

Pesticide	Tolerance Requested for Revocation	CFR Citation
Methomyl	Hop, dried cones	40 CFR 180.253
Naled	Cucumber Lettuce Tomato Pumpkin Squash, winter Turnip, tops	40 CFR 180.215
Phorate	Coffee, bean, green	40 CFR 180.206
Terbufos	Coffee, bean, green	40 CFR 180.352
Dichlorvos	Tomato	40 CFR 180.235

ABC also asserts that should EPA believe that tolerances for import purposes are necessary, it must consult with the U.S. Fish and Wildlife Service to retain the tolerances listed above to “identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations...” and “develop and use principles, standards and practices that will lessen the amount of unintentional take...”

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: August 24, 2009.

**Peter Caulkins,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E9-21124 Filed 8-31-09; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL -8951-6]

**Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Cape Charles, VA**

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

**ACTION:** Notice.

**SUMMARY:** The Acting Regional Administrator of EPA Region III 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 Town of Cape Charles for the purchase of membrane filtration cassettes, which are an integral

component of the Membrane Bioreactor (MBR) wastewater treatment process, at its Wastewater Treatment Plant (WWTP). Cape Charles indicates that the MBR treatment process is necessary to achieve the wastewater treatment levels required by the National Pollutant Discharge Elimination System (NPDES) permits issued for this WWTP. The membrane filtration equipment under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets Cape Charles’s technical specifications. 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 the specific project circumstances. The Acting Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance. Cape Charles has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA’s 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 membrane filtration cassettes for the proposed project being implemented by Cape Charles.

**DATES:** *Effective Date:* August 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert Chominski, Deputy Associate Director, (215) 814-2162, or David McAdams, Environmental Engineer, (215) 814-5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c),

EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111-5, Buy American requirements to the Town of Cape Charles for the acquisition of membrane filtration cassettes manufactured by GE Water and Process Technologies located in Canada. Cape Charles has been unable to find an American made membrane filtration cassette manufacturer to meet its specific wastewater requirements.

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 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.

Cape Charles’s waiver request is to allow the purchase of three membrane filtration cassettes for use in improvements to its existing WWTP. This project will upgrade its existing WWTP by adding a new MBR treatment process. The membrane filtration cassette is an integral component of the MBR treatment process because it separates the treated wastewater from the mixed liquor which comes from the biological reactors, before the treated wastewater is disinfected and discharged. After an engineering analysis of alternate treatment processes, Cape Charles determined MBR to be the most environmentally

sound and cost effective solution. The MBR is an advance waste water treatment process which is designed to meet the high quality effluent requirements of the waste load allocation under the NPDES permit. In addition, in anticipation of procuring the MBR system, Cape Charles has already incorporated specific technical design requirements for installation of membrane filter cassettes with the MBR treatment process at their WWTP, including specific tankage footprint, geometry and configuration. To require Cape Charles to redesign its project would cause an unacceptable delay to the initiation of construction.

Cape Charles has provided information to the EPA demonstrating that there are no membrane filtration cassettes manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. Cape Charles surveyed forty membrane manufacturers as part of its market research to locate domestic manufacturers of membrane filtration cassettes for WWTPs. It was unable to locate any domestic manufacturers. Most were unacceptable because their membrane products were not designed for domestic wastewater treatment plants. The remaining manufacturers either manufacture membrane materials without providing a package system similar to the system specified or were foreign manufacturers.

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." Cape Charles has incorporated specific technical design requirements for installation of membrane filtration cassettes at its WWTP.

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 Cape Charles, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. 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.

Based on additional research conducted by EPA's Office of Infrastructure and Assistance (OIA) in Region III, and to the best of the Region's knowledge at the time of review, there do not appear to be other membrane filtration cassettes manufactured domestically that would meet Cape Charles's technical specification. EPA's national contractor prepared a technical assessment report dated July 13, 2009 based on the waiver request submitted. 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 there are no American-made membrane filtration cassettes for use in MBRs in WWTPs.

The OIA has reviewed this waiver request and to the best of our knowledge at the time of review has determined that the supporting documentation provided by Cape Charles is sufficient to meet the criteria listed under Section 1605(b) 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). 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 Cape Charles's technical specifications, 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 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 Town of Cape Charles is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of three membrane

filtration cassettes using ARRA funds as specified in Cape Charles's request of July 8, 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.

Issued on: August 19, 2009.

**William C. Early,**

*Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.*  
[FR Doc. E9-21123 Filed 8-31-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA-RO4-SFUND-2009-0643, FRL-8951-8]

### Vertut Blending and Packaging Superfund Site, Memphis, Shelby County, TN; Notice of settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of settlement.

**SUMMARY:** Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Vertut Blending and Packaging Superfund Site located in Memphis, Shelby County, Tennessee for publication.

**DATES:** The Agency will consider public comments on the settlement until October 1, 2009. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

**ADDRESSES:** Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA-RO4-SFUND-2009-0643 or Site name Vertut Blending and Packaging Superfund Site by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- <http://www.epa.gov/region4/waste/sf/enforce.htm>.
- E-mail: [Painter.Paula@epa.gov](mailto:Painter.Paula@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Paula V. Painter at 404/562-8887.