

there is no reasonable and less environmentally damaging practicable alternative for achieving the Congressional directive than to locate a sector gate adjacent to the Bayou aux Carpes CWA 404(c) site.

In consideration of the above information, EPA believes that compelling circumstances justify a modification of the 1985 Bayou aux Carpes CWA Section 404(c) designation, that there are no less environmentally damaging practicable alternatives that would adequately address those circumstances, and that all feasible means of minimizing adverse wetland effects to the Bayou aux Carpes site will be implemented. Therefore, EPA is modifying the 1985 Bayou aux Carpes CWA 404(c) Final Determination with conditions to allow for discharges associated with construction of the West Closure Complex on the Bayou aux Carpes site as described in the Corps' November 4, 2008, request for modification. EPA believes that this Final Determination for modification achieves a balance between the national interest in reducing overwhelming flood risks to the people and critical infrastructure of south Louisiana while minimizing any damage to the Bayou aux Carpes CWA Section 404(c) area to the maximum degree possible in order to avoid unacceptable adverse effects.

Dated: July 21, 2009.

**Michael H. Shapiro,**

*Acting Assistant Administrator for Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8935-8]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Sharon Elementary School Water System, Sharon, VT

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American requirements of ARRA section 1605 under the authority of section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Sharon Elementary School Water System in Sharon, Vermont for the purchase of NSF-55 Class A certified Ultra Violet

(UV) disinfection equipment. This is project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. The UV disinfection equipment under consideration is manufactured outside of the United States by two companies based in Canada and meets the water system's technical and design specifications. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Sharon Elementary School Water System has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to section 1605 of the ARRA. This action permits the purchase of specific UV disinfection equipment for the proposed project being implemented by the Sharon Elementary School Water System.

**DATES:** *Effective Date:* July 17, 2009.

**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, One Congress Street, CMU, Boston, MA 02114.

**SUPPLEMENTARY INFORMATION:**

In accordance with ARRA section 1605(c) and pursuant to section 1605(b)(2) of Public Law 111-5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Sharon Elementary School Water System (the "System") in Sharon, Vermont for the acquisition of NSF-55 Class A certified Ultra Violet (UV) disinfection equipment manufactured outside of the United States.

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 public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided 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.

The State of Vermont requires that water supply installations must comply with the Vermont Standards for Water System Design, Construction and Protection (Vermont Water Supply Rule—Chapter 21). In order to meet these standards the State of Vermont requires public water systems using UV disinfection to use National Sanitation Foundation (NSF) Standard 55 (Ultraviolet Microbial Water Treatment Systems) Class A certified UV equipment. The State of Vermont, Agency of Natural Resources, Water Supply Division (VTANR) has identified three lines of UV disinfection systems with NSF-55 Class A certification, all manufactured in Canada. Two of the three include the UV Pure Hallett 15xs ultraviolet water system, as well as the Trojan Technologies Sterilight SPV 200 series units. The design engineer and the VTANR have conducted research and determined that there are no domestic manufacturers that have NSF-55 Class A certification at the time of this waiver request.

The design engineer for the System indicated that he chose to use four Hallett 15xs (15 gpm) UV units for the school buildings and one Sterilight SPV 200 (2 gpm) UV unit for a remote location which receives its water supply from the school well. The designs also took into account the limited space available for retrofitting the water supply and distribution systems, as well as the attributes of the specific equipment. The estimated cost for all of the UV equipment for the proposed project was under \$10,000.

The System's submission clearly articulates functional reasons for its technical specifications and requirements, and has provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009'", defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project

plans and design". After extensive research by the design engineer and the VTANR, the system has provided information to the EPA representing that there is currently no other UV disinfection equipment from a domestic manufacturer available to meet the System's exact design specifications.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as the Sharon Elementary School Water System, to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs. The construction must be completed by late August when the students return for the new school year.

EPA's national contractor prepared a technical assessment report dated June 19, 2009 based on the waiver request submitted and supporting documentation. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that NSF Standard 55 Class A UV disinfection equipment of the size specified are not available from a domestic manufacturer.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Sharon Elementary School Water District is sufficient to meet the criteria listed under section 1605(b) of the ARRA and in the April 28, 2009, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009' Memorandum": Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the System's technical specifications and requirements, a

waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the 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 this manufactured good was not available from a producer in the United States, the Sharon, Vermont Elementary School Water System is hereby granted a waiver from the Buy American requirements of section 1605(a) of Public Law 111-5 for the purchase of the specified UV disinfection equipment using ARRA funds as specified in the System's request of June 15, 2009. 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: July 17, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, Region I, New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8935-7]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Lewiston, ME Department of Public Services

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Lewiston, Maine Department of Public Services (LMDPS) for the purchase of a Hydroslide model DR-400 VN-Vario constant flow regulator. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project

being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. This flow regulator is manufactured outside of the United States by Gabriel Novac & Associates, Inc., a company based in Canada, and meets the LMDPS's technical specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The LMDPS has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a specific constant flow regulator for the proposed project being implemented by the LMDPS that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* July 17, 2009.

**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, One Congress Street, CMU, Boston, MA 02114.

#### SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111-5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Lewiston, Maine Department of Public Services (LMDPS) for the acquisition of a Hydroslide model DR-400 VN-Vario constant flow regulator manufactured outside of the United States by Gabriel Novac & Associates, Inc., a company based in Canada.

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 public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided 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;