

section 302(c) of the Clean Air Act, as amended (42 U.S.C. 1857h(c)).

(3) *Federal certifying authority.* The term "Federal certifying authority" means the Administrator of the Environmental Protection Agency (see Reorganization Plan No. 3 of 1970, 35 FR 15623).

(d) *Profitmaking abatement works, etc.—*(1) *In general.* Section 169(e) provides that the Federal certifying authority shall not certify any property 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 property its costs will be recovered over the period referred to in paragraph (a) (6) of this section for such property. The Federal certifying authority need not certify the amount of estimated profits to be derived from such recovery of wastes or otherwise with respect to such facility. Such estimated profits shall be determined pursuant to subparagraph (2) of this paragraph. However, the Federal certifying authority shall certify—

(i) Whether, in connection with any treatment facility so certified, there is potential cost recovery through the recovery of wastes or otherwise, and

(ii) A specific description of the wastes which will be recovered, or the nature of such cost recovery if otherwise than through the recovery of wastes.

For effect on computation of amortizable basis, see paragraph (c) of §1.169-3.

(2) *Estimated profits.* For purpose of this paragraph, the term "estimated profits" means the estimated gross receipts from the sale of recovered wastes reduced by the sum of the (i) estimated average annual maintenance and operating expenses, including utilities and labor, allocable to that portion of the facility which is certified as a treatment facility pursuant to paragraph (a)(1)(i) of this section which produces the recovered waste from which the gross receipts are derived, and (ii) estimated selling expenses. However, in determining expenses to be subtracted neither depreciation nor amortization of the facility is to be taken into account. Estimated profits shall not include any estimated savings to the taxpayer by reason of the taxpayer's reuse

or recycling of wastes or other items recovered in connection with the operation of the plant or other property served by the treatment facility.

(3) *Special rules.* The estimates of cost recovery required by subparagraph (2) of this paragraph shall be based on the period referred to in paragraph (a)(6) of this section. Such estimates shall be made at the time the election provided for by section 169 is made and shall also be set out in the application for certification made to the Federal certifying authority. There shall be no redetermination of estimated profits due to unanticipated fluctuations in the market price for wastes or other items, to an unanticipated increase or decrease in the costs of extracting them from the gas or liquid released, or to other unanticipated factors or events occurring after certification.

[T.D. 7116, 36 FR 9013, May 18, 1971; 36 FR 9770, May 28, 1971]

### § 1.169-3 Amortizable basis.

(a) *In general.* The amortizable basis of a certified pollution control facility for the purpose of computing the amortization deduction under section 169 is the adjusted basis of such facility for purposes of determining gain (see Part II (section 1011 and following) Subchapter O, Chapter 1 of the Code), as modified by paragraphs (b), (c), and (d) of this section. For the adjusted basis for purposes of determining gain (computed without regard to such modifications) of a facility which performs a function in addition to pollution control, or which is used in connection with more than one plant or other property, or both, see paragraph (a)(3) of §1.169-2. For rules as to additions and improvements to such a facility, see paragraph (f) of this section.

(b) *Limitation to post-1968 construction, reconstruction, or erection.* (1) If the construction, reconstruction, or erection was begun before January 1, 1969, there shall be included in the amortizable basis only so much of the adjusted basis of such facility for purposes of determining gain (referred to in paragraph (a) of this section) as is properly attributable under the rules set forth in paragraph (b)(2)(iii) of §1.169-2 to

construction, reconstruction, or erection after December 31, 1968. See section 169 (d)(4). For example, assume a certified pollution control facility for which the shortest period authorized under section 167 is 10 years has a cost of \$500,000, of which \$450,000 is attributable to construction after December 31, 1968. Further, assume such facility does not perform a function in addition to pollution control and is used only in connection with a plant in operation before January 1, 1969. The facility would have an amortizable basis of \$450,000 (computed without regard to paragraphs (c) and (d) of this section). For depreciation of the remaining portion (\$50,000) of the cost, see section 169(g) and paragraph (a)(3)(ii) of § 1.169-1. For the definition of the term "certified pollution control facility" see paragraph (a) of § 1.169-2.

(2) If the taxpayer elects to begin the 60-month amortization period with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under section 179) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under subparagraph (1) of this paragraph shall be reduced by an amount equal to (i) the amount of such allowable depreciation multiplied by (ii) a fraction the numerator of which is the amount determined under subparagraph (1) of this paragraph, and the denominator of which is its total cost. The additional first-year allowance for depreciation under section 179 will be allowable only for the year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. See paragraph (e)(1)(ii) of § 1.179-1.

(c) *Modification for profitmaking abatement works, etc.* If it appears that by reason of estimated profits to be derived through the recovery of wastes or otherwise (as determined by applying the rules prescribed in paragraph (d) of § 1.169-2) a portion or all of the total

costs of the certified pollution control facility will be recovered over the period referred to in paragraph (a)(b) of § 1.169-2, its amortizable basis (computed without regard to this paragraph and paragraph (d) of this section) shall be reduced by an amount equal to (1) its amortizable basis (so computed) multiplied by (2) a fraction the numerator of which is such estimated profits and the denominator of which is its adjusted basis for purposes of determining gain. See section 169(e).

(d) *Cases in which the period referred to in paragraph (a)(6) of § 1.169-2 exceeds 15 years.* If as to a certified pollution control facility the period referred to in paragraph (a)(6) of § 1.169-2 exceeds 15 years (determined as of the first day of the first month for which a deduction is allowable under the election made under the section 169(b) and paragraph (a) of § 1.169-4), the amortizable basis of such facility shall be an amount equal to (1) its amortizable basis (computed without regard to this paragraph) multiplied by (2) a fraction the numerator of which is 15 years and the denominator of which is the number of years of such period. See section 169(f) (2)(A).

(e) *Examples.* This section may be illustrated by the following example:

*Example (1).* The X Corporation, which uses the calendar year as its taxable year, began the installation of a facility on November 1, 1968, and completed the installation on June 30, 1970, at a cost of \$400,000. All of the facility qualifies as a certified pollution control facility within the meaning of paragraph (a) of § 1.169-2. \$40,000 of such cost is attributable to construction prior to January 1, 1969. The X Corporation elects to take amortization deductions under section 169(a) with respect to the facility and to begin the 60-month amortization period with January 1, 1971. The corporation takes a depreciation deduction under sections 167 and 179 of \$10,000 (the amount allowable, of which \$2,000 is for additional first year depreciation under section 179) for the last 6 months of 1970. It is estimated that over the period referred to in paragraph (a) (6) of § 1.169-2 (20 years) as to such facility, \$80,000 in profits will be realized from the sale of wastes recovered in its operation. The amortizable basis of the facility for purposes of computing the amortization deduction as of January 1, 1971, is \$210,600, computed as follows:

(1) Portion of \$400,000 cost attributable to post-1968 construction, reconstruction, or erection ... \$360,000

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(2) Reduction for portion of depreciation deduction taken for the taxable year in which the facility was completed:		
(a) \$10,000 depreciation deduction taken for last 6 months of 1970 including \$2,000 for additional first year depreciation under section 179 .....	\$10,000	
(b) Multiplied by the amount in line (1) and divided by the total cost of the facility (\$360,000/ \$400,000) .....	0.9	\$9,000
(3) Subtotal .....		\$351,000
(4) Modification for profitmaking abatement works: Multiply line (3) by estimated profits through waste recovery (\$80,000) and divide by the adjusted basis for determining gain of the facility (\$400,000).		
(5) Reduction .....		\$70,200
(6) Subtotal .....		\$280,800
(7) Modification for period referred to in paragraph (a)(6) of § 1.169-2 exceeding 15 years: Multiply by 15 years and divide by such period (determined in accordance with paragraph (d) of this section) (20 years) .....		0.75
(8) Amortizable basis .....		\$210,600

*Example (2).* Assume the same facts as in example (1) except that the facility is used in connection with a number of separate plants some of which were in operation before January 1, 1969, that the Federal certifying authority certifies that 80 percent of the capacity of the facility is allocable to the plants which were in operation before such date, and that all of the waste recovery is allocable to the portion of the facility used in connection with the plants in operation before January 1, 1969. The amortizable basis of such facility, for purposes of computing the amortization deduction as of January 1, 1971, is \$157,950 computed as follows:

(1) Adjusted basis for purposes of determining gain: Multiply percent certified as allocable to plants in operation before January 1, 1969 (80 percent) by cost of entire facility (\$400,000) .....		\$320,000
(2) Portion of adjusted basis for determining gain attributable to post-1968 construction, reconstruction, or rection: Multiply line (1) by portion of total cost of facility attributable to post-1968 construction, reconstruction, or erection (\$360,000) and divide by the total cost of the facility (\$400,000) .....		\$288,000
(3) Reduction for portion of depreciation deduction taken for the taxable year in which the facility was completed:		
(a) \$10,000 depreciation deduction taken for last 6 months of 1970 including \$2,000 for additional first year depreciation under section 170 .....	\$10,000	
(b) Multiplied by the amount in line (2) and divided by the total cost of the facility (\$288,000/\$400,000) .....	0.72	\$7,200
(4) Subtotal .....		\$280,800

(5) Modification for profitmaking abatement works; Multiply line (4) by estimated profits through waste recovery (\$80,000) and divide by the amount in line (1) (\$320,000).		
(6) Reduction .....		\$70,200
(7) Subtotal .....		\$210,600
(8) Modification for period referred to in paragraph (a)(6) of § 1.169-2 exceeding 15 years: Multiply by 15 years and divide by such period (determined in accordance with paragraph (d) of this section) (20 years) .....		0.75
(9) Amortizable basis .....		\$157,950

(f) *Additions or improvements.* (1) If after the completion or acquisition of a certified pollution control facility further expenditures are made for additional construction, reconstruction, or improvements, the cost of such additions or improvements made prior to the beginning of the amortization period shall increase the amortizable basis of such facility, but the cost of additions or improvements made after the amortization period has begun, shall not increase the amortizable basis. See section 169(f)(2)(B).

(2) If expenditures for such additional construction, reconstruction, or improvements result in a facility which is new and is separately certified as a certified pollution control facility as defined in section 169(d)(1) and paragraph (a) of § 1.169-2, and, if proper election is made, such expenditures shall be taken into account in computing under paragraph (a) of this section the amortizable basis of such new and separately certified pollution control facility.

[T.D. 7116, 36 FR 9015, May 18, 1971; 36 FR 9770, May 28, 1971]

**§ 1.169-4 Time and manner of making elections.**

(a) *Election of amortization—*(1) *In general.* Under section 169(b), an election by the taxpayer to take an amortization deduction with respect to a certified pollution control facility and to begin the 60-month amortization period (either with the month following the month in which the facility is completed or acquired, or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired) shall be made by a statement to that effect attached to its return for the taxable year in which falls the first month of the 60-month amortization period so elected.