

WATER QUALITY PERMITS

Policies & Procedures

Policy No.: WQP-8

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Approved By: *Paul Ferraro*

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ECONOMIC REASONABLENESS

Purpose: To provide guidance to Division personnel on implementation of Section 25-8-503(8).

Policy/
Procedures: Pursuant to 25-8-503(8) "Where a permit requires treatment to levels necessary to protect water quality standards and beyond levels required by technology based effluent limitation requirements, the Division must determine whether or not any or all of the water quality standard based effluent limitations are reasonably related to the economic, environmental, public health and energy impact to the public and affected persons.... The Division's determination shall be based upon information available to it including information provided during the public comment period on the draft permit or in response to specific requests for information. Such determination shall be included as part of the written record of the issuance of the final permit...."

Implementation of this part is addressed in Section 6.12.0(1) of the permit regulations and states in pertinent part. "Where economic.... to the public and affected persons have been considered in the classifications and standards process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

- (a) A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or
- (b) In the case of a continuing discharge, additional information or factors have merged that were not anticipated or considered at the time of the classification and standards rulemaking."

It also states the division will consider available information, data provided during public notice, and data provided at the division's request.

Implementation into permits will be as follows:

- (1) The evaluation will be required for all WQS based limitations, except pH and TRC.
- (2) It will be necessary to review available information including fiscal statements for the respective stream standards.
- (3) If, after evaluation, Section 6.12.0(1) applies, a statement similar to the following will be appropriate in the rationale for public notice:

Economic Reasonableness Evaluation

"Section 25-8-503(8) of the revised (June 1985) Colorado Water Quality Control Act requires the Division to "determine whether or not any or all of the water quality standard based effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104".

The Regulations for the State Discharge Permit System, 6.1.0 (amended 4/14/86, effective 5/30/86) further define this requirement under 6.12.0 and state; "Where economic, environmental, public health, and energy impact to the public and affected persons have been considered in the classifications and standards setting process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

- (a) A NEW PERMIT IS ISSUED WHERE THE DISCHARGE WAS NOT IN EXISTENCE AT THE TIME OF THE CLASSIFICATION AND STANDARDS RULEMAKING, OR
- (b) IN THE CASE OF A CONTINUING DISCHARGE, ADDITIONAL INFORMATION OR FACTORS HAVE EMERGED THAT WERE NOT ANTICIPATED OR CONSIDERED AT THE TIME OF THE CLASSIFICATION AND STANDARDS RULEMAKING."

The evaluation for this permit shows that this discharge was in existence at the time of water quality standards rulemaking and that no additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking. As such, it is presumed that the resulting effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons. If the permittee disagrees with this finding, pursuant to 6.12.0(2)(b) the permittee should submit all pertinent information to the Division during the 45 day public notice period.

- (4) If 6.12.0(1)(a) applies, the facility is a new discharge and an evaluation of available data and facility circumstances support the economic reasonableness of the limitations, it will be appropriate to modify the last paragraph as follows:

"The evaluation for this permit shows that this is a new facility not in existence at the time of water quality standards rulemaking. However, based on available data, the resulting water quality standard based effluent limitations are determined to be reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons. If the permittee disagrees with this finding, pursuant to 6.12.0(2)(b) the permittee should submit all pertinent information to the Division during the 45 day public notice period."

- (5) In some cases, the WQCC has specifically heard issues, such as metals on Ralston Creek associated with Cotter Schwartzwalder. The WQS fiscal statements in such cases may present site specific determinations. In these instances it will be appropriate to specifically tailor the last paragraph.
- (6) If 6.12.0(1)(b) applies, new factors or data are available, and it will be necessary to conduct the evaluation and make a determination based on the facts.

- (7) If an economic issue is raised by the permittee or other interested party, it will be appropriate to request additional information per 6.12.0(2)(c). Timeframes for submittal of the data are 45 days or an agreed upon date.
- (8) In any case where available information does not support the applicability of the limitation for economic, environmental, public health or energy impact reasons, such position and justification of such position shall be presented in the rationale. However, the permit limitation remains unchanged.

Implementation of this process is to be immediate but not retroactive unless there is a permit about to be issued where economics have been raised.