

§ 35.2034

40 CFR Ch. I (7-1-07 Edition)

(1) Privately-owned individual systems (§35.2034) are not eligible for this preference.

(2) If the present worth costs of the innovative or alternative unit processes are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the innovative or alternative components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is a part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is a part; or requires significant additional capital expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in §§ 35.2100 through 35.2127 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2035 Rotating biological contractor (RBC) replacement grants.

The Regional Administrator may award a grant for 100 percent of the cost, including planning and design costs, of modification or replacement of RBCs which have failed to meet design performance specifications, provided:

(a) The applicant for a modification/replacement grant demonstrates to the Regional Administrator's satisfaction, by a preponderance of the evidence, that the RBC failure is not due to the negligence of any person, including the treatment works owner, the applicant, its engineers, contractors, equipment manufacturers or suppliers;

(b) The RBC failure has significantly increased the project's capital or operation and maintenance costs;

(c) The modification/replacement project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR parts 31, 32 and 35;

(d) The modification/replacement project is included within the fundable range of the State's annual project priority list; and

(e) The State certifies the project for funding from its regular (i.e. non-reserve) allotments and from funds appropriated or otherwise available after February 4, 1987.

[55 FR 27095, June 29, 1990]

§ 35.2036 Design/build project grants.

(a) *Terms and conditions.* The Regional Administrator may award a design/build (Step 7) project grant provided that:

(1) The proposed treatment works has an estimated total cost of \$8 million or less;

(2) The proposed treatment works is an aerated lagoon, trickling filter,