

{In Archive} Betsy Mason's Thoughts on BAT Analysis
John King to: Mark Stein, David Webster

Archive: This message is being viewed in an archive.

This email contains apparently Betsy Mason's view concerning the BAT analysis of Merrimack Station's FGD treatment system. This is a very interesting insight from one of PSNH's hired attorneys. There is nothing new or extraordinary in her view, but it is interesting to have their position so clearly explained.

John

----- Forwarded by John King/R1/USEPA/US on 09/17/2010 08:19 AM -----

From: palmeag@nu.com
To: John King/R1/USEPA/US@EPA
Date: 09/16/2010 01:48 PM
Subject: Re: BAT Analysis Examples

This is the only part of the email that appears to be from Allan Palmer, "Bad news, Betsy is very sick..."

The remainder appears to be written by Betsy 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

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>
***** This

e-mail, including any files or attachments transmitted with it, is confidential and/or proprietary and is intended for a specific purpose and for use only by the individual or entity to whom it is

addressed. Any disclosure, copying or distribution of this e-mail or the taking of any action based on its contents, other than for its intended purpose, is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and delete it from your system. Any views or opinions expressed in this e-mail are not necessarily those of Northeast Utilities, its subsidiaries and affiliates (NU). E-mail transmission cannot be guaranteed to be error-free or secure or free from viruses, and NU disclaims all liability for any resulting damage, errors, or omissions.
