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Discharges of conventional pollutants by existing sources are subject to effluent limitations based on the "best conventional pollutant control technology" (BCT). 33 U.S.C. §§ 1311(b)(2)(E) and 1314(b)(4)(A); 40 C.F.R. § 125.3(a)(2)(ii). *See also* 33 U.S.C. § 1314(a)(4) and 40 C.F.R. § 401.16 (conventional pollutants include biochemical oxygen demand (BOD), total suspended solids (TSS) (nonfilterable), pH, fecal coliform, oil and grease). Merrimack Station's FGD wastewater discharge will include TSS, which is a conventional pollutant subject to the BCT standard. As explained above, EPA has not promulgated NELGs for FGD wastewater. Therefore, technology-based limits will need to be determined based on a BPJ application of the BCT standard.

BCT is the next step above BPT for conventional pollutants. As a result, effluent limitations based on BCT may not be less stringent than limitations based on BPT would be. In other words, BPT effluent limitation guidelines set the "floor" for BCT effluent limitations.

As with setting BAT limits on a BPJ basis, the regulations specify that when setting BCT limits on a BPJ basis, EPA considers the "the appropriate technology for the category or class of point sources of which applicant is a member, based upon all available information" and "any unique factors relating to the applicant." 40 C.F.R. § 125.3(c)(2)(i)-(ii). In addition, the regulations require that in setting BCT limits, EPA must consider the same factors as for BAT (discussed above), with the exception that the BCT factors do not include an open-ended factor that authorizes the Agency to consider "such other factors as EPA may deem appropriate."

Finally, in setting BCT limits, EPA also considers the following additional cost-related factors:

> (1) a comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; and
> (2) the reasonableness of the relationship between the cost of attaining a reduction in effluent and the effluent reduction benefits derived.

40 C.F.R. § 125.3(d)(2). The first part of the BCT cost test is referred to as the "POTW test" and the second part is known as the "industry cost-effectiveness test" The POTW cost-comparison test compares BCT costs to EPA's calculation of the cost of upgrading a POTW from "secondary

treatment" to "advanced treatment." The "industry cost-effectiveness test" compares BCT costs to EPA's calculation of the cost per pound to upgrade a POTW from secondary treatment to advanced treatment divided by the cost per pound to upgrade from no control to secondary treatment. *See* 51 Fed. Reg. 24974, 24976 (July 9, 1986).

The effluent reduction benefits expected due to implementation of the permit are reasonable in relation to the costs associated with the new BCT requirements. EPA's analysis of the likely costs is set forth above. With respect to benefits, EPA has made a qualitative judgment, in accordance with the policy objectives of the Act, which is to make reasonable further progress toward eliminating pollution in the Nation's waters, and to make such waters fishable and swimmable. See Natural Resources Defense Council, Inc. v. Costle, 568 F.2d 1369, 1380 (D.C. Cir. 1977). EPA's judgment is that the benefits to be expected in this permit are reasonably related to the level of costs required to implement one of (or a combination of) the three mitigation actions described above. Reducing oil and grease loadings into a severely impaired stretch of the Island End River not only benefits the resource by enhancing its ecological integrity (both ExxonMobil and others have noted the presence of oily sheens in the receiving waters of uncertain origin) but also provides value to the community, which uses the receiving water for recreational purposes. Impacted recreational areas include the Massachusetts Department of Conservation and Recreation Amy O'Malley Park, which includes boating access, and the Admiral's Hill Yacht Club.

Effluent limitations based on BCT may not be less stringent than the limitations based on "best practicable control technology currently available" (BPT). In light of the foregoing analysis of costs and benefits, EPA has determined that an effluent limitation of 5 mg/l for oil and grease would at a minimum constitute BPT. ("The relevant inquiry with respect to BPT . . .is whether the costs are 'wholly disproportionate' to the benefits." Chemical Mfrs. Ass'n v. U.S. E.P.A., 870 F.2d 177, 205 (5th Cir. 1989)). Because BPT effluent limitations guidelines are a "floor" below which BCT effluent limitations guidelines cannot be established, EPA has established the BCT limit at 5 mg/l.

In footnote 1 of the comment, ExxonMobil suggests that the Everett Terminal is not eligible for coverage under the Multi-Sector General Permit (MSGP) because an individual permit was previously developed for the facility on a case-by-case basis. This is only partially correct. While the MSGP does include coverage for some non-storm water discharges, groundwater discharges must be uncontaminated (see paragraph 1.2.2.2 of the MSGP). Therefore, even if individual effluent limits had not been developed prior to the issuance of the MSGP, an individual permit would still be required for the Everett Terminal.