ENVIRONMENTAL PROTECTION AGENCY

[18 CFR Part 602]

CERTIFICATION OF FACILITIES

Notice of Proposed Rule Making

On June 10, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 8942) which set forth the text of regulations proposed to revise Part 602, relating to certification by the Secretary of the Interior of water pollution control facilities, to implement section 704 of the Tax Reform Act of 1969, Public Law 91-172.

On December 2, 1970, the functions of the Secretary of the Interior with regard to certification of water pollution control facilities, and the functions of the Secretary of Health, Education, and Welfare with regard to certification of air pollution control facilities, were transferred pursuant to Reorganization Plan No. 3 of 1970 to the Administrator, Environmental Protection Agency.

To insure consistency and uniformity, regulations pertaining to certification of air and water pollution control facilities have been combined. Interested persons are invited to submit, in quadruplicate, written data or arguments in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Washington, D.C. 20460. All relevant material received no later than 45 days after publication of this notice will be considered.

Part 602 would be revised to read as follows:

PART 602—CERTIFICATION OF FACILITIES

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AUTHORITY: The provisions of this Part 602 issued pursuant to sec. 301, 80 Stat. 378, 5 U.S.C. 301, and sec. 704 of the Tax Reform Act of 1969, 83 Stat. 667.

§ 602.1 Applicability.

The regulations of this part apply to certifications by the Administrator of water or air pollution control facilities for tax deduction purposes pursuant to section 169 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 169.

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§ 602.2 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.) for water pollution control facilities, or the Clean Air Act, as amended (42 U.S.C 1857), for air pollution control facilities.

(b) "State certifying authority" means:

(1) For water pollution control facilities, the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for enforcing State laws relating to the abatement of water pollution, it means such other State agency; or

(2) For air pollution control facilities, the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for enforcing State laws relating to the abatement of air pollution, it means such other State agency.

(c) "Applicant" means any person who files an application with the Administrator for certification that a facility is in compliance with the applicable regulations of Federal agencies and in furtherance of the general policies of the United States for cooperation with the States in the prevention and abatement of water or air pollution under the Act.

(d) "Administrator" means the Administrator, Environmental Protection Agency.

(e) "Facility" means property comprising any new identifiable treatment facility which removes, alters, disposes of or stores pollutants, contaminants, wastes, or heat.

(f) "State" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

§ 602.3 General provisions.

(a) An applicant shall file an application in accordance with this part for each separate facility for which certification is sought.

(b) Applications shall be submitted by the taxpayer to the Administrator through the State certifying authority.

(c) A copy of each application submitted to a State certifying authority shall be forwarded by the applicant to the Administrator, Environmental Protection Agency, Washington, D.C. 20460, at the time such application is submitted to the State certifying authority.

(d) Applications may be filed prior or subsequent to the commencement of construction, acquisition, installation, or operation of the facility.

(e) An amendment to an application shall be submitted in the same manner as the original application and shall be considered a part of the original application.

(f) The application or amended application for certification of any facility must be accompanied by a certification from the State certifying authority.

(g) If the facility is certified by the Administrator, notice of certification will be issued to the Secretary of the Treasury and a copy of the notice shall be forwarded to the applicant and to the State certifying authority. If the facility is denied certification, the Administrator will advise the applicant and State certifying authority in writing of the reasons therefor.

(h) No certification will be made by the Administrator for any facility prior to the time it is placed in operation and the application, or amended application, in connection with such facility so states.

§ 602.4 Notice of intent to certify.

(a) On the basis of applications submitted prior to the construction, reconstruction, erection, acquisition, operation of a facility, the Administrator may notify applicants that such facility will be certified if:

(1) The Administrator determines that such facility, if constructed, acquired, installed, and operated in accordance with such application will be in compliance with requirements identified in section 602.8 of this part, and in furtherance of the general policies identified in section 602.7 of this part; and if

(2) The application is accompanied by a statement from the State certifying authority that such facility, if constructed, acquired, installed and operated in accordance with such application, will be in conformity with the State program or requirements for abatement or control of water or air pollution.

(b) Notice of actions taken under this section will be given to the appropriate State certifying authority.

§ 602.5 Applications.

Applications for certification under this part shall be submitted in such manner as the Administrator may prescribe, shall be signed by the applicant or agent thereof, and shall include the following information:

(a) Name, address, and Internal Revenue identifying number of the applicant;

(b) Type and narrative description of the new identifiable facility for which certification is (or will be) sought, including a copy of schematic or engineering drawings, and a description of the function and operation of such facility;

(c) Address (or proposed address) of facility location;

(d) A general description of the operation in connection with which such facility is (or will be) used and a description of the specific process or processes resulting in discharges or emissions which are (or will be) controlled by the facility;

(e) Description of the effect of such facility in terms of type and quantity of pollutants, contaminants, wastes or heat, removed, altered, stored, or disposed of by such facility;

(f) Date when such construction, reconstruction, or erection will be completed or when such facility was (or will be) acquired;

(g) Date when such facility is placed (or is intended to be placed) in operation;

(h) Identification of the applicable State and local water or air pollution control requirements and standards, if any;

(i) Expected useful life of facility;

(j) Cost of construction, acquisition, installation, operation, and maintenance of the facility;

(k) Estimated profits reasonably expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life; and

(l) Such other information as the Administrator deems necessary for certification.

§ 602.6 State certification.

The certification of the State certifying authority in accordance with 26 U.S.C. 169(d)(1)(A) that the facility described in such application has been consructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or air pollution shall be executed by an agent or officer authorized to act on behalf of the State certifying authority and accompanied by evidence of such authority.

§ 602.7 General policies.

(a) The general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Act are: To enhance the quality and value of our water resources; to eliminate or reduce the pollution of interstate waters and tributaries thereof; to improve the sanitary condition of surface and underground waters; 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; and to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution.

(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 health or welfare of any persons.

§ 602.8 Requirements for certification.

(a) Except as provided in § 602.9, the Administrator will certify a facility if he determines that:

(1) The facility was constructed, reconstructed, erected or acquired to control the release of pollutants which, but for the facility, would be released into the environment.

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(2) The facility is not necessary to the manufacturing process from which discharges or emissions are being controlled and is identifiable apart from the equipment used in such process.

(3) The facility is in compliance with the applicable regulations of Federal agencies.

(4) Such facility furthers the general policies of the United States for cooperation with the States in the prevention and abatement of pollution under the Act; and

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

(b) In determining whether a facility complies with applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution, the Administrator shall consider whether such facility is consistent with and meets the requirements of the following factors, insofar as they are applicable to the waters which will be affected by the facility:

(1) Water quality standards, including water quality criteria and plans of implementation and enforcement established pursuant to section 10(c) of the Act.

(2) Recommendations issued pursuant to section 10 (e) and (f) of the Act;

(3) State water pollution control programs established pursuant to section 7 of the Act and regulations issued thereunder;

(4) Comprehensive water pollution control programs established pursuant to section 3 of the Act;

(5) State, interstate and local standards and requirements for the prevention, control and abatement of water pollution.

(c) In determining whether a facility complies with applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of air pollution, the Administrator shall consider whether such facility is consistent with and meets the requirements of the following factors, 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 pursuant to section 108(c) of the Act.

(2) Recommendations issued pursuant to sections 103(e) and 108 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.

(d) The Administrator will not certify any facility which does not meet the requirements of paragraph (a) of this section, even though it may be demonstrated by "incremental cost" or other accounting methods that certain expenses associated with such facility are required to meet water or air quality standards.

(e) The Administrator may certify a facility which removes elements or compounds from fuels which would be released as pollutants when such fuels are burned only if such facility is operated in connection with the process in which such fuels are burned, and otherwise meets the requirements of this part.

§ 602.9 Cost recovery.

Notwithstanding any other provisions of this part, the Administrator will not certify any facility to the extent it appears that, by reason of estimated profits to be derived through the recovery of wastes or otherwise in the operation of such facility, its costs will be recovered over its actual useful life.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

DECEMBER 21, 1970.

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