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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 2018 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 2018 (FY 2018) 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 2018 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2018 budget and fee schedule was provided in the New Jersey Register on May 7, 2018, at 50 N.J.R. 1228(c), and in the Trenton Times newspaper on May 7, 2018. Notice of availability of the Annual Fee Report on the Department's website at www.nj.gov/dep/dwg/njpdessfees.html 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 a public hearing on the FY 2018 NJPDES Annual Fee Report on June 6, 2018, at the Department's offices at 401 East State Street, Trenton, New Jersey. No one

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attended the public hearing. 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 2018 Annual Fee Report closed on June 6, 2018.

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 no amendments.

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 2018. There were no changes to the rates between proposal and adoption. The final rates and the permit category amounts to be billed for FY 2018 are as follows:

CATEGORY	TOTAL ENVIRONMENTAL IMPACT	FINAL RATE	AMOUNT TO BE BILLED
Surface Water Municipal	33,987.62000	211.5281	\$6,753,882

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Surface Water Industrial	453,300.74000	11.9227	\$3,860,454
Stormwater	---	---	\$5,277,550
Groundwater	1,356,403	0.7447	\$2,369,085
Significant Indirect User	12,324.29000	21.7201	\$541,195
Residuals	---	---	\$154,250
TOTAL:	1856015.65	---	\$18,956,416

The following is a list of those persons who provided written comments concerning the Annual Fee Report and/or general comments concerning the NJPDES fee assessment methodology.

Name and Affiliation

1. Dennis Hart, Executive Director, Chemistry Council of New Jersey
2. Dennis Palmer, Executive Director, Landis Sewerage Authority

The comments received are summarized below with the Department’s responses. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

Summary of Public Comments and Agency Responses:

1. COMMENT: Permittees are concerned and disappointed that the rule reform developed by the Department and permittee stakeholders in 2013 and 2014 has not been implemented.

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The existing NJPDES fee structure is both unpredictable and inequitable and provides the permittee no level of predictability for future budget planning. The current process is complicated and contains many variables that result in unpredictable fees from year to year. Permittees are in support of fee reform which provides a predictable, less complicated but equitable fee structure and request again that the Department move forward in an expeditious manner to have the reform in place for the next fee cycle. (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.

2. 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 2018, the NJPDES budget has been reduced by a total of 15 percent, the number of permits managed has increased by a total of 97 percent, and the number of full-time employees has been reduced by a total of 32 percent. The NJPDES program has also made significant improvements to its electronic systems used to process and manage

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permit information, and has implemented online permit services that have improved efficiencies by streamlining permit issuance and submittals for its largest permit categories.

3. 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. An analysis of 2013 data shows that two percent of the industrial facilities were paying 45 percent of the NJPDES Industrial budget and their fees were five to 50 times higher than fees for similar facilities in other benchmark states. NJPDES fees are not competitive with other states in our region that administer the same program. (1)

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, at the time of the 2013 survey, 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,

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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.

4. COMMENT: The industrial NJPDES fee calculations need to be changed to produce a simple and predictable structure. The current 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. Improvements to the NJPDES industrial fee structure have been requested for the past several years, including during the 2013/2014 stakeholder process. Some of the specific principles that the Department should include are:

- Flat tier-based fees based on flows/sludge production (five-year average);
- Simple add-on factor for toxicity (major industrial facility); and
- Simple 85 percentage subtractor for facilities whose discharge is greater than 80 percent non-contact cooling water or cooling tower blowdown. (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 concerns as part of any future rulemaking related to NJPDES fees.