



**{In Archive} Re: BAT Analysis Examples**

**palmeag** to: John King

09/16/2010 01:48 PM

From: palmeag@nu.com

To: John King/R1/USEPA/US@EPA

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Bad news, Betsy is very sick...

I know this is bad timing, but I am home in bed today with a 102.2 degree fever, chills and an awful headache, plus stomach stuff. I am pretty much incapacitated, and I will need until Monday to get you a complete draft BAT analysis.

I really enjoyed skimming the BAT analyses, although not really what we're looking at, i.e., a standard wastewater treatment system (versus SWPPP BMPs and thermal pollution). I like much of the groundwork language...

That is, EPA must set limits that represent a minimum level of treatment based on technologies that are technologically available and economically achievable, and that will result in reasonable progress toward the elimination of the discharge of such pollutants (which the Merrimack Station project obviously accomplishes by the mere installation of the FGD to remove all the pollutants that fall back into the water; in addition to the fantastic WWTS being installed).

The statute sets up a loose framework for assessing these factors in setting BAT limits. It does not require their comparison, merely their consideration. Moreover, "[i]n enacting the CWA, 'Congress did not mandate any particular structure or weight for the many consideration factors. Rather, it left EPA with discretion to decide how to account for the consideration factors, and how much weight to give each factor.'" In sum, when EPA considers the BAT factors in setting BAT limits, it is governed by a standard of reasonableness. It must consider each factor, but it has "considerable discretion in evaluating the relevant factors and determining the weight to be accorded to each in reaching its ultimate BAT determination." One court has succinctly summarized the standard for measuring EPA's consideration of the BAT factors in setting BAT limits: "[s]o long as the required technology reduces the discharge of pollutants, our inquiry will be limited to whether the Agency considered the cost of technology, along with other statutory factors, and whether its conclusion is reasonable."

When imposing BAT limits using BPJ under § 402(a)(1), a permit writer is required to apply both the statutory BAT factors and the factors specified in 40 C.F.R. § 125.3(d)(3), and to consider both the "appropriate technology for the category of point sources of which the applicant is a member, based on all available information," and "any unique factors relating to the applicant." The 40 C.F.R. § 125.3(d)(3) factors are the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process change, the cost of achieving such effluent reduction, and non-water quality environmental impact (including energy requirements).

Courts have construed the CWA as not requiring EPA to identify the specific technology or technologies a plant must install to meet BAT limits.

But then when I read EPA's "analysis," it's basically a we don't care what you say, we think you need to build it regardless of the cost. Horrible.

So why do we have to do this anyway? We presented a top-of-the-line technology to DES and found that it would essentially meet all the WQBELS. For extra assurance, we added even more technology to

address water quality concerns even further. How can EPA now pull an end run and claim that the technology is not "best" when it's been proven to meet all water quality standards? Aren't water quality-based limitations always more restrictive than technology-based limitations? I understand mandating more technology when water quality standards are being compromised, but we have proven we meet WQBELs!

From: king.john@epamail.epa.gov  
To: Allan G. Palmer/NUS@NU  
Date: 09/15/2010 03:47 PM  
Subject: BAT Analysis Examples

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RESPONSE TO COMMENTS (Logan Airport); BAT Analysis  
<http://www.epa.gov/region1/npdes/logan/pdfs/finalma0000787rtc.pdf#page=231>

Clean Water Act NPDES Permitting Determinations for Brayton Point Station's  
Thermal Discharge and Cooling Water  
Intake in Somerset, MA, July 22, 2002

Table of Contents:  
<http://www.epa.gov/region1/braytonpoint/pdfs/BRAYTONtableofcontents-chapter1.PDF>

RESPONSE TO COMMENTS (Brayton Point); Best Available Technology  
Standard-Based Thermal Discharge Limits

<http://www.epa.gov/region1/braytonpoint/pdfs/finalpermit/sectionVIII.pdf>

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- **RESPONSE TO COMMENTS (Brayton Point); Best Available Technology Standard -Based Thermal Discharge Limits**  
<http://www.epa.gov/region1/braytonpoint/pdfs/finalpermit/sectionVIII.pdf>