

Environmental Protection Agency

§ 20.8

§ 20.7 General policies.

(a) The general policies of the United States for cooperation with the States in the prevention and abatement of water pollution are: To enhance the quality and value of our water resources; to eliminate or reduce the pollution of the nation's waters and tributaries thereof; to improve the sanitary condition of surface and underground waters; and to conserve such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.

(b) The general policy of the United States for cooperation with the States in the prevention and abatement of air pollution is to cooperate with and to assist the States and local governments in protecting and enhancing the quality of the Nation's air resources by the prevention and abatement of conditions which cause or contribute to air pollution which endangers the public health or welfare.

§ 20.8 Requirements for certification.

(a) Subject to § 20.9, the Regional Administrator will certify a facility if he makes the following determinations:

(1) It has been certified by the State certifying authority.

(2) That the facility:

(i) Removes, alters, disposes of, stores, or prevents the creation of pollutants, contaminants, wastes, or heat, which, but for the facility, would be released into the environment;

(ii) Does not by a factor or more than 5 percent: (A) Increase the output or capacity, (B) extend the useful life, or (C) reduce the total operating costs of the operating unit (of the plant or other property) most directly associated with the pollution control facility; and

(iii) Does not significantly alter the nature of the manufacturing or production process or facility.

(3) The applicant is in compliance with all regulations of Federal agencies applicable to use of the facility, including conditions specified in any NPDES permit issued to the applicant under section 402 of the Act.

(4) The facility furthers the general policies of the United States and the

States in the prevention and abatement of pollution.

(5) The applicant has complied with all the other requirements of this part and has submitted all requested information.

(b) In determining whether use of a facility furthers the general policies of the United States and the States in the prevention and abatement of water pollution, the Regional Administrator shall consider whether such facility is consistent with the following, insofar as they are applicable to the waters which will be affected by the facility:

(1) All applicable water quality standards, including water quality criteria and plans of implementation and enforcement established pursuant to section 303 of the Act or State laws or regulations;

(2) Decisions issued pursuant to section 310 of the Act;

(3) Water pollution control programs required pursuant to any one or more of the following sections of the Act: Section 306, section 307, section 311, section 318, or section 405; or in order to be consistent with a plan under section 208.

(c) In determining whether use of a facility furthers the general policies of the United States and the States in the prevention and abatement of air pollution, the Regional Administrator shall consider whether such facility is consistent with and meets the following requirements, insofar as they are applicable to the air which will be affected by the facility:

(1) Plans for the implementation, maintenance, and enforcement of ambient air quality standards adopted or promulgated pursuant to section 110 of the Act;

(2) Recommendations issued pursuant to sections 103(e) and 115 of the Act which are applicable to facilities of the same type and located in the area to which the recommendations are directed;

(3) Local government requirements for control of air pollution, including emission standards;

(4) Standards promulgated by the Administrator pursuant to the Act.

(d) A facility that removes elements or compounds from fuels that would be released as pollutants when such fuels

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are burned is eligible for certification if the facility is—

(1) Used in connection with a plant or other property in operation before January 1, 1976 (whether located and used at a particular plant or as a centralized facility for one or more plants), and

(2) Is otherwise eligible for certification.

(e) Where a facility is used in connection with more than one plant or other property, one or more of which were not in operation before January 1, 1976, or where a facility will perform a function other than the removal, alteration, storage, disposal, or prevention of pollutants, contaminants, wastes, or heat, the Regional Administrator will so indicate on the notice of certification and will approve or disapprove the applicant's suggested method of allocating costs. If the Regional Administrator disapproves the applicant's suggested method, he shall identify the proportion of costs allocable to each such plant, or to the removal, alteration, storage, disposal, or prevention of pollutants, contaminants, wastes, or heat.

[36 FR 22382, Nov. 25, 1971, as amended at 43 FR 1341, Jan. 9, 1978]

§ 20.9 Cost recovery.

Where it appears that, by reason of estimated profits to be derived through the recovery of wastes, through separate charges for use of the facility in question, or otherwise in the operation of such facility, all or a portion of its costs may be recovered over the period referred to in paragraph (a)(6) of 26 CFR 1.169-2, the Regional Administrator shall so signify in the notice of certification. Determinations as to the meaning of the term *estimated profits* and as to the percentage of the cost of a certified facility which will be recovered over such period shall be made by the Secretary of the Treasury, or his delegate: *Provided*, That in no event shall estimated profits be deemed to arise from the use or reuse by the applicant of recovered waste.

§ 20.10 Revocation.

Certification hereunder may be revoked by the Regional Administrator on 30 days written notice to the applicant, served by certified mail, when-

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ever the Regional Administrator shall determine that the facility in question is no longer being operated consistent with the § 20.8 (b) and (c) criteria in effect at the time the facility was placed in service. Within such 30-day period, the applicant may submit to the Regional Administrator such evidence, data or other written materials as the applicant may deem appropriate to show why the certification hereunder should not be revoked. Notification of a revocation under this section shall be given to the Secretary of the Treasury or his delegate. See 26 CFR 1.169-4(b)(1).

APPENDIX A TO PART 20—GUIDELINES FOR CERTIFICATION

1. General.
2. Air Pollution Control Facilities.
 - a. Pollution control or treatment facilities normally eligible for certification.
 - b. Air pollution control facility boundaries.
 - c. Examples of eligibility limits.
 - d. Replacement of manufacturing process by another nonpolluting process.
3. Water Pollution Control Facilities.
 - a. Pollution control or treatment facilities normally eligible for certification.
 - b. Examples of eligibility limits.
4. Multiple-purpose facilities.
5. Facilities serving both old and new plants.
6. State certification.
7. Dispersal of pollutants.
8. Profit-making facilities.
9. Multiple applications.

1. *General.* Section 2112 of the Tax Reform Act of 1976 (Pub. L. 94-455, October 4, 1976) amended section 169 of the Internal Revenue Code of 1954, "Amortization of Pollution Control Facilities." The amendment made permanent the rapid amortization provisions of section 704 of the Tax Reform Act of 1969 (Pub. L. 91-172, December 30, 1969) and redefined eligibility limits to allow certification of facilities which prevent the creation or emission of pollutants.

The law defines a *certified pollution control facility* as a *new identifiable treatment facility* which is:

(a) Used in connection with a plant or other property in operation before January 1, 1976, to abate or control air or water pollution by removing, altering, disposing of, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat;

(b) Constructed, reconstructed, erected or (if purchased) first placed in service by the taxpayer after December 31, 1975;

(c) Not to *significantly* increase the output or capacity, extend the useful life, alter the nature of the manufacturing or production