CHEMISTRY COUNCIL OF NEW JERSEY

June 6, 2018

VIA REGULAR MAIL & EMAIL
Mail Code 401 – 02B
Terry Beym, Project Manager
NJDEP – Water Pollution Management Element
Office of Permit Management
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RE: CCNJ COMMENTS ON NJPDES FISCAL YEAR 2018 ANNUAL FEE REPORT AND ASSESSMENT OF FEES

To Ms. Beym:

On behalf of our members, the Chemistry Council of New Jersey (CCNJ, or the Council) appreciates the opportunity to once again provide comments on the New Jersey Pollutant Discharge Elimination System (NJPDES) Fiscal Year 2018 Annual Fee Report and Assessment of Fees. As you know, CCNJ represents over 70 companies involved in the business of chemistry (pharmaceuticals, chemicals, flavors and fragrances, petroleum refining, etc.) in New Jersey. The business of chemistry directly employs over 55,000 persons in New Jersey and is responsible for over $25 billion dollars in revenues in New Jersey each year.

First, we would like to share some history and background on our past efforts in advocating for improvements to the NJPDES fee structure. Back in 2013 and 2014, CCNJ and its members participated in NJPDES stakeholder meetings with the focus on ensuring that the reduction of permittees and environmental loading was taken into account when calculating the industrial NJPDES fees, which were rising uncontrollably. This issue has been a major area of concern for our industry as we continue to see the number of industrial water permits drop annually while the NJPDES budget remains relatively constant. Based on our previous analysis of 2013 data, we learned that five New Jersey companies spent over $2.3 million in NJPDES fees per year out of the (then) $5.3 million budget; in other words, at that time, five out of 320 companies were paying for 45% of the NJPDES industrial budget. Also, in most of these cases, we found that these same five companies were paying 5 – 50 times higher fees in New Jersey vs. other benchmark states.

During this 2013/2014 stakeholder process, the New Jersey Department of Environmental Protection (NJDEP, or the Department) conducted a very thorough evaluation and comparison against other states with significant industrial fees. Based on this effort, the NJDEP and stakeholders developed a more equitable fee program with a new simplified and predictable fee structure that would account for workload and effort of the NJPDES permitting staff for renewals and new applications in the various categories, making these fees more competitive when benchmarked to neighboring states. A NJPDES fee rule revision, which incorporated these industrial fee program reforms, was then drafted for public comment, though this never made it in its entirety to even the proposal stage.

Though we were pleased to see that significant improvements were made in 2014 to the fee structure, including a maximum fee cap of $400,000, the Council was extremely disappointed to see that all of the expected changes to the NJPDES fees from the extensive stakeholder process, including a less complicated industrial fee structure, were not fully implemented. Over the past several years, CCNJ and its members advocated for these additional improvements to the NJPDES industrial fee structure. As requested in our comment letter to you last year, we again respectfully ask that the NJDEP provide a schedule which the Department proposes to amend the fee formula to be promulgated in the proposal for the next cycle in 2019.

The CCNJ would like to commend the Department for maintaining fees and program costs, including fringe, indirect and operating costs, near their Fiscal Year 2014/2015 levels; however, we believe that further savings are achievable. The program must become more efficient and either reduce headcount to maintain budgetary control or find other sources of funding instead of permit fees. The NJDEP must also continue to improve systems and processes to streamline work and reduce the overall NJPDES budget.

The NJPDES industrial 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 their budget requirements, while the remaining permittees continue to pay more even though they have lower loading and emissions as compared to historical numbers since the environmental loading factor is back-calculated to balance the budget. This does not seem like a fair and equitable fee structure as industry has significantly improved our emissions performance, but continues to be penalized to balance the NJDEP budget.

Some of the specific principles that we would like to have seen in this rule-proposal include the following:

- Flat tier-based fees based on flows/sludge production (5-year average);
- Simple add-on factor for toxicity (major industrial facility); and
- Simple 85% percentage subtractor for facilities whose discharge is greater than 80% non-contact cooling water or cooling tower blowdown.

We believe it is also instructive for us to repeat many of the same concerns the Council raised in our comments submitted with respect to the 2014 – 2017 Fiscal Year NJPDES Fee Reports. To this end, CCNJ again offers the following suggestions to improve New Jersey's program:

1. Utilize a fee schedule for permit applications and renewals (Arizona-type system)
    - A potential basis for fee schedule could be on wastewater operator license required (N1 – N4).
    - Fee schedule for renewals and new applications could be based upon time allotment to permit schedule. This system would be similar to NJDEP air fees.

2. Annual fee based on flow calculation to maintain simplicity (California, South Dakota, Indiana, and Arizona are all flow-based)
    - An additional fee for threat or toxicity is utilized in some of these states, including California.
    - A fee reduction factor is utilized for non-contact cooling water/boiler blow-down in some of these states as well, including Indiana.

3. Redefine a new maximum fee at a reasonable level based on flow that does not shift fees up across the board for other dischargers. In addition, our CCNJ members still pay 10 – 30 times more for our NJPDES industrial fees for discharging into the same water body that they would pay if they were located in Delaware or Pennsylvania.

4. Include a Consumer price index increase on budget after a new norm on NJPDES industrial fees is established over a period of time. If NJPDES industrial fees were reduced to a reasonable and sustainable level with predictable tables based on flow, CCNJ would be able to support a nominal annual increase to maintain budgets based upon inflationary rates.

The discharge fee inequity with other states is one more reason why the cost of doing business in New Jersey is higher than in other states. This and other inequities need to be leveled to allow New Jersey to effectively compete for new capital projects, business investments, and expansion opportunities. Excessive NJPDES fees act as a significant disincentive for manufacturing to locate, expand, or remain in New Jersey.

In closing, we thank the NJDEP for largely holding NJPDES fees steady. However, NJPDES industrial fees remain unpredictable and high relative to other states. As such, we continue to support an expeditious effort to develop and propose a simplified industrial fee structure that is predictive and comparable to other states' industrial fees, and also establish a maximum cap. We encourage the NJDEP to seek innovative ways to adjust the size of the budget to match the reduction in environmental loading, as well as reduction in workload and effort. We look forward to the Department providing a schedule which NJDEP proposes to amend the fee formula to be promulgated in the proposal for the next cycle in 2019.

We welcome the opportunity to continue working collaboratively with NJDEP staff to develop a more predictable and equitable NJPDES fee structure. We would be more than happy to meet with you in-person to further discuss.

Thank you for your consideration.

Sincerely,

Dennis Hart
Executive Director