

SENATE CONCURRENT RESOLUTION No. 102

STATE OF NEW JERSEY

INTRODUCED OCTOBER 24, 1996

By Senator SCOTT

1 **A CONCURRENT RESOLUTION** concerning legislative review of regulations
2 pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
3 State of New Jersey and invalidating certain regulations of the Department
4 of Environmental Protection.

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6 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
7 Assembly concurring):

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9 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
10 State of New Jersey, the Legislature may review any rule or regulation
11 adopted by an administrative agency to determine if the rule or regulation is
12 consistent with the intent of the Legislature as expressed in the language of the
13 statute which the rule or regulation is intended to implement.

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15 2. a. The Legislature enacted the "Water Pollution Control Act," P.L.1977,
16 c.74 (C.58:10A-1 et seq.), to regulate the discharge of pollutants into the
17 State's waters. The Legislature intended that the State program be consistent
18 with the "Federal Water Pollution Control Act Amendments of 1972," 33
19 U.S.C. §1251 et seq. The foundation of this regulatory program was a permit
20 system that establishes the amount of pollutants that a person may lawfully
21 discharge into the State's waters. Any person discharging pollutants into the
22 State's waters is required to obtain a New Jersey Pollutant Discharge
23 Elimination System (NJPDES) permit, or an equivalent permit from the federal
24 government.

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

31 c. The fee structure adopted by the commissioner for NJPDES permits for
32 wastewater facilities provides for individual permit fees based on a
33 complicated formula reflecting the facility's potential environmental impact, the
34 billing rate for the category of discharge, and the minimum fee for the category
35 of discharge. Facilities required to be permitted include those which discharge

1 industrial wastewater, sanitary wastewater, non-contact cooling water,
2 decontaminated ground water, stormwater runoff or other types of treated and
3 untreated types of wastewater to the surface or ground waters of the State.
4 Fees for NJPDES permits related to site remediation are based on the actual
5 cost to the department of processing, administering, and monitoring those
6 permits.

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

19 e. Because of the extensive array of program costs now being supported
20 by NJPDES permits, and because of program inefficiencies, NJPDES permit
21 fees for many if not most permit holders are unreasonable.

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23 3. By the passage of Concurrent Resolution No. 26 of 1996, filed by the
24 Secretary of State on July 19, 1996, the Legislature found that the regulations
25 of the Department of Environmental Protection establishing a fee schedule for
26 NJPDES permittees and applicants, adopted at N.J.A.C.7:14A-1.8, was not
27 consistent with the intent of the Legislature as expressed in the language of the
28 "Water Pollution Control Act" because the high level of the NJPDES fees
29 were not "reasonable" and because the fee schedule allows for the imposition
30 of fees for costs unrelated to the "processing, monitoring and administering the
31 NJPDES permits" as required by section 9 of P.L.1977, c.74 (C.58:10A-9).
32 Senate Concurrent Resolution No. 26 of 1996 further determined that,
33 pursuant to paragraph 6 of the Constitution of the State of New Jersey, if the
34 Commissioner of the Department of Environmental Protection did not amend
35 or withdraw the regulation within 30 days of passage of Senate Concurrent
36 Resolution No. 26, the Legislature was authorized under the Constitution to
37 invalidate the regulation in whole or in part.

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39 4. The Legislature finds that the 30 day period given to the Commissioner
40 of Environmental Protection in Senate Concurrent Resolution No. 26 of 1996
41 has expired and that the Commissioner of Environmental Protection has failed
42 to amend or withdraw N.J.A.C.7:14A-1.8 in a manner that is consistent with
43 the intent of the Legislature.

1 5. The Legislature therefore is, by the passage of this Concurrent
2 Resolution, exercising its Constitutional powers pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey to invalidate,
4 in whole, the regulations of the Department of Environmental Protection that
5 are promulgated at N.J.A.C.7:14A-1.8. The regulations promulgated at
6 N.J.A.C.7:14A-1.8 are invalidated.

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STATEMENT

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11 This concurrent resolution embodies the finding of the Legislature that the
12 regulations of the Department of Environmental Protection concerning a fee
13 schedule for NJPDES permittee and applicants, codified at
14 N.J.A.C.7:14A-1.8, is not consistent with legislative intent pursuant to Article
15 V, Section IV, paragraph 6 of State Constitution.

16 Previously the Legislature enacted Senate Concurrent Resolution No. 26
17 of 1996 which initially made this finding and gave the Commissioner of
18 Environmental Protection 30 days in which to amend or withdraw the
19 regulation or the Legislature would be empowered to pass a second
20 Concurrent Resolution to invalidate the regulations in whole or in part.
21 Because the regulations were not amended or withdrawn to address the
22 inconsistency with legislative intent, this second Concurrent Resolution is
23 necessary to invalidate the adopted regulations. Upon passage of this
24 Concurrent Resolution, the regulations adopted at N.J.A.C.7:14A-1.8 will be
25 invalidated in whole.

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30 Finds that NJPDES fee regulations of the DEP invalid due to inconsistency
31 with legislative intent.