

discharge of any of these materials to the ice pier:

(a) Petroleum products unloaded from supply tankers to storage tanks at McMurdo Station;

(b) Drummed chemicals, petroleum products, and all materials unloaded from cargo freighters to supply depots at McMurdo Station; and

(c) All materials loaded to freighters destined to be returned to bases outside Antarctica.

(2) If a spill or discharge occurs on an ice pier, clean-up procedures must be completed by NSF or its contractors to a level below any visible evidence of the spill or discharge. All spills or discharges on an ice pier must be cleaned up within two hours of the spill or discharge, unless circumstances prevent cleanup within that time frame. In that event, the spill or discharge shall be cleaned up as soon as possible thereafter.

(3) As part of normal monitoring requirements, a record of the following information shall be kept by NSF:

(a) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, and the results of those procedures;

(b) The number of wooden poles remaining in the pier at the time of its release from McMurdo Station, and their approximate length;

(c) The approximate length of the steel cables remaining in the pier at the time of its release from McMurdo Station;

(d) Any other non-ice materials remaining on the pier at the time of its release from McMurdo Station; and

(e) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound or the Antarctic Sea.

(4) The non-embedded ends of all wooden utility poles or bollards shall be cut off from the ice pier prior to disposal, and shall not be disposed of in the ocean.

(5) Prior to the ocean dumping of any ice piers, the NSF shall take the following actions:

(a) Other than the matter physically embedded in the ice pier (such as the ends of wooden light poles frozen in the pier, and the strengthening steel cables), all other objects (including the non-embedded portions of the wooden poles used for lighting, power, or telephone connections, and any removable cables, equipment debris, or objects of

anthropogenic origin), shall be removed from the ice pier prior to dumping;

(b) The gravel non-slip surface of the ice pier shall be removed to the maximum extent possible, and shall be stored on the mainland for subsequent use during the next operating season; and

(c) A methodology to track any ice piers released from McMurdo Station shall be established and utilized for a period of one year from the date of release of the ice pier. The results of these tracking efforts shall be included in the annual reports that the NSF is required to submit to the Agency.

(6) The NSF shall submit a report by June 30 of every year to the Director, Oceans and Coastal Protection Division, Office of Water, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, on:

(a) Any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station;

(b) Any ocean dumping of ice piers from McMurdo Station; and

(c) Any tracking efforts of ice piers released from McMurdo Station under this general permit, for the year preceding the date of the annual report.

(7) For the purpose of this permit, the term "ice pier(s)" means those man-made ice structures containing embedded steel cable, wooden pole ends, and any remaining gravel frozen into the surface of the pier, that are constructed at McMurdo Station, Antarctica, for the purpose of off-loading the annual provisions of fuel, supplies, and materiel for use by NSF activities in Antarctica, as well as for the purpose of loading the previous year's accumulation of wastes, which can be returned to the United States for recycling and disposal.

(8) This permit shall be valid until (month)(day), 2018.

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9303-3]**

### **Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of South Burlington, VT**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605

under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City of South Burlington, Vermont ("City") for the installation of two specific turbo aeration blower units for the City's Airport Parkway Wastewater Treatment Plant Upgrade project. This is a project specific waiver and only applies to the use of the specified products for the ARRA project under construction. Any other ARRA recipient that wishes to use the same products must apply for a separate waiver based on project specific circumstances. The City was provided written representations by the manufacturer (K Turbo USA) during 2009 and early 2010 that the turbo aeration blower units being supplied would be substantially transformed in the United States and would be in compliance with the Buy American provisions of ARRA. However, as a result of a recent on-going criminal investigation, the written representations provided by the manufacturer that the specified aeration blower units had undergone substantial transformation in the United States have been questioned. Based on the information provided by the City, EPA agrees with the City that, if the K-Turbo units in question are determined to be non-American made, requiring the installation of domestically manufactured turbo aeration blower units will extend the time frame of the project by approximately five months due to the redesign, procurement, submittal delivery, submittal review, fabrication, delivery, and replacement of the aeration blower installation at the construction site. This delay is inconsistent with the public interest, and a waiver of the Buy American provisions in these circumstances is justified. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the installation of the two specified turbo aeration blower units that have already been delivered to the construction site as noted in the City's March 31, 2011 request.

**DATES:** *Effective Date:* May 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Katie Connors, Environmental Engineer, (617) 918-1658, or, David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP),

U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109-3912.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project specific waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City of South Burlington (City), Vermont for the installation of two specified aeration blower units as part of its Airport Parkway Wastewater Treatment Plant Upgrade project. Based on the information provided by the City, EPA has determined that it is inconsistent with the public interest for the City to further delay the project to pursue the purchase and installation of domestic manufactured turbo aeration blower units.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of OMB's regulation at 2 CFR 176.120, EPA will generally consider a waiver request with respect to components that were specified in the bid solicitation or in a general/primary construction contract or those made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed, can be evaluated as timely because of the extenuating circumstances surrounding this on-going project.

The City was provided written representations prior to delivery by the manufacturer that the specified turbo aeration blower units would be substantially transformed in the United States. During the spring of 2010, the City's general contractor and design engineer were actively engaged in the

shop drawing submittal and review process. The general contractor submitted technical information to the design engineer for review and approval, along with ARRA certification required for contract specifications. The shop drawing process for the KTurbo aeration blower units was completed at that time and KTurbo provided additional certification regarding substantial transformation and compliance with the ARRA requirements, specifically the Buy American provision. However, as a result of a recent on-going criminal investigation, the written representations provided by the manufacturer that these specific turbo aeration blower units had undergone substantial transformation in the United States have been questioned. The City of South Burlington could not reasonably have foreseen the need for a waiver from the Buy American provisions of ARRA until it was fully informed of the extenuating circumstances surrounding the on-going criminal investigation involving KTurbo. Accordingly, EPA will evaluate the request as if it were timely.

As of March 31, 2011, the City's Airport Parkway Wastewater Treatment Facility Upgrade construction project is approximately two thirds completed. One of the old existing three aeration blower units has already been removed, and one of the new turbo aeration blower units has already been installed and is in operation serving the plant's main biological treatment process. This aeration blower unit is identical to the two specified aeration blower units involved in this waiver request that have not yet been installed. The General Contractor's plans are to install these two specified turbo aeration blower units during April of 2011 to stay on its critical path to complete construction.

Not allowing the installation of these two specified turbo aeration blower units that have been delivered to the site would cause a significant time delay to the project. The City would need to completely redesign, procure, and have domestic manufactured turbo aeration blower units delivered to the site. In addition, the City would need to make some necessary building and room changes (e.g. associated piping and electrical revisions) to accommodate any replacement units, install, and properly start-up the new equipment. According to the City, it is estimated that this approach could delay the construction completion date by up to five months.

In addition to imposing a lengthy time delay to the project, not installing the two other specified aeration blower

units would result in an unbalanced air blower system comprised of one high efficiency turbo blower with specific performance characteristics, and two conventional centrifugal blowers with different performance characteristics. Operation and maintenance of such an unbalanced system is not common and is not recommended since it would result in additional operating costs due to additional plant training, additional and non-matching spare parts, and possibly additional maintenance and repair, resulting in risk to water quality.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the documentation provided by the City has established a proper basis to specify that using the domestic manufactured good, if in fact the goods provided by K-Turbo are determined to be non-domestic, would be inconsistent with the public interest. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good, if in fact the goods provided by K-Turbo are determined to be non-domestic, would be inconsistent with the public interest, the City of South Burlington, Vermont is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits the use of ARRA funds for the installation of two specified turbo aeration blower units documented in the City's waiver request submittal dated March 31, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

**Authority:** Public Law 111-5, section 1605.

Dated: April 28, 2011.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA Region 1—New England.*

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