

[First Reprint]

ASSEMBLY CONCURRENT RESOLUTION No. 32

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman CRECCO and Assemblyman LUSTBADER

1 **A CONCURRENT RESOLUTION** concerning legislative review of Department
2 of Environmental Protection ~~and Energy~~ regulations pursuant to Article
3 V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
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5 **BE IT RESOLVED** by the General Assembly of the State of New Jersey
6 (the Senate concurring):
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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Legislature may review any rule or regulation
10 adopted by an administrative agency to determine if the rule or regulation is
11 consistent with the intent of the Legislature as expressed in the language of the
12 statute which the rule or regulation is ~~intended~~intended to implement.
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14 2. a. The Legislature enacted the "Water Pollution Control Act,"
15 P.L.1977, c.74 (C.58:10A-1 et seq.), to regulate the discharge of pollutants
16 into the State's waters. The Legislature intended that the State program be
17 consistent with the "Federal Water Pollution Control Act Amendments of
18 1972," 33 U.S.C. §1251 et seq. At the center this regulatory program was a
19 permit system that establishes the amount of pollutants that a person may
20 lawfully discharge into the State's waters. Thus, any person discharging
21 pollutants into the State's waters is required to obtain a New Jersey Pollutant
22 Discharge Elimination System (NJPDES) permit, or an equivalent permit from
23 the federal government.

24 b. Section 9 of P.L.1977, c.74 (C.58:10A-9) provides that the
25 Commissioner of Environmental Protection ~~and Energy~~ "shall, in accordance
26 with a fee schedule adopted by regulation, establish and charge reasonable
27 annual administrative fees, which fees shall be based upon, and shall not
28 exceed, the estimated cost of processing, monitoring and administering the
29 NJPDES permits."

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly APR committee amendments adopted May 20, 1996.

1 c. The fee structure adopted by the commissioner for NJPDES permits for
2 wastewater facilities provides for individual permit fees based on a
3 complicated formula reflecting the facility's potential environmental impact, the
4 billing rate for the category of discharge, and the minimum fee for the category
5 of discharge. Wastewater treatment plants include facilities which discharge
6 industrial wastewater, sanitary wastewater, non-contact cooling water,
7 decontaminated ground water, stormwater runoff or other types of treated and
8 untreated types of wastewater to the surface or ground waters of the State.
9 Fees for NJPDES permits related to site remediation are based on the actual
10 cost to the department of processing, administering, and monitoring those
11 permits.

12 d. The NJPDES permit fees are used to pay personnel costs for the
13 permitting, monitoring, and enforcement of the NJPDES permit requirements.
14 In addition to the actual personnel costs, the fees also pay for fringe benefits
15 of these personnel, including pension, health, and insurance benefits.
16 Additionally, routine departmental operating costs are now paid for by these
17 fees, including office supplies, printing, copiers, library supplies, telephone
18 services, postage, vehicle rental and maintenance, legal advertising, and travel.
19 Other major program expenses paid in part by NJPDES permit fees include
20 charges for professional services submitted by the Office of the Attorney
21 General, the United States Geological Survey, the Department of Health
22 Laboratory and the ~~1[DEPE] DEP 1~~ Environmental Laboratory, the Office of
23 Administrative Law, and the Office of Telecommunications and Information
24 Systems.

25 e. Because of the extensive array of program costs now being supported
26 by NJPDES permits, and because of program inefficiencies, NJPDES permit
27 fees for many if not most permit holders are unreasonable. There were 34
28 industrial discharge NJPDES permit holders alone who were assessed annual
29 permit fees of over \$50,000 during the fiscal years 1988 to 1992. Five of
30 these industrial discharges were assessed NJPDES permit fees in fiscal year
31 1992 of over \$500,000, the highest being over \$700,000. One permittee saw
32 its permit fee rise from \$1,300 in fiscal year 1988 to \$621,000 in fiscal year
33 1992. Other categories of permittees, municipal and significant industrial
34 users, also saw their permit fees rise to unreasonable levels.

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36 3. The Legislature finds that the fee schedule for NJPDES permittees and
37 applicants, promulgated at N.J.A.C.7:14A-1.8, is not "reasonable" and allows
38 for the imposition of fees for costs unrelated to the "processing, monitoring and
39 administering the NJPDES permits" as required by section 9 of P.L.1977,
40 c.74(C.58:10A-9). The Legislature therefore finds that these regulations are
41 not consistent with the intent of the Legislature as expressed in the language of
42 the "Water Pollution Control Act," which the regulations are intended to
43 implement.

1 4. The Secretary of the Senate and the Clerk of the General Assembly
2 shall transmit a duly authenticated copy of this concurrent resolution to the
3 Governor and the Commissioner of Environmental Protection [and Energy].
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5 5. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
6 State of New Jersey, the Commissioner of Environmental Protection [and
7 Energy] shall have 30 days following transmittal of this resolution to amend or
8 withdraw the regulations codified in N.J.A.C.7:14A-1.8 or the Legislature
9 may, by passage of another concurrent resolution, exercise its authority under
10 the Constitution to invalidate the regulations codified in N.J.A.C.7:14A-1.8,
11 in whole or in part.

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16 Determines that NJPDES fee schedule is inconsistent with legislative intent.