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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 2021 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 2021 (FY 2021) 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 2021 budgeting and fee assessment process for the NJPDES permit program.

Notice of the public hearing and opportunity to comment on the proposed FY 2021 budget and fee schedule was provided in the New Jersey Register on February 16, 2021, at 53 N.J.R. 267(a), and in the Trenton Times newspaper on March 6, 2021. 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 three virtual public hearings on the FY 2021 NJPDES Annual Fee Report. The first public hearing was held on March 17, 2021, at 9:00 A.M. Eight people

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attended the hearing and nobody gave oral testimony on the proposed NJPDES budget and the fee schedules at the hearing. The second public hearing was held on March 18, 2021, at 9:00 A.M. Seventeen people attended this hearing and two people gave oral testimony on the proposed NJPDES budget and the fee schedules. The third public hearing was held on April 6, 2021, at 9:00 A.M. Two people attended the hearing and one person gave oral testimony on the proposed NJPDES budget and the fee schedules at the hearing. Michele Christopher, Chief for the Bureau of Ground Water, Residuals, and Permit Administration in the Division of Water Quality, served as the hearing officer for all three public hearings.

The public comment period for the FY 2021 Annual Fee Report closed on April 6, 2021. In addition to the comments received during the public hearing, three people submitted written comments; two of which also provided oral testimony. The comments submitted are available for inspection by contacting the Department through email through [dwq\\_pas@dep.nj.gov](mailto:dwq_pas@dep.nj.gov) or through the address as follows:

Mail Code 401-02B

NJDEP – Water Pollution Management Element

Bureau of Ground Water, Residuals, and Permit Administration

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.

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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 2021. There were no changes to the rates between proposal and adoption. The final rates and the permit category amounts to be billed for FY 2021 are as follows:

| <b>CATEGORY</b>           | <b>TOTAL ENVIRONMENTAL IMPACT</b> | <b>FINAL RATE</b> | <b>AMOUNT TO BE BILLED</b> |
|---------------------------|-----------------------------------|-------------------|----------------------------|
| Surface Water Municipal   | 44,609.25742                      | 167.7589          | \$6,732,699                |
| Surface Water Industrial  | 361,979.31325                     | 9.1985            | \$3,252,882                |
| Stormwater                | ---                               | ---               | \$5,296,050                |
| Groundwater               | 1,382,070                         | 0.9988            | \$2,770,736                |
| Significant Indirect User | 15,885.67207                      | 38.8135           | \$756,010                  |
| Residuals                 | ---                               | ---               | \$164,300                  |
| <b>TOTAL:</b>             | <b>1,804,544.243</b>              | <b>---</b>        | <b>\$18,972,677</b>        |

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. Dennis W. Palmer, Executive Director, Landis Sewage Authority
2. Peggy Gallos, Executive Director, Association of Environmental Authorities

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3. Steve Fleetwood, Bivalve Packing Company
4. Raymond Frank, Chief Operator, Raritan Township Municipal Utilities 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 NJPDES fee structure for discharges to ground water (DGW) facilities is unjust and inequitable, especially through the application of the Environmental Impact (EI), when compared to the fee structure for other types of NJPDES permits. Surface water dischargers gain the benefit in a lower EI based upon the Total Pollutant Load (TPL). A discharger who operates their facility at a higher quality than their permit limits or experiences reduced flows due to dry weather or less use by customers is rewarded with a lower TPL and a lower NJPDES fee. The fee is based on actual loadings, which is logical and fair. In contrast, the NJPDES fee for DGW facilities is based upon the design flow. Because of this, if facility operation results in a better quality of effluent, or flows drop off due to less use (for example, during the COVID pandemic), there is no adjustment or resulting benefit from the reduction in loading. The regulations should be updated to base DGW NJPDES fees on factual information like actual flow and actual loadings. (1)

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2. COMMENT: With the passage of P.L. 2020, c. 92, the Department needs to correct its NJPDES fee program with a view to Environmental Justice by eliminating inequities in the fee formula and adjusting the minimum fees. The commenter remarks that their entire service area within the City of Vineland is designated as an overburdened community. (1 and 2)
3. 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 since 2007. As a result, a higher financial burden has disproportionately been placed on a small percentage of permit holders (for example, Landis Sewerage Authority) whose fees are derived based on the environmental impact associated with their discharge. It is remarked that this lack of action by the Department to increase minimum fees has resulted in a scenario where these small percentage of permit holders effectively subsidize numerous other permit holders, including the NJDEP. (1 and 2)
4. 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. 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 implement NJPDES permit fee reforms to provide a predictable and foreseeable permit fee program so dischargers can reasonably prepare budgets and operating costs that go out for several years. (1)
5. 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

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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 urged to leverage the progress made in 2014 to implement reform of the rules governing implementation of the NJPDES fees. (1 and 2)

RESPONSE TO COMMENTS 1 THROUGH 5: The FY 2021 NJPDES annual fees were assessed consistent with the governing rules at N.J.A.C. 7:14A-3.1. The rule provides for the calculation of annual fees based on a minimum fee and, where applicable, a measure of environmental impact multiplied by a rate. The minimum fees are set forth at Table III of the rule and are based on the permittee's specific type (or category) of discharge. Depending on the type of discharge, one of several methods is used to determine a permittee's environmental impact. In some cases, the environmental impact is based on the nature of the discharge (for example, pollutant type); for others, the environmental impact is based on the quantity of pollutants discharged. In determining the additional fee associated with a permittee's environmental impact, a rate is calculated and applied to each category of discharge. This rate is a weighted unit of environmental impact and is calculated based on the total budget for a category of discharge, as well as the sum of minimum fees and the total environmental impact for all permittees in that category of discharge.

These rules do not include an express consideration of environmental justice concerns. However, as part of the Department's extensive self-assessment under Executive Order No. 23 (2020), and in consideration of the additional concerns raised regarding the NJPDES fee

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structure, the Department will consider and welcome suggestions and comments during the stakeholder process for a future rulemaking to amend N.J.A.C. 7:14A-3 that would yield predictable fees, provide a fair distribution of program costs, include elements from previous stakeholder meetings, and adequately address environmental justice concerns.

6. COMMENT: The commenter questions how the indirect costs remained the same for FY 2020 and FY 2021 in light of the fact that NJDEP buildings were closed and staff performed their work responsibilities, including inspections, remotely. The indirect costs do not line up with reality. It was expected that a 24.8 percent reduction in indirect costs would have occurred; similar to what was seen with the operating costs. (1 and 2)

7. COMMENT: Staffing levels have decreased for four of the six programs. However, salary, fringe, and indirect costs have increased. (2)

RESPONSE TO COMMENTS 6 AND 7: The Department acknowledges that staffing levels for the NJPDES program have decreased for several of the permitting programs. However, please note that the reduction in operating costs was not a result of the pandemic. Rather, it was the result of the Department's re-evaluation of the costs necessary to operate the program as a whole. Further, there is no direct correlation between staffing levels and the calculation of the fringe rate, indirect rate, or average salary.

The indirect cost rate represents the Department's financial obligations for management and administrative costs (for example, utility costs, building rent and lease costs, management, and administrative salary and non-salary costs), as well as the Department's share of Statewide

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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 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. During negotiations, the rate is typically calculated based on actual information from two years prior.

For FY 2021, the indirect cost rate was negotiated based on FY 2019 actuals. Further, although the majority of the Department staff have been working remotely during FY 2021, the buildings remain open and the utilities remain on to accommodate those essential staff that continue to report to the office. Lastly, the onset of remote working due to the COVID pandemic did not change the salary costs of management and administrative staff. For these reasons, the indirect cost rate remained the same between FY 2020 and FY 2021.

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

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information regarding the FY 2021 fringe benefit rate, please refer to the New Jersey Department of Treasury Circular for fiscal year ending June 30, 2021, available at <https://www.nj.gov/infobank/circular/cir21-07-OMB.pdf>.

The average salary cost for FY 2021 was determined based upon the anticipated salary costs as of January 1, 2021.

8. COMMENT: The fees associated with the NJPDES permit is excessive and a relaxation of the fees is requested. In addition to the FY 2021 annual NJPDES fee that was assessed, the commenter is also concerned about the costs associated with administering the monitoring and reporting requirements identified in the permit. The commenter would like to talk to someone about the parameters in their permit (that is, NJ0029696) that require monitoring. (3)

RESPONSE: The FY 2021 NJPDES annual fees were assessed consistent with the governing rules at N.J.A.C. 7:14A-3. Further, a permittee may object to a fee assessment and request a fee recalculation pursuant to N.J.A.C. 7:14A-3.1(a)6. Please note that any costs associated with the implementation of monitoring and reporting requirements contained within a NJPDES permit are outside of the scope of the FY 21 Annual Fee Report and Assessment of Fees. Questions pertaining to requirements of the permit should be directed to the Bureau of Surface Water and Pretreatment Permitting at (609) 292-4860 or through email at [dwg\\_bswp@dep.nj.gov](mailto:dwg_bswp@dep.nj.gov).

9. COMMENT: Collection of delinquent fees from 2019 to 2020 appears to have been less successful. This should be investigated further. (2)

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RESPONSE: The NJPDES FY 2021 Annual Fee Report and Assessment of Fees (FY 2021 NJPDES Fee Report) indicates that the Department has collected 95.8 percent and 95.5 percent of the NJPDES annual fees billed for FY 2019 and FY 2020, respectively. However, since the publication of the FY 2021 NJPDES Fee Report, these values have been updated to 96.0 percent and 97.2 percent collected for the NJPDES fees billed in FY 2019 and FY 2020, respectively. These collection rates are consistent with historical collection rates and the Department believes that no further investigation is necessary at this time.

10. COMMENT: RTMUA is requesting that the Flemington Wet Weather Facility (Permit # NJ0028436), be classified as a minor facility and the NJPDES annual fee be re-established based on that classification. The facility is not a major facility and should not be subject to the fee assessed to major facilities. The facility is a wet weather stormwater facility that is only permitted to discharge in response to events of precipitation after 1.35 million gallons per day of flow is conveyed to the RTMUS's main plant. As such, the discharge from the facility is intermittent and does not occur on a daily basis. The flow associated with the facility is not the design flow as that term is defined at N.J.A.C. 7:14A-1.2 in that it does not represent the average daily volume of wastewater, which a domestic treatment was designed to discharge. Further, the design flow does not reflect the actual flow treated at the facility and discharged.

(4)

RESPONSE: The FY 2021 NJPDES annual fees were assessed consistent with the governing rules at N.J.A.C. 7:14A-3. Consistent with N.J.A.C. 7:14A-1.2, the Flemington facility has been classified as a major facility in its currently effective permit for more than 15 years, since the

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design flow of the facility exceeds 1.0 million gallons per day (MGD). Therefore, the minimum fee for a “major facility” was correctly applied to the calculation of the facility’s NJPDES fee billed for FY 2021. Further, re-classification of the facility as a “minor” facility is outside the scope of the Fiscal Year 2021 Annual Fee Report and Assessment of Fees. If the facility believes it is incorrectly classified as “major facility” as defined at N.J.A.C. 7:14A-1.2, it may submit a request for re-classification and modification of the permit, consistent with the procedures at N.J.A.C. 7:14A-16.3, to the Bureau of Surface Water and Pretreatment Permitting through email at [dwq\\_bswp@dep.nj.gov](mailto:dwq_bswp@dep.nj.gov).