

**List of Subjects**

Environmental protection, Pesticides and pests, Cancellation order.

Dated: January 19, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Program.*

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9108-9]

**Notice of a Regional Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Albany County Sewer District (ACSD), NY**

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 2 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 Albany County Sewer District (ACSD), New York for the purchase of a foreign manufactured Organic Rankine Cycle (ORC) turbine generator to recover waste heat from the sludge incineration operation at the ACSD's North Plant wastewater treatment plant (WWTP), and to produce electrical power for on-site consumption. The ACSD, through its consultant engineers, has indicated that no United States manufacturer produces an alternative that meets the ACSD's technical specifications; specifically, no ORC turbine generator manufactured in the United States is of adequate capacity to meet the electrical power output specifications for the proposed WWTP waste heat recovery and on-site electricity generation project. The foreign ORC turbine generators under consideration are manufactured by (1) Turboden, in Italy, (2) Ormat Technologies, Inc, in Israel, and (3) Adoratec, in Germany. This is a project specific waiver and only applies to the use of the identified 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 the project specific circumstances. The Regional Administrator is making this determination based on the review and

recommendations of the Region 2 State Revolving Fund Program Team. The ACSD 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 ACSD to purchase an ORC turbine generator manufactured by (1) Turboden (Italy), (2) Ormat Technologies, Inc. (Israel) or (3) Adoratec (Germany) for the proposed WWTP waste heat recovery and on-site electricity generation project being implemented by the ACSD.

**DATES:** *Effective Date:* January 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jane Leu, Environmental Engineer, (212) 637-3815, State Revolving Fund Program Team, Division of Environmental Planning and Protection, U.S. EPA, 290 Broadway, New York, NY 10007.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111-5, Buy American requirements, the EPA hereby provides notice that it is granting a project waiver to the Albany County Sewer District (ACSD), New York, for the acquisition of an Organic Rankine Cycle (ORC) turbine generator manufactured by any of the following foreign manufacturers: Turboden (Italy), Ormat Technologies, Inc. (Israel), or Adoratec (Germany) to meet the ACSD's technical design specifications for its proposed North Plant wastewater treatment plant (WWTP) waste heat recovery and on-site electricity generation project.

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, unless a waiver is provided to the recipient by 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 ACSD proposes to modify its North Plant WWTP, which has been in operation since 1974, to provide

additional energy savings through the installation of a Combined Heat and Power (CHP) system. The proposed project and design involves the capture of waste heat from the solids handling process and a system that ducts the exhaust gas flow and transports it to a waste-heat-oil heater and ORC system. The ACSD has requested a waiver from the Buy American provision of ARRA for a foreign manufactured ORC turbine generator to recover waste heat from the sludge incineration operation at the ACSD's North Plant WWTP, and to produce electrical power for on-site consumption. ACSD's waiver request stated that the ORC turbine generators manufactured in the United States are not of adequate capacity to meet the electrical power output specifications for the project. The project specifications require that the ORC turbine generator has a maximum electrical generation net power output of 1,000 kilowatt (kW) and a minimum electrical generation net power output of 826 kW. The New York State Environmental Facilities Corporation administers the Clean Water State Revolving Fund on behalf of the New York State Department of Environmental Conservation, and has identified this project for ARRA funding.

ACSD's waiver request included a design and performance specification matrix comparing foreign and domestic ORC turbine generator manufacturers consisting of three foreign (Turboden, Ormat Technologies, Inc, and Adoratec) and four domestic manufacturers (UTC Power, Infinity Turbine, TurboGenix and Barber-Nichols, Inc.). The matrix provides evidence that three of the four domestic manufacturers do not meet the electrical power generation output required by the project specifications. The fourth domestic manufacturer, Barber-Nichols, Inc (BNI), was identified as a potential domestic manufacturer of ORC turbine generators. The ACSD's revised waiver request, however, indicated that BNI was no longer a viable domestic candidate for the ORC turbine generator based upon the following: (1) An e-mail from BNI to ACSD dated July 17, 2008, stating that BNI does not provide complete turbine generator packages (as required in the project specifications), and (2) an e-mail from BNI to ACSD dated August 13, 2008, declining ACSD's invitation to bid on this project.

The information provided to EPA by the ACSD was confirmed through a technical review by EPA's national contractor of the submitted documentation. To the best of EPA's knowledge at this time, there does not

appear to be any American-manufactured ORC turbine generator available to meet the ACSD's project design specifications for its North Plant WWTP. The ACSD's submission clearly articulates entirely functional reasons for its technical specifications, 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 Headquarters 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 the 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," and *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

Based on additional research conducted by the State Revolving Fund Program Team of the Division of Environmental Planning and Protection and to the best of the Region's knowledge at the time of the review, there do not appear to be other ORC turbine generators manufactured domestically that would meet the ACSD's technical 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 potential SRF eligible recipients, such as the ACSD, to revise their design standards and specifications. 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 the fundamental purpose of the ARRA, which is to preserve and create jobs and promote economic recovery.

The State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the ACSD establishes both a proper basis to specify the particular good required and that the manufactured good was not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section

1605(b), OMB's regulation at 2 CFR 176.100, and in the EPA Headquarters April 28, 2009, Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009':" 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). 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 ACSD's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's March 31, 2009, delegation of authority memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of 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 ACSD is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of an ORC turbine generator from any of the following foreign manufacturers: Turboden (Italy), Ormat Technologies, Inc. (Israel), or Adoratec (Germany) to meet the ACSD's technical design specifications for its North Plant WWTP waste heat recovery and on-site electricity generation project using ARRA funds, as specified in the ACSD's request of September 30, 2009, and as revised on October 28, 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: January 19, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9108-8]

### Notice of a Regional Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the West Milford Township Municipal Utilities Authority (WMTMUA), New Jersey

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 2 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 WMTMUA, New Jersey, for the purchase of a membrane bio-reactor (MBR) unit that uses flat-plate membrane cartridges. The WMTMUA's proposed upgrade of its Awosting Sewage Treatment Plant to a MBR facility requires utilizing flat-plate membrane cartridges. No United States manufacturer produces a MBR unit with flat-plate membrane cartridges that meet the specifications for the project. The only MBR unit that incorporates the flat-plate membrane cartridges and meets the WMTMUA's specifications is manufactured in Japan by Kubota. This is a project specific waiver and only applies to the use of the identified 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 the project specific circumstances. The Regional Administrator is making this determination based on the review and recommendations of the Region 2 State Revolving Fund Program Team. The WMTMUA 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 Kubota MBR unit that uses flat-plate MBR membrane cartridges for the ARRA-funded project being implemented by WMTMUA, New Jersey.

**DATES:** *Effective Date:* January 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jane Leu, Environmental Engineer, (212) 637-3815, State Revolving Fund