



January 12, 2023

**VIA ELECTRONIC FORMAT**

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Mail Code 401-02B

NJDEP – Water Pollution Management Element

Bureau of Ground Water, Residuals, and Permit Administration

Permit Administration Section

P.O. Box 420

401 East State Street

Trenton, New Jersey 08625-0420

Re: FY2023 Annual Fee Report and Assessment of Fees for the NJPDES Permit Program

To Whom It Concerns –

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) appreciates the opportunity to provide comments on the New Jersey Pollutant Discharge Elimination System (NJPDES) Fiscal Year (FY) 2023 Annual Fee Report and Assessment of Fees. CCNJ, founded in 1955, is the trade and advocacy organization representing the interests of more than 100 manufacturers and firms engaged in the business of chemistry. Our membership consists of large and small companies that are part of New Jersey's chemical, pharmaceutical, consumer packaged goods, petroleum, flavor & fragrances, and precious metals industries.

CCNJ continues to strongly urge the New Jersey Department of Environmental Protection (NJDEP) to restructure their industrial fee calculations to make them more predictable and equitable. The current self-fulfilling process of meeting NJDEP budget requirements is entirely unfair as the number of permittees and loading/emissions decrease while their discharge permit fees increase.

We have been told by the NJDEP that they agree the industrial fee structure needs to be improved upon many times in the past and as recently as the stakeholder meeting held last year; however, upon reviewing the FY2022 document, we very quickly realized that, though the number of industrial surface water permitted facilities decreased, the total amount of these fees assessed significantly increased (over \$1 million!), which is concerning to say the least. Nothing significant has changed in the FY2023 document. Operating a facility in New Jersey where just one permit fee (in this instance, a NJPDES permit fee) is in the hundreds of thousands of dollars with nothing comparable existing in other states is simply not sustainable.

Given the fact that we were told by the NJDEP as recently as last year that they agree with our concerns, coupled with the outrageous increase in industrial surface water permit fees, we are extremely frustrated

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and disappointed that no action has been taken prior to this proposal. We ask the NJDEP to not move forward with the FY2023 Annual Fee Report and Assessment of Fees, reconvene all stakeholders, and make the much needed improvements now – please stop delaying! In addition, CCNJ respectfully requests that the NJDEP be transparent and share all stakeholder comments/responses and how their NJPDES budget is calculated, discuss what is included and which costs are fixed/variable, and, specifically, explain why the industrial surface water permit fees drastically increased with less facilities being permitted. For a quick reference, we have attached our responses to your questions posed at the April 20, 2022 stakeholder meeting.

We welcome the opportunity to continue working collaboratively, and efficiently, with the NJDEP to develop a more predictable and equitable NJPDES industrial fee structure. Please feel free to reach out to me with any questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'DH', with a long horizontal flourish extending to the right.

Dennis Hart  
Executive Director

Attachment

Chemistry Council of New Jersey (CCNJ) Responses to New Jersey Department of Environmental Protection (NJDEP) New Jersey Pollutant Discharge Elimination System (NJPDES) Fee Stakeholder Questions from April 20, 2022 Meeting

1. The Department is considering a simplified fee assessment process that uses a tiered fee approach using flow or some other factor to establish a permit fee. Is this reasonable?

CCNJ Response: Yes, members agree this is reasonable.

2. If a tiered fee approach is used, what value should be used to determine placement in a tier? The Department is considering the following options:
  - a. Average Flow
    - i. If an average flow tiered approach is utilized, how do we address that predictability could be lost because flows could fluctuate? Is this a concern?
    - ii. If an average flow tiered approach is utilized, what value should we assign for facilities that are new, or have been off-line and haven't had a flow?
  - b. Design Flow
    - i. If a design flow tiered approach is utilized, not all individual permit categories (Category B, Category L, Category GW) have a design flow. How would we address this situation for these permits?
    - ii. If a design flow tiered approach is utilized, is it appropriate that some permittees pay for flow they may not be discharging, taking into consideration that they have the advantage of being authorized to discharge higher amounts in their permit?
  - c. Other alternatives? Perhaps a hybrid of a. and b.?

CCNJ Response: Members strongly recommend an average flow tiered approach as both equity and predictability are our concerns. We do not support a design flow or hybrid tiered approach as it may not be equitable because some facilities operate closer to their design than others. In our past comments, CCNJ recommended flat tier-based fees based on flows/sludge production over a five-year average.

3. There is a workload for a small number of activities that the Department currently does not receive compensation for. The Department is considering a new minimal NJPDES submittal fee for certain registrations, certifications, or general permit authorizations (e.g. Dental Amalgam certifications, Short Term De Minimis Discharge, Swimming Pool general permit, etc.). Is there a compelling reason not to do this?

CCNJ Response: No, members are supportive of this. Reasonable fees should be charged commensurate with effort.

4. In an effort to normalize fees between Category A and Category B Discharges, the Department is considering an "add-on" fee for an individual permit that is a Category B permit (Industrial Discharge to Surface Water) and is classified as a "major facility" pursuant to N.J.A.C. 7:14A-1.2.

Is there a compelling reason not to do this taking into consideration that Major Industrial DSW's could have significantly less flow than Major Domestic DSW's?

"Major facility" means:

1. For industrial facilities, any facility which scores 80 or more points on the NPDES permit rating worksheet using the USEPA rating criteria. A facility with less than the required score of 80 may still be classified as a Major facility by the Regional Administrator or the Department. In those situations, the Department shall state the reasons for doing so; and
2. For municipal facilities, any POTW with a design flow of 1.0 Million Gallons per Day or greater.

CCNJ Response: Members would like clarification on this concept. Our assumption is that the additional fee is based on the theory that industrial facilities are more complex than municipal facilities. If an additional fee is to be charged for industrial facilities, then POTWs that receive industrial flow should be treated similarly. Also, we are interested in knowing and commenting on how NJDEP plans to determine this add-on number to ensure that industrial facilities are treated equitably relative to other facilities. This add-on fee seems to introduce uncertainty into a system that NJDEP is attempting to remove uncertainty from via this process, thereby, we oppose this until further discussion of the concepts.

5. The Department is considering a reduction in the individual permit annual fee for facilities whose discharge is primarily non-contact cooling water or cooling tower blowdown. Is there a compelling reason not to do this?

CCNJ Response: No, members are supportive of this; however, we are interested in knowing and commenting on what percent of a reduction (and what this equates to in dollars) NJDEP is considering. In our past comments, CCNJ recommended a simple 85% subtractor for facilities whose discharge is greater than 80% non-contact cooling water or cooling tower blowdown.

6. The Department is considering an automatic annual increase on NJPDES Fees to account for increasing costs (including salaries, and fringe and indirect costs). How should this be reflected in the rule?
  - a. Would you prefer to see multiple tables in the rule which show the annual increases?
  - b. Would you prefer to have 1 table in the rule and then have an annual increase calculation that has to be run to determine the fee?

CCNJ Response: We oppose an automatic annual increase of fees. Industries and municipalities do not receive automatic increases in their revenue and any NJDEP program should be evaluated on an annual basis for the need to increase any fee. If an annual fee is required, members prefer option b (i.e. 1 table with annual calculations). We do recommend that NJDEP also consider another frequency (e.g. every 5 years) that simplifies facility budgeting/planning and allows for other adjustments to fees. In addition, we request that NJDEP seeks general appropriations from the state budget to pay for the fringe and indirect costs, which are now equal to the salary costs being charged to permittees.