total of 29 percent.

5. 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. (2)

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 showed that, other than New Jersey, only California covers 100 percent of its total costs through

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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, the survey revealed that revenue from permit fees paid only 30 percent of the costs to administer the Pennsylvania program. Similarly, Delaware covered only 20 percent of the costs to administer its program through fees, and had not adjusted most of its permit fees since 1991. The New Jersey 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.

6. COMMENT: The NJPDES program costs are not fairly distributed across permit holders. For example, in 2014, ground water permit fees increased from \$1.7 million in FY 2013 to \$3.06 million in FY 2014, a dramatic 80 percent increase in one year. (1)

RESPONSE: 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 the Treasury. The groundwater portion of the Nonpoint Pollution Control Program's budget increased by \$500,000 from FY 2013 to FY 2014. Ordinarily, a

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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.

7. 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, back to 40.15 percent, and now increased back up to 45.25 percent, while the average salary has gone from \$59,500 to \$86,105, 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. (1, 3)

RESPONSE: The Department acknowledges that minimum fees have not been recalculated since 2007. The Department will continue to evaluate adjustments to minimum fees under the

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

existing rules and as part of any future rulemaking related to NJPDES fees. The fringe benefit rate is obtained from the Office of Management and Budget (OMB). See Response to Comment 12 for a further discussion of the fringe rate.

8. COMMENT: The Department has approximately \$4 million in delinquent fees which accounts for approximately 20 percent of the budget. This balance has not changed appreciably over the last several budgets. The Department should step up its efforts to collect these amounts so that this deficit is not borne by permit holders that do pay their fees. (1)

RESPONSE: The Department continues its efforts to collect delinquent fees in accordance with State and Department policies. 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. (3)

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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 commenter's concern regarding the flow aspects of the existing fee structure as part of any future rulemaking related to NJPDES fees.

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. (3)

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 Department disagrees that discharge to ground water permittees are being treated in an arbitrary, capricious, and discriminatory manner. The Department follows the NJPDES regulations as they are currently promulgated. The regulations establish different methods for calculating fees for the different NJPDES permit categories. In accordance with N.J.A.C. 7:14A-3.1(d), the NJPDES permitted flow limit, or the facility design flow in the absence of a NJPDES permitted flow limit, is to be used when calculating fees for groundwater discharges.

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

11. COMMENT: We are absolutely opposed to the FY 2016 Municipal/Industrial Ground Water/Operating Landfill Permit rate of 1.1362, which is the highest rate in six years. This is nearly a six-fold increase over the rate in FY 2013, which was 0.2101. Rates from 2010 through 2013 were equal to or less than 0.21. Given the track record of this rate being equal to or less than 0.21 since 2013, the exponential increase in this year's proposal must be retracted and recalculated. (3)

RESPONSE: The rate of 1.1362 in the proposed fee schedule was calculated in accordance with the governing rules at N.J.A.C. 7:14A-3.1(a)9. As indicated above in the final rate schedule, the Municipal/Industrial Ground Water/Operating Landfill Permit rate was recalculated and adjusted to 1.137. The Department acknowledges the variability in the rates over previous fiscal years, and will consider the commenter's concern as part of any future rulemaking related to NJPDES fees.

12. COMMENT: The introduction to the FY 2016 Annual Fee Report and Assessment of Fees indicates that, for 2016, the fringe benefit rate of 45.25 percent and the indirect rate of 19.03 percent have been established by, respectively, the Department of the Treasury and the Department of Environmental Protection. It is not possible to verify whether the fringe and indirect cost estimates are accurate or reasonable. (1)

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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 and the indirect rate.

The fringe benefit rate is set by the Department of the 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. 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. 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 negotiated annually between the Department and the US 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 OMB.

13. COMMENT: What are the detail, basis and background for the up and down of the fringe factor? The State did not make its full pension payment and the fringe factor should not have gone up. (3)

NOTE: THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION CAN BE FOUND IN THE APRIL 4, 2016, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: See Response to Comment 12 for a discussion of the fringe rate.

14. 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. (2)

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 consider the commenter's concern as part of any future rulemaking related to NJPDES fees.