

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Applications of Entergy Nuclear FitzPatrick, LLC for a Water Quality Certification under § 401 of the federal Clean Water Act and 6 NYCRR § 608.9 and the Renewal of a State Pollutant Discharge Elimination System Permit under Environmental Conservation Law § 17-0801, *et seq.* and 6 NYCRR Part 750 for the James A. FitzPatrick Nuclear Power Plant, Scriba, New York

**SUMMARY HEARING REPORT
& ORDER OF DISPOSITION**

**DEC Project No.
2-6403-00011/00063**

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Proceedings

The permittee, Entergy Nuclear FitzPatrick, LLC (Entergy) owns and operates a nuclear power plant located on the southern shore of Lake Ontario in the Town of Scriba. The plant is governed, *inter alia*, by a State Pollutant Discharge Elimination System (SPDES) permit that was due for renewal on August 1, 2006. Entergy submitted a timely renewal for the permit on February 1, 2006. The New York State Department of Environmental Conservation (Department or DEC) extended the permit administratively pursuant to § 401 of the New York State Administrative Procedure Act (SAPA) in order to obtain information from the facility in accordance with the Department's Environmental Benefit Permit Strategy (EBPS).

In July 2006, Entergy submitted an application to the Nuclear Regulatory Commission (NRC) to extend its license to operate the facility. Pursuant to 33 U.S.C. § 1341, the facility must provide a water quality certification (WQC) to the NRC assuring this federal agency that the facility will meet State water quality standards. On April 10, 2007, Entergy submitted an application to DEC for a WQC. Because the SPDES permit and the WQC pertain to the same environmental issues, the Department determined it appropriate to process these applications together.

Due to the Department's concerns about the impingement and entrainment of aquatic species in Lake Ontario resulting from the facility's cooling water intake structure, the Department's draft SPDES permit provided for a number of modification to minimize these impacts. In response to this draft permit, in April 2008, Entergy provided to the Department objections to these modifications and requested a hearing. Because the Department also withdrew the WQC for the facility and Entergy raised objections and requested a hearing on this action, the Department decided to proceed to a hearing on both these applications.

Chief Administrative Law Judge James T. McClymonds assigned me to this matter. On May 1, 2008, I convened a conference call with the Department staff and counsel to Entergy regarding the hearing protocols. Based upon this discussion, we set the legislative hearing date

for July 15, 2008 and July 16, 2008 and subsequent days as necessary for the issues conference.

Legislative Hearing

The announcement of the public comment period, availability of the draft permit, denial of water quality certification, and notice of hearing and issues conference was published in the May 21, 2008 *Environmental Notice Bulletin*, and in the May 22, 2008 edition of *The Palladium Times*. The hearing was held at 7:00 p.m. at the Scriba Justice Center on Creamery Road, Oswego, New York. Approximately 75 people were in attendance and 24 people provided oral comments. In addition, I received 5 written comments from State Senator Daniel J. Aubertine (48th District); Gavin J. Donohue, President & CEO, Independent Power Producers of New York, Inc.; Patrick J. Curran, Executive Director, The Energy Association of New York State; L. Michael Treadwell, CEcD, Executive Director, Operation Oswego County; and Brian Kocher.

All of the public comments, written or verbal, were in support of the expeditious approval of the SPDES permit and WQC. A number of elected officials spoke as well as representatives of trade unions, and Entergy employees. Included in the elected officials were William Barclay, Assemblyman, 124th Assembly District; Barry Leemann, Chairman of the Oswego County Legislature; Paul Santore, Oswego County Legislator (10th District); Ken Burdick, Town of Scriba Town Supervisor; Randy Batemen, Mayor of the City of Oswego; James Wellington, Chairman, Town of Scriba Planning Board; Morris Sorbello, District 23 County Legislator; Philip Church, County Administrator; and Reuel Todd, Sheriff, Oswego County. All of these speakers emphasized the economic benefits that Entergy FitzPatrick brings to the community in terms of 650 jobs as well as \$7.2 million in taxes. These representatives stressed that the plant provides low cost power in a safe and reliable manner and does not emit greenhouse gases in that process. Many also spoke to the plant's actions as a good neighbor in providing much financial support as well as personnel as volunteers towards the many charitable organizations in the area. Several speakers asked the Department to allow Entergy FitzPatrick to study the fish return system prior to mandating any expensive technology.

Norris McDonald, of the African American Environmentalist Association, spoke in support of the facility stating that its closure could lead to the increase in pollution in low-income minority communities due to the increased demand on polluting power plants.

Amber Sisson spoke on behalf of the New York Affordable Reliable Electricity Alliance stating that because 30% of New York's power comes from nuclear and hydropower it was in a superior position in terms of less reliance on fossil fuels. However, she also stated that as New York has the highest energy costs in the nation it was critical to maintain this facility.

Ronald Haney, Roofers Local 195; Dan Dougherty, President, Oswego County Labor Council; Kern Yerdon, IBEW Local 97 Business Representative; and Gary Toth, Carpenters Local 747 all spoke to the quantity and quality of the jobs that Entergy FitzPatrick provides as well as the significant benefits that it offers its employees.

Several Entergy employees including Tim Page spoke about the company's good safety record and commitment to environmental stewardship. These individuals stated that the facility "would do the right thing" but should not be expected to invest millions of dollars in technology that might not be useful.

Many other citizens including Jennifer Hill of the Oswego-Fulton Chamber of Commerce stated that the community was pleased to be the home to 3 nuclear plants and was hoping to have a fourth plant sited there.

At the outset of the hearing, Pete Dietrich, the facility's site Vice President, provided his comments in support of the facility. He also emphasized Entergy's production of energy without fossil fuels and its importance to the upstate economy in terms of jobs. Mr. Dietrich also provided information on Entergy's status as a sustainable company and the company's support of environmental organizations in their lawsuit before the United States Supreme Court to require the U.S. Environmental Protection Agency to regulate greenhouse gases. He also discussed the company's own internal efforts to stabilize its emissions. Mr. Dietrich ended his comments with assurances that the company would safeguard Lake Ontario and his hope for a prompt resolution of this matter.

Mark Sanza, counsel for DEC staff, briefly explained that the hearing provided a second opportunity for public comment on the draft permit. He stated that based upon the comments received from the prior notice in March 2008 including Entergy's objections to the SPDES permit, these proceedings were convened. He explained that because the water quality certification incorporated the SPDES requirements, it was necessary to withdraw that WQC based on the company's objections and that once issues on the SPDES permit were resolved, they both could be issued.

After the last speaker, I adjourned the legislative hearing at approximately 8:30 p.m. After the hearing concluded, Elise Zoli, Esq., counsel to Entergy, and Mr. Sanza informed me that it appeared the parties had come to a resolution regarding the issues. Accordingly, we agreed to meet in the morning to verify this status and review the documents to identify what constituted the record of this modification proceeding.

Issues Conference

The issues conference was scheduled to begin at 10:00 a.m. on July 16, 2008. Based upon the parties' ability to come to a resolution, we met at 9:00 a.m. at the Justice Center to review the documents. Attached to this summary report and order of disposition is a list of issues conference exhibits that we agreed comprise the record of this SPDES modification proceeding. Included as Exhibit 35 is the executed stipulation of settlement and the revised draft SPDES permit and water quality certification.

Because no petitions for party status were received by the Department, the only potential issues were those between staff and the permittee. Because those were resolved, the issues

conference was adjourned. On Thursday, July 17, 2008, staff delivered to my office the stipulation and revised SPDES and WQC. Among the conditions in the revised SPDES permit, it requires the permittee to replace the existing conventional traveling screens with modified Ristroph type traveling screens. This work is expected to begin in September 2008 when there will be a scheduled refueling outage. During this outage, Entergy FitzPatrick is to install an initial screen wash return system to return organisms and debris collected on the newly installed screens to Lake Ontario.

In addition, the permit requires the permittee, within 6 months of the effective date of the permit (EDP), to submit a study plan to evaluate the survival of the live fish in the forebay and those collected off the traveling screens to evaluate the reduction in the impingement mortality and guide the design process for a fish handling return system (FHRS). The permit provides for a 2 year period for this study. Within 2 years and nine months of EDP, the permittee is to submit a design and construction technology review to DEC for installing and operating a FHRS. The permit also provides for an independent reviewer of this review at the request of either DEC or the permittee. The reviewer would be selected by DEC. In the event that the Department decides that a FHRS is appropriate based upon the law, regulations and the review, the permittee will submit a plan for such installation within 6 months of the permit modification requiring installation and it will be installed no later than 4 years and 6 months of the EDP. The permit also requires that the permittee develop a monitoring plan for the FHRS.

The permit also requires Entergy FitzPatrick to perform a biological study to assess the potential for reduction of impingement and entrainment based upon the extension of the cooling water intake structure further offshore. This report will be due 4 1/2 years from the EDP.

The permit also contains a provision for supplementation of the permittee's January 2008 studies to assess technologies and/or operational measures that are potentially capable of being installed at the facility to reduce impingement and entrainment. Within two months of DEC's approval of this review, the permittee must submit a proposal for implementation of technologies that provide for a minimum of a 60 percent decrease in entrainment and 80 percent decrease in impingement.

CONCLUSION and ORDER OF DISPOSITION

On July 17, 2008, Mark Sanza, Esq., delivered to me the executed stipulation, the revised draft SPDES permit, and revised draft water quality certification. Accordingly, in compliance with the Department's Organization and Delegation Memorandum (O & D Memo) 94-13, "Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings" issued by then-Acting Commissioner Langdon Marsh on May 5, 1994, I am remanding this matter to staff for final processing and issuance of the final SPDES permit and final § 401 WQC. Upon issuance of the SPDES permit and WQC to the permittee, this matter will be concluded.

Albany, New York
July 21, 2008

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

**In the Matter of the Modification of the SPDES Permit
and Application for a WQC for Entergy Nuclear Fitzpatrick, LLC**

Issues Conference Exhibit List

1. 7/8/2008 - Letter dated 7/8/2008 from Elise N. Zoli to ALJ Helene G. Goldberger enclosing the original Affidavit of the Legal Notice published in The Palladium Times on May 22, 2008 relating to the legislative hearing and issues conference
2. 5/21/2008 - Environmental Notice Bulletin (dated 5/19/2008, published in 5/21/2008 ENB)
3. 5/19/2008 - Announcement of Public Comment Period and Public Hearing (dated 5/19/2008, published 5/22/2008)
4. 5/8/2008 - Request for Adjudicatory Hearing on Notice of Denial, Section 401 WQC from Elise N. Zoli to William R. Adriance dated 5/8/08
5. 5/1/2008 – Letter dated 5/1/2008 from ALJ Helene G. Goldberger to Elise N. Zoli and William Little summarizing the discussion held on May 1, 2008 regarding the procedures for the Legislative Hearing and Issues conference.
6. 4/28/2008 - Request for Hearing dated 4/28/08 from Elise N. Zoli to Commissioner Grannis and William R. Adriance, Chief Permit Administrator
7. 4/22/2008 - Staff Hearings Request to OHMS dated 4/22/08
8. 4/9/2008 - Notice of Denial of Section 401 WQC, JAFNPP dated April 9, 2008
9. 4/4/2008 - Comments of Lake Ontario Waterkeeper and Upper St. Lawrence Riverkeeper dated 4/4/08 from Reed W. Super to Christopher M. Hogan
10. 4/3/2008 - Comments of Entergy Nuclear FitzPatrick LLC on Draft SPDES permit dated 4/3/08
11. 3/7/2008 – County of Oswego, *The Palladium Times* Affidavit of Publication of Notice of Complete Application and associated public notice
12. 3/3/2008 - Draft SPDES permit and biological fact sheet with cover letter dated 3/3/08 from Christopher M. Hogan, Division of Environmental Permits
13. 3/3/2008 - Draft Water Quality Certification (WQC)
14. 2/21/2008 - Entergy's Response to January 17, 2008 Engineering Questions, (SPDES/WQC)
15. 2/7/2008 - Entergy's Response to January 17, 2008 Fisheries Questions, (SPDES/WQC)

16. 1/17/2008 - DEC Request for Additional Information (SPDES/WQC)
17. 1/9/2008 - Cover letter accompanying two reports from Entergy dated 1/9/08 from Elise N. Zoli to Chuck Nieder, DEC Division of Fish and Wildlife, along with (1) affidavit of Mark T. Mattson, Ph.D dated January 7, 2008, (2) affidavit of David Harrison, Jr., Ph.D dated January 4, 2008, and (3) affidavit of Sam R. Beaver dated January 3, 2008
18. 1/2008 - § 316(b) *Studies Performed During 2006 and 2007 at the James A. FitzPatrick Nuclear Power Plant* (January 2008) prepared by Normandeau Associates, Inc.
19. 1/2008 - *Response to NYSDEC Request for Information for License Renewal - James A FitzPatrick Nuclear Power Plant* (January 2008) prepared by Enercon Services Inc. with inputs from Normandeau Associates, Inc. and NERA Economic Consulting, Inc.
20. 8/16/2007 - Entergy's Response to Verbal Request for Additional Information (SPDES)
21. 4/10/2007 - Joint Permit Application, 401 WQC dated 4/10/07
22. 3/29/2007 - Cover letter dated 3/29/07 to Brian Baker, DEC from Pete Dietrich, Site Vice President - JAFNPP regarding Entergy's response to the EBPS Request for Information (RFI)
23. 10/5/2006 - Letter dated 10/5/06 from Brian Baker to Mike Rodgers, JAFNPP regarding extension of deadline to submit RFI response
24. 7/20/2006 – DEC RFI dated 7/20/06
25. 3/3/2006 - DEC Approval of Proposal for Information Collection for JAFNPP
26. 2/1/2006 - Letter dated 2/1/06 from Lynn Kaplan, DEC to Entergy Nuclear FitzPatrick Station regarding DEC's full technical review of SPDES permit and acknowledgment of JAFNPP's timely renewal application
27. 1/31/2006 - Proposal for Information Collection to Address Compliance with CWA §316(b) Phase II Regulations at JAFNPP (submitted by Entergy, prepared in consultation with Enercon Services, Inc. and Normandeau Associates, Inc.)
28. 1/24/2006 - Letter dated 1/24/06 from T.A. Sullivan, JAFNPP to DEC regarding SPDES renewal application
29. Undated letter from William Adriance to Pete Dietrich, VP - JAFNPP regarding procedures for renewal of SPDES permit

30. 3/25/2002 - Cover letter dated 3/25/02 from Joseph Dlugolenski, DEC Region 7 to Mike Rodgers Entergy Nuclear Fitzpatrick, LLC with corrected SPDES permit pages
31. 11/20/2000 - Letter dated 11/20/2000 from Joseph Dlugolenski to John Kahabka, NYPA regarding sale of the facility to Entergy FitzPatrick Nuclear Station, LLC with transfer forms
32. 7/16/1997 - Letter dated 7/16/97 from Joanne L. March, DEC Region 7 to Dennis Dunning, Ph.D., PASNY with attached SPDES permit
33. Public comments as of July 15, 2008
34. Revised SPDES Permit to reflect chlorine change
35. Stipulation with revised SPDES Permit and WQC