17.30.1203 CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS IN MPDES PERMITS - VARIANCE PROCEDURES

(1) Technology-based treatment requirements under section 301(b) of the federal Clean Water Act represent the minimum level of control that must be imposed in MPDES permits. Unless a more stringent effluent limitation applies under ARM 17.30.1344, permits issued by the department must contain the applicable technology-based treatment requirements provided in (2) and (3), according to the applicable deadlines.

(2) For POTWs, effluent limitations must be based upon secondary treatment as defined in 40 CFR Part 133, from date of permit issuance.

(3) For dischargers other than POTWs except as provided in ARM 17.30.1340(5), effluent limitations must require:

(a) the best practicable control technology currently available (BPT) in accordance with the following schedules:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for effluent limitations established on a case-by-case basis based on best professional judgment (BPJ) under (5) in a permit issued after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(iii) for all other BPT effluent limitations compliance is required from the date of permit issuance.

(b) for conventional pollutants, the best conventional pollutant control technology (BCT) in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than such limitations are promulgated, and in no case later than March 31, 1989;

(ii) for effluent limitations established on a case-by-case basis based on BPJ under (5) in a permit issued after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(c) for all toxic pollutants identified in 40 CFR 401.15, the best available technology economically achievable (BAT) in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for permits issued on a case-by-case basis based on BPJ under (5) after February 4, 1987, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(d) for all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT in accordance with the following schedule:

(i) for effluent limitations promulgated under section 304(b) of the federal Clean Water Act, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989;

(ii) for permits issued on a case-by-case basis based on BPJ under (5) after February 4, 1987, establishing BAT effluent imitations, compliance is required as expeditiously as practicable, but in no case later than March 31, 1989.

(4) The following variances from technology-based treatment requirements may be applied for and incorporated into MPDES permits:

(a) for dischargers other than POTWs, a variance from effluent limitations promulgated under sections 301 and 304 of the federal Clean Water Act based on fundamentally different factors in accordance with 40 CFR Part 125, Subpart D;

(b) for dischargers other than POTWs, a water quality related variance from BAT for certain nonconventional pollutants under section 301(g) of the federal Clean Water Act; and

(c) a thermal variance from BPT, BCT, and BAT under section 316(a) of the federal Clean Water Act in accordance with ARM 17.30.1210.

(5) Technology-based treatment requirements may be imposed through one of the following methods provided in (a) through (c):

(a) application of EPA-promulgated effluent limitations guidelines for dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations must be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations pursuant to 40 CFR, Part 125, Subpart D;

(b) on a case-by-case basis using BPJ to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in (6) and shall consider:

(i) the appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) any unique factors relating to the applicant.

(c) through a combination of the methods described in (a) and (b). Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to

certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the federal Clean Water Act;

(d) limitations developed under (6)(b) may be expressed, where appropriate, in terms of toxicity (e.g., "the LC50 for fat head minnow of the effluent from outfall 001 shall be greater than 25%''), provided that the limits reflect the appropriate requirements (for example, technology-based or water quality-based standards) of the federal Clean Water Act.

(6) In setting case-by-case limitations pursuant to (5), the permit writer shall consider the following factors:

(a) for BPT requirements:

(i) the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

(ii) the age of equipment and facilities involved;

(iii) the process employed;

(iv) the engineering aspects of the application of various types of control techniques;

(v) process changes; and

(vi) non-water quality environmental impact (including energy requirements).

(b) for BCT requirements:

(i) the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

(ii) the 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;

(iii) the age of equipment and facilities involved;

(iv) the process employed;

(v) the engineering aspects of the application of various types of control techniques;

(vi) process changes; and

(vii) non-water quality environmental impact (including energy requirements).

(c) for BAT requirements:

(i) the age of equipment and facilities involved;

(ii) the process employed;

(iii) the engineering aspects of the application of various types of control techniques;

(iv) process changes;

(v) the cost of achieving such effluent reduction; and

(vi) non-water quality environmental impact (including energy requirements).

(7) Technology-based treatment requirements are applied prior to or at the point of discharge.

(8) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment'' techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) the technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) the discharger agrees to waive any opportunity to request a variance under section 301(c), (g), or (h) of the federal Clean Water Act; and

(c) the discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(9) Technology-based effluent limitations must be established under this rule for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(10) The department may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology BCT, or a limit for a nonconventional pollutant which must not be subject to modification under section 301(c) or (g) of the federal Clean Water Act where:

(a) effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

(b) the limitation reflects BAT-level control of discharges of one or more toxic pollutants that are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(c) the permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(d) the fact sheet required by ARM 17.30.1371 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in (c), and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(11) The department may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

(a) effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or

(b) the limitation reflects BAT-level control of discharges, or an appropriate level determined under section 301(c) or (g) of the federal Clean Water Act, of one or more hazardous substance(s) that are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(c) the permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(d) the fact sheet required by ARM 17.30.1371 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate

level) control of the hazardous substances discharges identified in (c), and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(e) Hazardous substances that are also toxic pollutants are subject to (10).

(12) The department may not set a more stringent limit under the preceding sections if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(13) Toxic pollutants identified under (10) remain subject to the requirements of ARM 17.30.1343(1)(a) (notification of increased discharges of toxic pollutants above levels reported in the application form).

(14) The department adopts and incorporates by reference the following federal regulations as part of the MPDES:

(a) 40 CFR Part 133 (July 1, 2010), which sets forth the level of effluent quality attainable through the application of secondary treatment or equivalent treatment for POTWs;

(b) 40 CFR Part 125, Subpart D (July 1, 2010), which sets forth criteria and standards for determining fundamentally different factors under section 301 of the federal Clean Water Act;

(c) 40 CFR 401.15 (July 1, 2010), which is a list of toxic pollutants identified by EPA under section 307(a)(1) of the federal Clean Water Act.

(d) Copies of these federal regulations may be obtained from the Department of Environmental Quality, Water Protection Bureau, P.O. Box 200901, Helena, MT 59620.

Authorizing statute(s): 75-5-304, MCA

Implementing statute(s): 75-5-304, 75-5-401, MCA

History: NEW, 1989 MAR p. 2060, Eff. 12/8/89; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2011 MAR p. 2131, Eff. 10/14/11; AMD, 2020 MAR p. 1879, Eff. 10/24/20; AMD, 2024 MAR p. 257, Eff. 2/10/24.