

standard air relief structure, all valves that do not meet this standard would need to be replaced.

Use of alternative valves that do not meet the IEUA's specifications would thus require a substantial redesign of, delay in, and higher costs for the project. Because of the IEUA's current, extensive installations of ARI valves, the use of alternative, incompatible valves would impose continuing high costs into the future to change spare parts and staff training in operations and maintenance, as well as in inferior performance of the alternative valves. Procurement of alternative valves would be inconsistent with basic principles of sustainable infrastructure and effective asset management that EPA has consistently promoted. For all these reasons, EPA finds that the IEUA's specifications for these ARV valves were justified.

EPA also conducted research to find potential domestic manufacturers who can supply ARV valves that meet IEUA's technical specifications. Five domestic manufacturers of ARV valves were identified by the applicant. EPA's national contractor contacted the domestic manufacturers and inquired as to whether their products could meet the IEUA's specifications. All five manufacturers indicated that they could provide similar products, but could not meet all of the IEUA's specifications, particularly with regard to manufacturing materials and product design.

Based on these findings, EPA concludes the IEUA's claim that there are no known American manufacturers of ARV valves meeting the IEUA's specifications is supported by the available information.

The April 28, 2009 EPA Memorandum for implementation of the ARRA Buy American provisions of P.L. 111-5, states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. The IEUA's waiver request articulates a reasonable and appropriate basis for choosing the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation to conclude the relevant manufactured goods are not produced in the United States of a satisfactory quality to meet its technical specifications. The IEUA has incorporated specific technical design specifications for the proposed project based on their needs and provided information to the EPA indicating there

are currently no ARV valves manufactured in the United States that have equivalent product specifications. The IEUA has also provided certification indicating there are no systems of comparable quality available from a domestic manufacturer to meet its specifications. Based on additional inquiry by EPA's national contractor, there do not appear to be other ARV valves available to meet the IEUA's specifications.

EPA has also evaluated IEUA'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 IEUA's project specification for these ARV valves. The waiver request was submitted after the contract date due to a realignment of a portion of the project which was discovered in April, 2010. This realignment led to a project redesign which wasn't completed until May 26, 2010, thus leading to the waiver request on July 15, 2010. Although it was known that ARV valves would be needed for this project, it was unknown how many would be needed and the associated cost until after the realignment. There is no indication that IEUA 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 IEUA's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by IEUA and no loss to the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure

construction, not to delay shovel ready projects by requiring entities, like the IEUA, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. Further delay of this project would contravene the most fundamental economic purposes of the ARRA: To create or preserve jobs in the United States.

The EPA Region 9 Water Division, Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by the IEUA is sufficient to meet the criteria listed under ARRA Section 1605(b) (2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111-5.

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 IEUA is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111-5, for the purchase of the A.R.I. valves, specified in the IEUA's request of July 21, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

**Authority:** Public Law 111-5, Section 1605.

Dated: November 30, 2010.

**Jared Blumenfeld,**  
Regional Administrator, EPA Pacific  
Southwest, Region 9.

[FR Doc. 2011-754 Filed 1-13-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9252-8]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Lake County Special Districts

**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(a) 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 Lake County Special Districts (Lake County), California for the Kelseyville Wastewater Treatment Plant project. Lake County indicates that the design for the Kelseyville project (Project #4593-110 funded by the California Clean Water State Revolving Fund (CWSRF) ARRA Loan #08-821) requires check valves capable of performing under high pressure at a wastewater effluent pump station. Lake County is receiving this waiver to purchase Noreva V625 non-slam check valves for this purpose. This waiver applies only to this project. Other ARRA projects that wish to use the same product must apply for a separate waiver based on their project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception under section 1605(b)(2) of ARRA.

**DATES:** *Effective Date:* November 30, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Abimbola Odusoga, Environmental Engineer, U.S. EPA Region 9, Water Division (WTR-4), (415) 972-3437.

**SUPPLEMENTARY INFORMATION:**

In accordance with ARRA Sections 1605(c) and 1605(b)(2), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to Lake County for the acquisition of V625 non-slam check valves by foreign manufacturer, Noreva. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA 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. Pursuant to Section 1605(b), the head of each federal agency is authorized to issue a waiver from the requirements of Section 1605(a) for a specific project (project waiver) provided the agency determines: (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 EPA Administrator signed a memorandum, dated March 31, 2009, delegating authority to Regional Administrators to issue project waivers within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The Kelseyville wastewater treatment project will enhance the reliability of the wastewater treatment process to better serve the Kelseyville community, which has been classified as a disadvantaged community. According to the applicant, the valves will be installed on a 15,000 foot, 6-inch effluent line under high pressure (515 feet of static head). Check valve failure could result in thousands of gallons of backflow at high velocities causing flooding in the pump station, overflowing and spilling of effluent. As the project site is located in a remote location, an operator will not be present at all times, thus increasing the need for high quality, reliable check valves. According to Lake County, they require a product without external adjustments or devices such as levers, weights, springs, shock absorbers, or speed controls. The absence of these features reduces concerns of accidental operator error or vandalism in the remote location.

The applicant included the following specifications in its contract documents:

- Type V625 non-slam check valves;
- Axial-flow, quick-closing, non-slam design, spring-loaded annular or circular and hardened metal-to-metal seat;
- ANSI Class 300, wafer body to fit between ANSI B16.5 flanges, rated working pressure 720 psig at 100 degrees F;
- Cast CF8M stainless steel body and disc, type 316 stainless steel trim;
- Maximum pressure loss of 1 psi at 900 gpm; and
- Valves to be used in combination with a hydropneumatic surge tank.

Upon review, two manufacturers appeared to have products that met most of the project specification requirements. One of these manufacturers was contacted by Lake County and provided a written statement indicating that the use of the hydropneumatic surge tank would preclude the use of their valves in this installation. The second manufacturer was contacted by the review team. The second manufacturer failed to meet the project specification requirements for the following reasons:

- The specification lists a maximum pressure loss of 1 psi at 900 gpm, whereas the head loss on the domestic valves is 3 psi; and
- The specification lists a hardened metal-to-metal seat. The domestic products were unable to fulfill this requirement.

Based on these findings, EPA concurs with Lake County's claim that no known domestic manufacturers of V625 non-slam check valves are available to satisfy Lake County's specifications.

The April 28, 2009, EPA memorandum for implementation of the ARRA Buy American provisions of Public Law 111-5 states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. Lake County's waiver request articulates a reasonable and appropriate basis for selecting the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation to conclude the relevant manufactured goods are not produced in the United States of a satisfactory quality to meet its technical specifications. Lake County has incorporated specific technical design specifications for the proposed project based on their needs and has provided information to the EPA indicating there are currently no V625 non-slam check valves manufactured in the United States that have equivalent product specifications. Based on inquiry by EPA's national contractor, there do not appear to be other V625 non-slam check valves available to meet Lake County's specifications.

EPA has also evaluated Lake 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 Lake County's project specification for these check valves capable of performing under high pressure. Due to a delay in the construction of this project, Lake County was not made aware that there are no domestic equivalents for the valves in question until well after the contract was signed. There is no indication that Lake 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 Lake County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by Lake County and no loss by the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay shovel ready projects by requiring entities, like Lake County, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. Further delay of this project would contravene the most fundamental economic purposes of the ARRA: To create or preserve jobs in the United States.

EPA Region 9's Water Division and Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by Lake County is sufficient to meet the criteria listed under ARRA Section 1605(b)(2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111-5.

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, Lake County is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111-5, for the purchase of Noreva V625 non-slam check valves, specified in Lake County's request of June 8, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers

based on a finding under Section 1605(b)(2).

**Authority:** Public Law 111-5, Section 1605.

Dated: November 30, 2010.

**Jared Blumenfeld,**  
*Regional Administrator, EPA Pacific Southwest, Region 9.*

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**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 10-2320]

### Video Programming and Emergency Access Advisory Committee; Announcement of Establishment and Members; and Announcement of Date of First Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the establishment and appointment of members of the Video Programming and Emergency Access Advisory Committee ("Committee" or "VPEAAC") of the Federal Communications Commission ("Commission"). This document also announces the change of the Committee's popular name to the Video Programming Accessibility Advisory Committee ("VPAAC"). The Commission further announces the date of the Committee's first meeting.

**DATES:** The Committee was established on December 7, 2010. The first meeting of the Committee will take place on Thursday, January 13, 2011, 9 a.m. to 5 p.m., at Commission Headquarters.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Pam Gregory, Consumer and Governmental Affairs Bureau, 202-418-2498 (voice), 202-418-1169 (TTY), or Pam.Gregory@fcc.gov (e-mail); or Alison Neplokh, Media Bureau, 202-418-1083, Alison.Neplokh@fcc.gov (e-mail).

**SUPPLEMENTARY INFORMATION:** On December 7, 2010, in document DA-2320, Chairman Julius Genachowski announced the establishment and appointment of members of the VPEAAC, following a nominations period that closed on November 1, 2010. This Committee is established in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260 ("Communications and Video Accessibility Act" or "CVAA"). To avoid

confusion with the Emergency Access Advisory Committee (a second committee created under the CVAA), the Video Programming and Emergency Access Advisory Committee will commonly be referred to as the Video Programming Accessibility Advisory Committee (VPAAC). All meetings of the VPAAC shall be open to the public. Its purpose is to develop recommendations on closed captioning of Internet programming previously captioned on television; the compatibility between video programming delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to captioning, video description and emergency information; video description and accessible emergency information on television programming delivered using Internet protocol or digital broadcast television; accessible user interfaces on video programming devices; and accessible programming guides and menus. Within six (6) months of its first meeting, the VPAAC shall submit recommendations concerning the provision of closed captions for Internet-delivered video programming and the ability of video devices to pass through closed captions contained on Internet-based video programming. By April 8, 2012, the VPAAC shall submit recommendations on the remaining issues listed above. At the VPAAC's first meeting, the Committee will be divided into four working groups, each of which will be assigned specific tasks related to the Committee's purposes.

The Chairman of the Commission is appointing forty-five (45) members of the VPAAC. Of this number, ten (10) represent interests of persons with disabilities; six (6) represent interests of closed captioning and video description providers; eleven (11) represent device manufacturers; four (4) represent Internet and software companies; two (2) represent broadcasters; and twelve (12) represent video programming distributors and providers. The VPAAC's membership meets the CVAA's goals of assembling a Committee that has the technical knowledge and engineering experience needed to meet the tasks assigned. All appointments are effective immediately and shall terminate December 7, 2012, or when the Committee is terminated, whichever is earlier.

The membership of the VPAAC, designated by organization or affiliation, as appropriate, is as follows:

- Adobe, Inc.—Andrew Kirkpatrick
- Alliance for Telecommunications Industry Solutions—Phyllis Anderson