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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 2017 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 2017 (FY 2017) 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 2017 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2017 budget and fee schedule was provided in the New Jersey Register on February 6, 2017, at 49 N.J.R. 285(c), and in the Trenton Times newspaper on February 6, 2017. Notice of availability of the Annual Fee Report on the Department's website at [www.nj.gov/dep/dwq/njpdessfees.htm](http://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.

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The Department held a public hearing on the FY 2017 NJPDES Annual Fee Report on March 8, 2017 at the Department's offices at 401 East State Street, Trenton, New Jersey. One person attended the public hearing, gave oral testimony, and provided written comments on the proposed NJPDES budget and the fee schedules. Terry Beym, Project Manager for Permit Administration, Division of Water Quality, served as the hearing officer for the public hearing.

The public comment period for the FY 2017 Annual Fee Report closed on March 8, 2017. In addition to the comment received during the public hearing, two people submitted written comments. The comments submitted are available for inspection by contacting the Department as follows:

Mail Code 401-02B

NJDEP – Water Pollution Management Element

Permit Administration Section

PO Box 420

Trenton, New Jersey 08625-0420

After reviewing the record regarding the NJPDES Annual Fee Report, the Department adopted the Annual Fee Report, with the amendments discussed below.

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 2017. During the public comment period several permittees made telephone, written, or electronic inquiries concerning their individual fee assessments, permit classifications, or permit status. The Department addressed such facility-specific questions and explained the basis for the

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assessments directly to the inquiring permittees, and made adjustments to the fee schedules 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 below table summarizes the actions that have occurred since the proposed fee schedule was developed.

<b>CATEGORY</b>	<b># OF PERMITS REVOKED</b>	<b># OF NEW PERMITS</b>	<b># OF PERMITS ISSUED WITH A DIFFERENT PERMIT CATEGORY</b>	<b># OF PERMITS WITH AN ENVIRONMENTAL VALUE REASSESSMENT</b>
Surface Water Municipal	---	---	---	---
Surface Water Industrial	4	---	---	1
Stormwater	3	1	---	---
Groundwater	1	---	---	---
Significant Indirect User	---	---	---	---
Residuals	---	---	---	---
<b>TOTAL:</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>1</b>

The final rates (as compared to the proposed rates) and the permit category amounts to be billed for FY 2016 are as follows:

<b>CATEGORY</b>	<b>TOTAL ENVIRONMENTAL IMPACT</b>	<b>PROPOSED RATE</b>	<b>FINAL RATE</b>	<b>AMOUNT TO BE BILLED</b>
Surface Water Municipal	33,699.73	250.4410	250.4410	\$7,646,385
Surface Water Industrial	510,795.01	8.6597	8.7187	\$3,891,010
Stormwater	---	---	---	\$5,285,500
Groundwater	1,360,148	0.9103	0.9140	\$2,599,437
Significant Indirect User	19,285.08	12.9808	12.9808	\$560,955
Residuals	---	---	---	\$153,450
<b>TOTAL:</b>	<b>1,923,927.82</b>	<b>---</b>	<b>---</b>	<b>\$20,136,737</b>

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As discussed in the Annual Fee Report, the Department developed a new fee category for a Residuals Sludge Quality General Permit. 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. Samantha L. Jones, Director of Regulatory Affairs, Chemistry Council of New Jersey
2. Dennis Palmer, Executive Director, Landis Sewerage Authority
3. Robert S. Barron, President, Phillipsburg Marble Company, Inc.

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

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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)

RESPONSE: The Department recognizes that the NJPDES fee structure in the existing NJPDES regulations (N.J.A.C. 7:14A-3.1) is complicated and includes multiple methods to calculate fees associated with each different permit category. The Department will continue to 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.

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. (2)

RESPONSE: The Department met with stakeholders in September 2014 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. The Department has not proposed to amend the rules to change the

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method of calculating fees using any of the alternative methods presented. All fees and billings are based on the rules in place at the time of billing. The Department will provide an installment payment schedule to permittees, if requested, to alleviate any hardship situations.

3. 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. (1)

RESPONSE: The NJPDES program is continuously looking for ways to streamline operations. Between FY 2009 and FY 2017, the NJPDES budget has been reduced by a total of 10 percent, the number of permits managed has increased by a total of 89 percent, and the number of full time employees has been reduced by a total of 29 percent. During this same time period the NJPDES program has also made significant improvements to its electronic systems used to process and manage permit information. At the same time the NJPDES program has developed and implements several online permit services that have improved efficiencies by streamlining permit issuance and submittals for its largest permit categories.

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. (1)

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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 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 and not through other State funding sources

5. COMMENT: The groundwater permit fee increases experienced between FY 2013 and FY 2014 (as billed in calendar years 2014 and 2015, respectively) were shocking. The fee for this commenter’s permit increased by 141 percent, although the company is doing nothing differently and the Department is also doing nothing more to justify the increase. This type of increase is difficult for a small company to absorb. The explanation for the increase to the groundwater

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permittees was that there was a decrease in revenue from stormwater permits, which caused the increase to groundwater. The cost for stormwater should be reduced to compensate for the reduction of revenue. This kind of regulatory burden raises the possibility of relocating out of New Jersey and into Pennsylvania where the level of regulation of these matters is less. (3)

RESPONSE: The commenter has raised concern over the fee increase that occurred between FY 2013 and FY 2014, which is beyond the scope of the adopted FY 2017 Annual Fee Report. Nevertheless, the reason for the increase from FY 2013 and FY 2014 was that the overall budget for the Nonpoint Pollution Control program, which administers the stormwater, groundwater, and operating landfill permitting functions, was \$7.3 million in FY 2013, and \$8.6 million in FY 2014. As discussed in the response to Comment 4, above, the Department is required to assess fees sufficient to cover the cost of the program. Excess revenue from stormwater permit fees is applied to the groundwater and operating landfill programs, since the three programs share administrative and support functions. Stormwater permits are charged only a minimum fee; the number of permits each year results in variations of the amount of excess revenue available to offset the groundwater program costs. In FY 2014, there was less revenue from the stormwater program to apply to the groundwater and operating landfill budgets for shared functions than was previously available in FY 2013. In order to fund the FY 2014 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. As identified in the FY 2017 Annual Fee Report Proposal document, the Nonpoint Pollution Control program budget for



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FY 2017 has decreased to \$8.0 million. This decrease has resulted in a 14 percent (\$1,393.92) decrease in the commenter's annual fee for FY 2017.

6. COMMENT: The Department has not increased the minimum fees for NJPDES groundwater dischargers since 2007. This is a clear departure from the regulations at N.J.A.C. 7:14A-3.1(a)9, which require the Department to annually calculate discharge fees, including the minimum fee. The Department's own reports indicate that the fringe factor has surged from 40.15 percent to 45.25 percent and now to 53.95 percent from fiscal year 2015 to 2017, while the average salary has gone from \$59,500 in 2007 to \$84,246, 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. (2)

RESPONSE: The Department acknowledges that minimum fees for existing permits have not been recalculated since 2007. The Department will continue to evaluate adjustments to minimum fees under the existing rules and as part of any future rulemaking related to NJPDES fees. See Response to Comment 10 for a further discussion on the fee calculation.

7. 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

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for proper planning due to the use of permitted flow for calculating fees for discharges to groundwater rather than actual flow, which is used for discharges to surface water. (2)

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 as described. However, the Department will consider the commenter's concern regarding the flow aspects of the existing fee structure as part of future rulemaking related to NJPDES fees.

8. COMMENT: Facilities with permits to discharge to groundwater 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. (2)

RESPONSE: The Department disagrees that discharge to groundwater permittees are being treated in an arbitrary, capricious, and discriminatory manner. 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 follows the NJPDES regulations as they are currently promulgated. The regulations establish different methods for

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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.

9. COMMENT: The amount budgeted for information systems support increased from \$118,231 in FY2016 to \$123,564 in FY2017. The requirement that permittees report electronically should decrease this cost. (2)

RESPONSE: The information systems support operating cost includes the program's assessment to cover Department level information systems support as well as program software costs. As the Department continues to rely more heavily on automated systems, the infrastructure and support needs will increase. The savings resulting from electronic reporting by permittees is realized in the reductions of full time staff needed to support the programs.

10. 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. (1)

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RESPONSE: Individual permit fees are based on several 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, because 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.

11. The Department calculated a minimum fee for a new discharge category, but did not adjust minimum fees for existing discharge categories. This is a selective and arbitrary change to minimum fees. (2)

RESPONSE: N.J.A.C. 7:14A-3.1(a)9iii requires the Department to establish a minimum fee for a new or revised discharge category. The Department adds new minimum fees for new discharge categories when NJPDES permits with a new discharge category are issued, as it did in fiscal years 2013, 2014, and 2015. While the Department did calculate a new minimum fee for a

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new category of discharge as required, the Department is not required to annually recalculate the minimum fee for other, existing discharge categories.

12. COMMENT: The outputs of the groundwater permit section show a significant decrease (over 60 percent) in work products. We would anticipate a similar decrease in permit fees. (2)

RESPONSE: The budget for the groundwater program decreased 12 percent, from \$3,050,823 in FY 2016 to \$2,682,599 in FY 2017, primarily due to a reduction in staff. The NJPDES permits are issued for five-year terms, which results in a year to year variation in the number of permit actions. The number of groundwater permits managed by the program has increased from the 2016. The commenter does not identify which work products have decreased. There are various functions performed by the NJPDES program outside of strictly permit issuance that are necessary for program maintenance and management. They include, but are not limited to, the development of effluent limitations, site inspections, development of site-specific groundwater protection programs, data collection, compliance assistance, as well as permit issuance. The costs associated with these activities are also included in the permit fees.

**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

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(a) - (m) (No change.)

Tables I and II

(No change.)

Table III

Minimum Fees

<u>Permit Fee Category</u> <sup>1</sup>	<u>Min Fee Code</u>	<u>Minimum Fee</u>
1. - 29. (No change.)		
<b>30. Residuals – General Permit Categories 6 – 9</b>	<b>RS6</b>	<b>\$1,150</b>
Recodify existing 30. - 34. as <b>31. - 35.</b> (No change in text.)		
<sup>1-7</sup> (No change.)		