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Dated: April 29, 2010.

Sonia Altieri,

Designated Federal Officer.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9145-7]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Coldwater, MI (Coldwater)

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 of a satisfactory quality] to Coldwater, Michigan for the purchase of high-speed, high-efficiency magnetic bearing turbo-compressors that will be used in the city's sludge treatment process. This is a project-specific waiver and it 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. These turbo-compressors, which are supplied by ABS USA of Meriden, Connecticut, are manufactured in Sweden, and meet Coldwater's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Coldwater 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 high-speed, high-efficiency magnetic bearing turbo-compressors for Coldwater's activated sludge project that may otherwise be

prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* March 26, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Lausted, SRF Program Manager (312) 886-0189, or Puja Lakhani, Office of Regional Counsel, (312) 353-3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

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 Coldwater, Michigan for the acquisition of high-speed, high-efficiency magnetic bearing turbo-compressors that are manufactured in Sweden.

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 ARRA-funded project will provide improved aeration for Coldwater's activated sludge treatment process, allowing the Wastewater Treatment Plant (WWTP) to meet the stringent ammonia-nitrogen effluent discharge limits required for this facility placed into effect in May 2007. Following a study of the cause for these ammonia-nitrogen effluent discharge excursions, it was determined the WWTP's current organic treatment process was not capable of handling the maximum day and peak ammonia-nitrogen loading occurrences experienced by the facility. The existing multistage centrifugal aeration blowers cannot be turned down sufficiently to adequately meet the low and average aeration requirements on the WWTP. These blowers also have insufficient capacity to meet the peak aeration requirements alone, and need supplemental aeration blowers to meet these demands. Relative to conventional

technologies and equipment, the high-speed, high-efficiency turbocompressors offer more turndown potential and the ability for the WWTP to meet the low, average, and peak aeration requirements in combination with the existing aeration blowers. The selected equipment can operate at 38% of its rated capacity, providing exceptional turndown. Coldwater selected the magnetic bearing technology because of its ability to avoid overheating and its track record of providing long-standing reliable service—key advantages over the competing airfoil bearing technology. Further, as Coldwater initiated its evaluation of the equipment for selection and design phases well before the enactment of ARRA, the decision to do was clearly not an attempt to avoid application of the Buy American provisions of ARRA. Coldwater's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

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."

The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for high-speed, high-efficiency turbo-compressors. Based on the investigation, five companies manufacture these machines, but only two (ABS and one other company) used magnetic bearings. Moreover, both of the companies that use magnetic bearings manufacture their machines overseas. Therefore, Coldwater believed that there was no domestic product of satisfactory quality available.

EPA's national contractor prepared a technical assessment report dated December 24, 2009, based on the submitted waiver request. 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. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the high-speed, high-efficiency magnetic bearing turbo-compressors necessary for this project are not manufactured in the

United States, and no other U.S. manufactured product can meet Coldwater's project performance specifications and requirements.

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 communities such as Coldwater 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 ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The State and Tribal Programs Branch has reviewed this waiver request and has determined that the supporting documentation provided by Coldwater 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 item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Coldwater's project performance 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, Coldwater is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of high-speed, high efficiency magnetic bearing turbo-compressors using ARRA funds as specified in the community's request of December 21, 2009. This supplementary information constitutes the detailed written

justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111-5, section 1605.

Dated: March 26, 2010.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. 2010-10916 Filed 5-6-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9145-5]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Faribault, MN (Faribault)

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 of a satisfactory quality] to Faribault for the purchase of high-speed, high-efficiency magnetic bearing turbo-compressors to be used in the city's sludge treatment process. 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. These turbo-compressors, which are supplied by ABS USA of Meriden, Connecticut, are manufactured in Finland, and meet Faribault's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Faribault 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 high-speed, high-efficiency magnetic bearing turbo-compressors for Faribault's activated sludge project that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* January 13, 2010.

FOR FURTHER INFORMATION CONTACT:

Andrew Lausted, SRF Program Manager (312) 886-0189, or Puja Lakhani,

Regional Counsel, (312) 353-3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

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 Faribault for the acquisition of high-speed, high-efficiency magnetic bearing turbo-compressors that are manufactured in Finland.

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.

These manufactured goods will provide aeration for Faribault's activated sludge treatment process. The city selected the magnetic bearing technology because of its ability to avoid overheating and its track record of providing long-standing reliable service—key advantages over the competing airfoil bearing technology. Also, the project specifications required a 322 horsepower capacity turbo-compressor. Faribault's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

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."

The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for high-speed,