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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **WATER RESOURCE MANAGEMENT**

### **DIVISION OF WATER QUALITY**

#### **Notice of Adoption**

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

#### **Fiscal Year 2020 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 2020 (FY 2020) 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 2020 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2020 budget and fee schedule was provided in the New Jersey Register on April 6, 2020, at 52 N.J.R. 811(a), and in the Trenton Times newspaper on April 6, 2020 and again on April 28, 2020. Notice of availability of the Annual Fee Report on the Department's website at [www.nj.gov/dep/dwg/njpdessfees.html](http://www.nj.gov/dep/dwg/njpdessfees.html) was mailed to all NJPDES permit holders.

The Department held a virtual public hearing on the FY 2020 NJPDES Annual Fee Report on May 6, 2020. Thirty people attended the public hearing. Of those that attended the public hearing, two people gave oral testimony and/or provided written comments on the proposed

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NJPDES budget and the fee schedules. Michele Christopher, Chief for the Bureau of Pretreatment and Residuals, Division of Water Quality, served as the hearing officer for the public hearing.

The public comment period for the FY 2020 Annual Fee Report closed on May 6, 2020. In addition to the comments received during the public hearing, two people submitted written comments. The comments submitted are available for inspection by contacting the Department via email through [dwq\\_pas@dep.nj.gov](mailto:dwq_pas@dep.nj.gov) or via the address as follows:

Mail Code 401-02B

NJDEP – Water Pollution Management Element

Bureau of Pretreatment and Residuals

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 2020. 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 assessments directly to the inquiring permittees and made adjustments, where necessary.

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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 WITH AN ENVIRONMENTAL VALUE REASSESSMENT</b>
Surface Water Municipal	---
Surface Water Industrial	---
Stormwater	---
Groundwater	1
Significant Indirect User	---
Residuals	---
<b>TOTAL:</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	42,440.91156	180.2000	180.2000	\$6,926,135
Surface Water Industrial	478,437.64139	8.9091	8.9091	\$3,393,843
Stormwater	---	---	---	\$5,281,950
Groundwater	1,399,716	1.0328	1.0392	\$2,840,739
Significant Indirect User	13,500.91214	61.5064	61.5064	\$887,553
Residuals	---	---	---	\$162,350

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<b>TOTAL:</b>	<b>1934095.465</b>	---	---	<b>\$19,492,570</b>
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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. Martin L Ryan, Vice President – Engineering, Ocean County Landfill Corp.
2. Dennis W. Palmer, Executive Director, Landis Sewerage Authority
3. Peggy Gallos, Executive Director, Association of Environmental Authorities
4. Ray Cantor, New Jersey Business and Industry Association

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 fee detail sheet provided during the public comment period incorrectly stated that 630,178.21 tons of solid waste were deposited at a particular municipal sanitary landfill facility in 2018, even though the correct value is 544,169.44 tons. The corrected value results in a Pollutant Loading Factor of 1361, a Pollution Potential Factor of 1381, and an Environmental Value (EV) of 55,240. This revised EV should be used in the recalculation of the final FY 2020 NJPDES annual fee for permit NJ0080021. (1)

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**RESPONSE:** The Department agrees that the correct tons of solid waste deposited at the Ocean County Landfill facility in calendar year 2018 is 544,169.44. Therefore, consistent with the governing regulations at N.J.A.C. 7:14A-3, the Department has reassessed the permittee's FY 2020 annual NJPDES fee. This reassessment results in an updated EV of 55,240 and an updated FY 2020 annual NJPDES fee of \$64,305.41.

In addition, the change in the permittee's EV has resulted in a change in the Total Environmental Impact value utilized to calculate the rate for all permits assessed under the ground water budget (see equation at N.J.A.C. 7:14A-3.1(a)9ii). As such, the ground water budget rate has slightly increased from 1.0328 to 1.0392 (0.6 percent); resulting in slightly higher NJPDES fees for those other NJPDES permits assessed under the ground water budget and whose fee is based on an EV.

2. **COMMENT:** The fee detail sheet provided during the public comment period indicates the flow used to calculate the FY 2020 NJPDES fee is greater than 5.0 MGD. A recalculation of the FY 2020 NJPDES fee is requested since the average flow for the treatment plant has been below 5.0 MGD for the period July 1, 2019 to June 30, 2020. There has been a reduction in flow to the treatment plant from users such as food processors as well as other businesses. (2)

**RESPONSE:** In accordance with N.J.A.C. 7:14A-3.1(d), the flow used for a sanitary ground water discharge to calculate the Pollutant Loading factor, and thus the annual NJPDES fee, is the NJPDES permitted flow limit or the facility design flow in the absence of a NJPDES permitted flow limit. The permit for this facility is for a sanitary ground water discharge. Consistent with the currently effective NJPDES permit for Landis Sewage Authority (NJ0025364), the NJPDES permitted flow is greater than 5 million gallons per day (MGD). Therefore, the pollutant loading

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factor was correctly determined to be 4,000 based on the governing regulations. As such, no change has been made to the NJPDES fee based on this comment.

3. **COMMENT:** An increase of 34 percent to the NJPDES fee for FY 2020 will have an impact to a budget that is already restricted due to increased costs incurred for PPE, reduced shifts and work week, drop in revenue, and continuation of paying full salaries during the ongoing pandemic. In addition, the permittee remarks the facility is \$400,000 behind in delinquent payments. A permit fee increase in these times has the appearance of the Department being tone deaf to essential employees who are working to keep the pumps running and treatment operational every day. Further, with an ongoing responsibility to provide wastewater service every day and a safe workplace for employees, extra expenses for outside services to sanitize offices and vehicles is a new and additional strain on the budget. The 34% increase in fees is despairing and takes funds away for PPE and employee and public safety. (2)

**RESPONSE:** The Department understands the unique circumstances surrounding COVID-19 and appreciates the efforts undertaken by NJPDES permittees to maintain essential services, such as wastewater treatment. The Department's ongoing participation in the Water/Wastewater Sector Group along with regulated facilities and State partners helps the Department maintain situational awareness of permittees' ongoing needs, including the issue of reduced revenue due to delinquent payments. The FY 2020 NJPDES fees are assessed consistent with the governing regulations that control the Department's fee calculation methodology. The Department continues to provide the use, upon request, of installment plans for NJPDES fee invoices. For those permittees wishing to use installment plans for payment of their NJPDES fees, a request should be submitted to the Department in writing to Mail Code 401-02B, NJDEP – Water

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Pollution Management Element, Bureau of Pretreatment and Residuals, Permit Administration  
Section, PO Box 420, 401 East State Street, Trenton, New Jersey 08625-0420 or via email at  
dwq\_pas@dep.nj.gov.

4. **COMMENT:** The annual fee report provides information about the program revenue and expenditures. However, regarding the fringe and indirect costs, the report says only that they originate with the NJ Department of Treasury. The report offers no information about how the calculations are derived and how they relate to the costs specifically attributable to the NJPDES program. It would be in the interest of the public if NJDEP and Treasury were transparent about how fringe and indirect cost figures are calculated. (3)

**RESPONSE:** The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave, FICA and Medicare. This rate is negotiated between the New Jersey Office of Management and Budget (OMB) and the United States Department of Health and Human Services (USDHHS) on an annual basis and is derived using the net projected health benefit costs to the State rather than the gross costs. The fringe benefit rate is a composite of the PERS fringe benefit rate that the USDHHS agreed upon plus the FICA/Medicare tax rate. The Department does not have any input into these negotiations. The fringe benefit rate is not only used for the NJPDES program fee assessments but is also used for fee assessments for other Departmental programs. For further information regarding the FY 2020 fringe benefit rate, please refer to the NJ Department of Treasury Circular for fiscal year ending June 30, 2020 available at <https://www.nj.gov/infobank/circular/cir20-12.pdf>.

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The indirect cost rate represents the Department's financial obligations for management and administrative costs (e.g. utility costs, building rent and lease costs, management and administrative salary and non-salary costs, etc.), as well as the Department's share of Statewide indirect costs as allocated by the Office of Management and Budget. The indirect cost rate is negotiated annually between the Department and the United States Environmental Protection Agency (USEPA) 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.

5. **COMMENT:** New Jersey should have a fairer fee structure that allows New Jersey businesses to pay less fees and be more competitive with our neighbors. (4)

**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



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Act therefore anticipates that the Department will fund the NJPDES program through fees charged to NJPDES permittees.

6. **COMMENT:** The present system provides no level of predictability for future budget planning purposes and contains many variables that result in swings in fees from year to year. For the FY 2020 assessment, a permittee has reported a 34 percent increase in its NJPDES fee between Fiscal Years 2018 and 2019 and Fiscal Year 2020. As authorities and other providers of water and wastewater service and facilities are to perform asset management plans to evaluate and predicate areas of repairs and improvements, the Department needs to do a NJPDES permit fee reform to provide a predictable and foreseeable permit program so dischargers can reasonably prepare budgets and operating costs that go out for several years. (2)

7. **COMMENT:** The Department should amend the rules to allow for a more equitable distribution of fees among the permitted universe. Minimum fees have not been updated in several years. As a result, a higher financial burden has disproportionately been placed on a small percentage of permit holders (e.g. ground water dischargers) whose fees are derived based on the environmental impact associated with their discharge. Further, since the minimum fee is the only fee applied to General Permit Authorizations (GPAs), it raises the question as to whether GPAs are paying their fair share. (2) (3) (4)

8. **COMMENT:** In 2014, the Department presented to NJPDES fee stakeholders a plan to reform the NJPDES fee rules at N.J.A.C. 7:14A-3. The plan sought to establish NJPDES fees that are transparent and predictable from year to year. In addition, the plan sought to develop a fee structure that was easy to understand and takes minimal resources to administer. Stakeholders are frustrated with the NJPDES fee program and the current fee structure. The Department is

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urged to leverage the progress made in 2014 to implement reform of the rules governing implementation of the NJPDES fees. (2) (3) (4)

**RESPONSE TO COMMENTS 6, 7, and 8:** The Department recognizes that the NJPDES fee structure in the existing NJPDES rules (N.J.A.C. 7:14A-3.1) provides very little predictability for future budget planning purposes. The Department also acknowledges that the minimum fees have not been updated for many types of permits since 2007 and that without adjusting the minimum fees the current fee structure promotes an inequitable distribution of fees among the permit universe. The Department continues to consider an alternative fee structure that yields predictable fees and provides a fair distribution of program costs, including elements from prior attempts at revising the NJPDES rules. The Department will also continue to evaluate adjustments to minimum fees under the existing rules and as part of any future rulemaking. The Department commits to having a stakeholder process by the end of Summer 2020 to discuss potential rule changes.