



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 18 1973

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

Howard K. Shapar, Esquire
Assistant General Counsel
Licensing and Regulation
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: Effect of Water Quality
Certifications under Section 21(b)
of Federal Water Pollution Control Act
Prior to 1972 Amendments

Dear Howard:

I have your letter of June 7, 1973, inquiring as to my opinion on the question of the continuing effect of water quality certifications under section 21(b) of the Federal Water Pollution Control Act prior to the 1972 Amendments.

In my opinion, section 4 of P.L. 92-500 operates to continue section 21(b) certifications in full force and effect for purposes of federal permit issuance. Thus a certification under section 21(b) that was obtained prior to October 18, 1972, is sufficient to support issuance of a federal permit after that date (provided, of course, that the certification was legally valid when issued).

As you know, section 4 provides that "(a)ll * * * certifications * * * duly issued * * * pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act, and pertaining to any * * *, requirements, * * * under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act." The reference to "certifications" in section 4 clearly covers section 21(b) certifications, and such certifications clearly pertain to the requirement of the old Act that certain federal licenses and permits be preceded by a State certification as to water quality requirements. Thus section 21(b) certifications continue to be valid as a basis for federal permit issuance.

To be sure, section 401 contains some requirements that differ from section 21(b); but one of the functions of a savings provision such as section 4 is to continue in full force and effect actions taken under prior laws containing different legal requirements.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Alan G. Kirk II". The signature is fluid and cursive, with a large, stylized "A" and "K".

Alan G. Kirk II
Acting Assistant Administrator for
Enforcement and General Counsel