

Application Type
Facility Type
Major / Minor

Renewal
Industrial
Minor

**NPDES PERMIT FACT SHEET
ADDENDUM**

Application No. **PA0218863**
APS ID **1110042**
Authorization ID **1477908**

Applicant and Facility Information

Applicant Name	Fayette Power Company, LLC	Facility Name	Fayette Energy Facility
Applicant Address	100 Energy Drive Masontown, PA 15461-2588	Facility Address	100 Energy Drive Masontown, PA 15461-2588
Applicant Contact	Ronald George	Facility Contact	Aaron Kitzmiller
Applicant Phone	(724) 583-8003	Facility Phone	724-583-8034
Applicant Email	Ronald.George@vistracorp.com	Facility Email	Aaron.kitzmiller@vistracorp.com
Client ID	287448	Site ID	547636
SIC Code	4911	Municipality	German Township
SIC Description	Trans. & Utilities - Electric Services	County	Fayette
Date Published in PA Bulletin	April 27, 2024	EPA Waived?	No
Comment Period End Date	May 27, 2024	If No, Reason	Major
Purpose of Application	Renewal NPDES permit coverage		

Internal Review and Recommendations

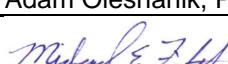
Notice of the Draft NPDES Permit was published in the Pennsylvania Bulletin on April 27, 2024. The Department received one comment from Fayette Power Company, LLC. (Fayette) and two comments from the United States Environmental Protection Agency (EPA) during the comment period. The comments are summarized below. The Department has made changes to the Draft permit due to comments on the draft permit. Due to these changes, the Department is redrafting the permit.

Comments and Responses

Fayette's Comment One:

Fayette is subject to the Phase I Rule as its construction began after January 17, 2002. In consultation with the Pennsylvania Department of Environmental Protection (PA DEP), it was requested that Fayette complete the studies required in 40 CFR 125.86 Track I Application Requirements, 40 CFR 122.21(r)(2) Source Waterbody Physical Data Study, 40 CFR 122.21(r)(3) Cooling Water Intake Structure Data Study and 40 CFR 122.21(r)(4) Source Waterbody Baseline Biological Characterization Study. The following studies were conducted and submitted to the PA DEP:

- 40 CFR 125.87(a) Biological Monitoring (2019)
- 40 CFR 125.86 Track I Application Requirements (2020)
- 40 CFR 122.21(r)(2) Source Waterbody Physical Data Study (2020)
- 40 CFR 122.21(r)(3) Cooling Water Intake Structure Data Study (2020)
- 40 CFR 122.21(r)(4) Source Waterbody Baseline Biological Characterization Study (2020)

Approve	Deny	Signatures	Date
X		 Adam Olesnak, P.E. / Environmental Engineer	August 5, 2024
X		 Michael E. Fifth, P.E. / Environmental Engineer Manager	August 6, 2024

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Based on the results of the Source Waterbody Baseline Biological Characterization Study, required by 40 CFR 122.21(r)(4), the PA DEP granted a waiver for the second year of impingement/entrainment sampling. Fayette would like to request that no further studies would be required during the permit term based off the results of the study conducted in 2020.

The Department's Response to Fayette's Comment One:

The Department understands Fayette's comment and agrees that based on the results from the 2020 study, and that Fayette Energy currently operates Best Technology Available for cooling water intake structures, additional Biological Monitoring per Part C.IV.C of the Draft Permit (Part C. IV.D in the 2nd Draft Permit) is not required during this permit term. The Department is authorizing the exemption (a reduction in frequency) of the Biological Monitoring requirements from 40 CFR 125.87(a) for this permit term. However, it should be noted that the Department may request/require additional Biological Monitoring in future permit renewals. Part C.IV.C of the Draft Permit will remain in the 2nd Draft Permit

EPA's Comment One:

The cooling water intake special conditions in Part C.III in the draft permit do not contain the required language regarding take in 40 CFR 125.98 (b)(1). Please include: "Nothing in this permit authorizes take for the purposes of a facility's compliance with the Endangered Species Act" in the permit conditions.

The Department's Response to EPA's Comment One:

Per 40 CFR 125.91 (a), 125.98 (b)(1) is applicable to existing facilities as defined in 125.92(k):

Existing facility means any facility that commenced construction as described in 40 CFR 1222.29(b)(4) on or before January 17, 2002 (or July 17, 2006 for an offshore oil and gas extraction facility) and any modification of, or any addition of a unit at such a facility. A facility built adjacent to another facility would be a new facility while the original facility would remain as an existing facility for purposes of this subpart. A facility cannot both be an existing facility and a new facility as defined at 125.83.

The facility is considered a new facility because construction of the facility began after January 17, 2002. Therefore, the site is not subject to the requirements at 125.94 through 125.99, including 125.98(b)(1).

However, the Department finds that "New Facilities" could be subject to the condition, but not based on EPA's reference to the Existing Facilities Rule. EPA's NPDES permitting regulations at 40 CFR 122.49 contain a list of Federal laws that might apply to federally issued NPDES permits. These include the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*; and the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* *The Endangered Species Act, 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.* In other words, the Endangered Species Act says that it is unlawful to take any listed endangered species of fish or wildlife. So, assuming there is a standing/written determination from USFWS and NMFS that impingement and/or entrainment of Federally-listed species constitutes "take", 40 CFR § 122.49 could obligate EPA to ensure that an NPDES permit issued by a State-approved NPDES program to a facility with a cooling water intake structure (which will impinge and entrain aquatic species) complies with the Endangered Species Act. Therefore, NPDES permits cannot authorize "take" and both the New and Existing Facilities Rules say—directly or indirectly—that they do not authorize "take." So, even though it isn't directly written in the New Facilities Rules, the statement from 40 CFR 125.98 (b)(1) may still be applicable. Therefore, inclusion of a Part C condition in the NPDES permit stating that the permit doesn't authorize "take" simply states a fact and avoids giving permittees the impression that "take" is authorized by the NPDES permit if they are not already aware that the NPDES permit cannot do that.

The statement "Nothing in this permit authorizes take for the purposes of a facility's compliance with the Endangered Species Act" has been added to the 2nd Draft Permit as Part C.IV.A due to this comment. The Numbering of Part C.IV has been changed due to the addition of this condition; Part C.IV.A has been changed to Part C.IV.B, Part C.IV.B has been changed to Part C.IV.C, Part C.IV.C has been changed to Part C.IV.D, and Part C.IV.D has been changed to Part C.IV.E.

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EPA's Comment Two:

PADEP does not list the zinc and chromium limits that apply to power plants who discharge cooling tower blowdown in Fayette Power Company, LLC NPDES permit, see 40 CFR 423.15(a)(10)(i). PADEP provided an explanation in the fact sheet as to why limits were removed from the permit. The NPDES permit central tenets, <https://www.epa.gov/sites/default/files/2015-09/documents/tenets.pdf>, states that not including a specific numerical limit (or other requirement) for any pollutant parameter that is part of an ELG applicable to a discharger is a condition subject to EPA's disapproval. We understand that chromium and zinc may not be used in the facility's chemical additives for cooling tower blowdown and PADEP can grant monitoring waivers under 40 CFR 122.44(a)(2) or 40 CFR 423.15(a)(10)(iii); however, the zinc and chromium limits are still required to be listed in the permit and must be met by the permittee if they are subject to the ELG. Limits can be displayed in the limitations section or as a Part C special condition but, even if they are waived, they must be included in the permit. Since compliance monitoring for zinc is still required in the NPDES permit, limits should be displayed in Part A until such time that PADEP may waive the monitoring requirements.

The Department's Response to EPA's Comment Two:

Due to EPA's comment, the Department has re-evaluated the applicability of the monitoring waiver of Total Zinc and Total Chromium.

The DMRs have shown consistent non-detects for chromium, therefore, in accordance with 40 CFR 122.44(a)(2) and 40 CFR 423.15(a)(10)(iii), the Department has granted a monitoring waiver for chromium. The monitoring requirement in Part A of the permit have been removed. However, because 40 CFR 122.44(a)(2) does not waive the permit limitations for all applicable guideline-listed pollutants in 40 CFR 423, a Part C condition will be included in the permit which lists these limitations. The Part C condition, Part C.I.J., is as follows:

Other Requirements

In conformance with 40 CFR 122.44(a)(2) a monitoring waiver may be granted for pollutants that are not present in the discharge. Historical data has shown consistent non-detects for total chromium. As such, monitoring for total chromium has been removed in accordance with 40 CFR 122.44(a)(2). However, this regulation does not waive the permit limitations for all applicable guideline-listed pollutants. Therefore, a monitoring waiver is granted for the total chromium, however, the limitations shall remain in effect as listed below. The permittee must still sample total chromium as part of the required testing for the next permit renewal application.

Pollutant	Concentration Limits (mg/L)	
	Average Monthly	Daily Maximum
Chromium, Total	0.2	0.2

Total Zinc is not eligible for a monitoring waiver because Total Zinc has been detected multiple times in the discharge. Because the monitoring requirement for total zinc cannot be waived; per EPA's comment, the limits from 40 CFR 423 must be displayed in Part A of the permit. The current limitations at IMP 101 for total zinc are 1.0 mg/L as an average monthly limitation and 1.0 mg/l as a daily maximum limitation and the monitoring frequency for total zinc is twice a month. These current limitations are consistent with the limitations from 40 CFR 423. However, because the discharge concentrations for total zinc have been consistently well below the limitations, the Department has determined to evaluate a reduction in the sample frequency. The average discharge concentration of total zinc from IMP is 0.03 mg/L, which is 3% of effluent limitations. Following EPA's performance-based sample frequency reduction guidance document, a sample frequency of twice a month can be reduced to once per quarter if the average monthly effluent concentration is less than 25% of the average monthly effluent limitation. With the sample frequency being reduced to once per quarter, the average monthly limitation of 1.0 mg/L will be changed to an average quarterly limitation of 1.0 mg/L. Therefore; the limitations for Total Zinc in the 2nd Draft Permit are 1.0 mg/L as an average quarterly limitation and 1.0 mg/L as a daily maximum limitation with sampling frequency of once per quarter.

Part C.I.I has been revised to remove the inclusion total zinc from the 126 priority Pollutants because the total zinc limitations have been added to Part A of the 2nd Draft permit. Part C.I.I now states, *Cooling tower blowdown discharges shall contain no detectable amounts of the 126 Priority Pollutants listed in 40 CFR Part 423, Appendix A, that are contained in chemicals added for cooling tower maintenance, including Total Chromium but except Total Zinc. When requested by DEP, the permittee shall*

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conduct monitoring or submit engineering calculations to demonstrate compliance with 40 CFR 423.13(d)(1). The use of chemical additives containing chromium and/or zinc is prohibited without first obtaining written approval from the Department

Summary and Recommendations

The monitoring requirements in Part A for Total Chromium at IMP 101 have been removed from the 2nd Draft Permit

The monitoring requirements in Part A for Total Zinc at IMP 101 have been changed to an average quarterly limitation of 1.0 mg/L and a daily maximum limitation of 1.0 mg/L in the 2nd Draft Permit.

The sample frequency for in Part A for Total Zinc has been changed from 1/6months to 1/quarter in the 2nd Draft Permit.

Part C.I.I has been revised to say except zinc instead of including total zinc in the 2nd Draft permit.

A part C condition, Part C.I.J, has been added to the 2nd Draft Permit granting the monitoring waiver for Total Chromium.

A part C condition, Part C.IV.A, stating "Nothing in this permit authorizes take for the purposes of a facility's compliance with the Endangered Species Act" has been added to the 2nd Draft Permit.

The numbering of Part C.IV has been changed in the 2nd Draft Permit; Part C.IV.A has been changed to Part C.IV.B, Part C.IV.B has been changed to Part C.IV.C, Part C.IV.C has been changed to Part C.IV.D, and Part C.IV.D has been changed to Part C.IV.E.

The site was last inspected on December 10, 2019; no violations were noted. The Permittee has no open violations.

The Department mistakenly neglected to copy the U.S. Fish and Wildlife Service, NOAA Fisheries, and Pennsylvania Fish and Boat Commission on the First Draft. U.S. Fish and Wildlife Service, NOAA Fisheries, and Pennsylvania Fish and Boat Commission should have been forwarded a copy of the Draft Permit because the site has a cooling water intake structure with subject to 316(b). The oversight will be corrected by redrafting the NPDES permit.

The Department has determined that the NPDES permit will need to be re-drafted due to the changes to the limitations at IMP 101 and changes to condition in Part C of the Draft permit. Second Draft Permit Issuance is recommended.

Public Participation:

DEP will publish notice of the receipt of the NPDES permit application and a tentative decision to issue the individual NPDES permit in the *Pennsylvania Bulletin* in accordance with 25 Pa. Code § 92a.82. Upon publication in the *Pennsylvania Bulletin*, DEP will accept written comments from interested persons for a 30-day period (which may be extended for one additional 15-day period at DEP's discretion), which will be considered in making a final decision on the application. Any person may request or petition for a public hearing with respect to the application. A public hearing may be held if DEP determines that there is significant public interest in holding a hearing. If a hearing is held, notice of the hearing will be published in the *Pennsylvania Bulletin* at least 30 days prior to the hearing and in at least one newspaper of general circulation within the geographical area of the discharge.