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**Docket:** Documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: November 19, 2009.

**Rebecca Clark,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E9-29218 Filed 12-7-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9090-5]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to Frederick County, MD

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

**ACTION:** Notice.

**SUMMARY:** The 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 Frederick County for the purchase of a Membrane Bioreactor (MBR) system, at the Ballenger McKinney Enhanced Nutrient Removal Wastewater Treatment Plant (WWTP) expansion. Frederick County indicates that the MBR treatment process is necessary to achieve the wastewater treatment levels required by the National Pollutant Discharge Elimination System (NPDES) permit issued for this WWTP. The MBR system under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets Frederick County'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 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. Frederick County 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 the MBR system containing goods not manufactured in America for the proposed project being implemented by Frederick County. It should be noted that for purposes of this action, the MBR, while treated as a single system, is not itself a manufactured good, but is an assembly of manufactured goods.

**DATES:** *Effective Date:* November 20, 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 Frederick County for the acquisition of a MBR system manufactured by GE Water and Process Technologies located in Canada. Frederick County has been unable to find an American made MBR system 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.

The GE Zenon MBR system is comprised of MBR filtration cassettes, air dryers and several other auxiliary components integral to the efficient operation of the system. The MBR system is a packaged product that has undergone complex biological design, hydraulic modeling, control automation, fabrication and integration of specialized product components. The GE Zenon MBR system—as a whole, is designed to remove nutrients (Phosphorus and Nitrogen) to a level specified in Frederick County's NPDES permit.

Frederick County's waiver request is to allow the purchase of the GE Zenon MBR system with one hundred forty membrane filtration cassettes, manufactured by GE Water and Process Technologies located in Canada, 2 desiccant air dryers, manufactured by Ingersol Rand located in the United Kingdom, and ten vacuum ejectors manufactured by Piab located in Sweden 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 cassettes, air dryers and vacuum ejectors are integral components of the MBR treatment process because they separate 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, Frederick County

determined MBR to be the most environmentally sound and cost effective solution. The MBR system 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, Frederick County had issued specifications for the MBR system in its June 2007 Request for Proposal (RFP) and evaluated and awarded the contract in March 2008. Section 11500 of this RFP No. 07–CP–78 included technical specifications for Membrane Filtration Equipment, and the qualification criteria in Section 1.03 of the bidder questionnaire required an established record of installed systems at municipal WWTPs. Specifically, Section 1.03 of the bidder questionnaire required that: (1) The bidder furnish a list of five of its MBR system installations at municipal WWTPs, (2) three of these systems have been in operation for at least one year, and (3) at least one of the three systems has an average flow design capacity of 1.0 MGD or more. These specifications and requirements were justified by Frederick County's obligation to meet reliably the environmental requirements of its NPDES permit. In this selection phase, no domestic manufacturers were able to meet these technical specifications and experience requirements. In May 2009, Frederick County received bids for the construction of the entire WWTP expansion based on the RFP. The winning general contractor will use the pre-selected MBR design/equipment in the final installation.

Frederick County has provided information to the EPA demonstrating that there are no membrane filtration systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet these technical specifications in its RFP. Two companies, neither of which manufacture in the United States, met Frederick County's justified technical specifications and experience 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” (“EPA Memorandum”), 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.” Frederick County has incorporated specific technical design

requirements for installation of a MBR system 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 Frederick County, 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 did not appear to be other MBR systems manufactured domestically back in March 2008 that would meet Frederick County's technical specifications. EPA's national contractor prepared a technical assessment report dated October 16, 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 only non-domestic manufacturers of the MBR cartridge could meet the technical specifications included in the RFP for Membrane Filtration Equipment and the qualification criteria for an established record of installed systems at WWTPs included in the bidder questionnaire.

Frederick County included a performance guarantee in the RFP as well as the original specification. GE's performance guarantee applies to the entire MBR system, including all components supplied by GE, which would be voided by substitution of other components. The potential voiding of the performance raises a valid issue regarding availability of alternative desiccant air dryers and vacuum ejectors. The existence of such a performance guarantee supports treating the entire MBR system as a unitary whole, rather than a collection of individual components. Therefore, EPA Region III concludes that only the “GE Zenon MBR System—as a whole”

meets the “specifications in project plans and design.”

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 Frederick County is sufficient to meet the criteria listed under Section 1605(b), OMB's regulations at 2 CFR 176.60–176.170, and in the April 28, 2009, EPA 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 Frederick County'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, Frederick County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a MBR system using ARRA funds as specified in Frederick County's request of August 18, 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:** November 20, 2009.

**William C. Early,**

*Acting Regional Administrator, U.S.  
Environmental Protection Agency, Region III.*  
[FR Doc. E9–29214 Filed 12–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, December 3, 2009, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC, (ninth floor).