

Dated: June 16, 2011.

**Lois Rossi,**

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

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9426-8]**

### **Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Wayne County Department of Public Services in Wayne County, MI (Wayne County)**

**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 Wayne County for the purchase of Link-Pipe PVC products in various pipe diameters for sewer pipe repair in seventeen locations throughout the Rouge Valley Sewage Disposal System in Wayne County, Michigan. This is a project-specific waiver and only applies to the use of the specified products 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 Link-Pipe PVC products, which are manufactured in Canada, meet Wayne County's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Wayne County 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 Link-Pipe PVC products in various pipe diameters for sewer pipe repair that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* June 29, 2011.

**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 Wayne County, Michigan, for the acquisition of Link-Pipe PVC in various pipe diameters that are manufactured 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; 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 Link-Pipe PVC products will allow for efficient and effective sewer pipe repair at seventeen locations throughout the Rouge Valley Sewage Disposal System. Wayne County selected Link-Pipe products to allow for trenchless spot repair of sanitary sewer interceptor lines. The snap-out PVC repair sleeves are designed to quickly and easily repair damaged/leaking sanitary sewers without excavation—a requirement for the project since many of the sewer interceptor repair sites are located in remote wetlands and forested areas where access is restricted. Wayne County's submissions clearly articulated the 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 products to repair sewer pipe 42 to 78 inches in diameter. Based on the investigation, several companies were found to manufacture sewer repair products, but none were able to meet all of the criteria in the project specifications, namely snap-out repair sleeves consisting of rigid polyvinylchloride pipe material conforming to material standards known as Normal Impact Type 1 PVC 12454-B, snap-out parts connected by non-corrodible metal hinges, and sleeves to repair sewer pipe between 42 to 78 inches in diameter. Therefore, Wayne County contends that there is no domestic product of satisfactory quality available.

EPA's national contractor prepared a technical assessment report 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 Link-Pipe PVC snap-out sewer repair sleeves necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet Wayne County's project performance specifications and requirements.

EPA has also evaluated Wayne County's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official *may* deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet Wayne County's project specifications for PVC repair sleeves that fit sewer pipe 42 to

78 inches in diameter. The waiver request was submitted after the contract was signed due to the large size of the project, which led to Wayne County not being made aware that there are no domestic equivalents for the PVC repair sleeves in question until after the contract was signed. There is no indication that Wayne County failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider Wayne County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by Wayne County and no loss by the government due to the late request.

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 loan recipients such as Wayne County 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.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by Wayne County 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 Wayne County'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, Wayne County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of Link-Pipe PVC products in various pipe diameters using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

**Authority:** P.L. 111-5, section 1605.

Dated: February 3, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011-16389 Filed 6-28-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9426-7]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

**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 MCES of St. Paul, Minnesota, for the purchase of four combination air release/vacuum valves (ARVs) to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe) located in St. Paul, Minnesota. 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 ARVs, which are manufactured in Israel, meet MCES's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. MCES 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 four combination ARVs for the South St. Paul Forcemain project that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* June 29, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Andrew Lausted, SRF Program Manager (312) 886-0189, or Joseph Williams, Office of Regional Counsel, (312) 886-6631, 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 MCES of St. Paul, Minnesota, for the South St. Paul Forcemain project, for the acquisition of four combination ARVs that are manufactured in Israel.

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 prevent failure or blockage of the South St. Paul Forcemain pressure pipe. MCES started using these particular ARVs seven years ago and they have become their standard air release vacuum valve. They were selected as their standard because of their light weight, ease of installation and maintenance, simplicity of operation, excellent performance, and low cost. MCES'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