

**ENVIRONMENTAL PROTECTION AGENCY**

[Petition IV-2007-3; FRL-8943-1]

**Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Tennessee Valley Authority—Paradise Fossil Fuel Plant; Drakesboro (Muhlenberg County), KY****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of final order on petition to object to a state operating permit.

**SUMMARY:** Pursuant to Clean Air Act (CAA) section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated July 13, 2009, partially granting and partially denying a petition to object to a State operating permit issued by the Kentucky Division for Air Quality (KDAQ) to Tennessee Valley Authority (TVA) for its Paradise Fossil Fuel Plant (Plant Paradise) located in Drakesboro, Muhlenberg County, Kentucky. This Order constitutes a final action on the petition submitted by Preston Forsythe, the Center for Biological Diversity, Kentucky Heartwood, Sierra Club, and Hilary Lambert (Petitioners) on December 27, 2007. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review of the Order in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307(b) of the Act.

**ADDRESSES:** Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The Order is also available electronically at the following address: [http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/tvaparadise\\_decision2007.pdf](http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/tvaparadise_decision2007.pdf).

**FOR FURTHER INFORMATION CONTACT:** Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562-9115 or [hofmeister.art@epa.gov](mailto:hofmeister.art@epa.gov).

**SUPPLEMENTARY INFORMATION:** The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by State permitting authorities under title V of the CAA, 42 U.S.C. 7661-7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions

must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted a petition on December 27, 2007, requesting that EPA object to a State title V operating permit issued by KDAQ to TVA Plant Paradise. Petitioners alleged that the permit was not consistent with the CAA for the following reasons: (1) The permit fails to include the prevention of significant deterioration (PSD) analysis for the three main boilers (Units 1-3) for NO<sub>x</sub> due to alleged modifications undertaken at Plant Paradise beginning in 1984 without TVA obtaining required PSD permits; (2) the permit does not require year-round operation of the selective catalytic reduction system consistent with 401 KAR 50:055; (3) continuous opacity monitoring systems (COMS) should be installed on Units 1-3 and that Method 9 is not sufficient to ensure compliance with the opacity requirements; (4) the permit fails to require a continuous emissions monitoring system (CEMS) for NO<sub>x</sub>; (5) the particulate matter emissions monitoring from the coal washing and handling plant are not enforceable and are inadequate; (6) the permit fails to require reporting of all monitoring results from COMS or CEMS; (7) the permit fails to contain language allowing for the use of any credible evidence; (8) the permit fails to include a case-by-case maximum achievable control technology determination for Units 4-6 for the industrial boiler national emissions standard for hazardous air pollutants.

On July 13, 2009, the Administrator issued an Order partially granting and partially denying the petition. The Order explains EPA's rationale for granting the petition with respect to issues 1, 3, 4 and 5, and denying on the other issues.

Dated: July 29, 2009.

**Beverly Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9-19071 Filed 8-7-09; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8942-7]

**EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council; Meeting Postponement****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of meeting postponement.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will postpone public meetings by conference call on the 2nd Wednesday of each month, beginning with August 12, 2009 from 12 p.m. to 1 p.m., eastern standard time, until further notice. The Notice of Public Meetings for the National Environmental Education Advisory Council was originally published on July 8, 2009 at 74 FR 32595.

**DATES:** This notice is applicable for the following dates:

- August 12, 2009;
- September 9, 2009;
- October 14, 2009;
- November 11, 2009;
- December 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at [potter.ginger@epa.gov](mailto:potter.ginger@epa.gov) or (202) 564-0453. General information concerning NEEAC can be found on the EPA Web site at: <http://www.epa.gov/enviroed>. For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**SUPPLEMENTARY INFORMATION:**

Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in

receiving a draft meeting agenda may contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Dated: July 31, 2009.

**Ginger Potter,**

*Designated Federal Officer.*

[FR Doc. E9-19067 Filed 8-7-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8939-1]

### Notice of Revised Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) Based on Public Interest for *de minimis* Incidental Components of Projects Financed Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for *de minimis* incidental components of eligible water infrastructure projects funded by ARRA. This action revises the terms under which incidental components qualify for coverage under the public interest *de minimis* waiver signed and effective on May 22, 2009, and permits the use of non-domestic iron, steel, and manufactured goods when they occur in *de minimis* incidental components of such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

**DATES:** *Effective Date:* July 24, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Jordan Dorfman, Attorney-Advisor, Office of Wastewater Management, (202) 564-0614, or Philip Metzger, Attorney Advisor, Office of Ground Water and Drinking Water, (202) 564-3776, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of Public Law 111-5, Buy American requirements, based on the public interest authority of section 1605(b)(1), to allow the use of non-domestic iron,

steel, and manufactured goods when they occur in *de minimis* incidental components of eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds where such components cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project.

Among the General Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), Section 1605(a) requires that “all of the iron, steel, and manufactured goods used in” a public works project built with ARRA funds must be produced in the United States, unless the head of the respective Federal department or agency determines it necessary to waive this requirement based on findings set forth in Section 1605(b). In addition, expeditious construction of SRF projects is made a high priority by a provision in the ARRA Title VII appropriations heading for the SRFs, which states “[t]hat the Administrator shall reallocate funds \* \* \* where projects are not under contract or construction within 12 months of” ARRA enactment (February 17, 2010). The finding relevant to this waiver is that “applying [ARRA’s Buy American requirement] would be inconsistent with the public interest” (1605(b)(1)).

EPA originally issued this waiver on May 22, 2009. This notice revises the terms under which that waiver may be applied, and, in accordance with the requirements of Section 1605(c) that all waivers granted must include a “detailed written justification”, adds new information and repeats relevant information that continues to justify this revised waiver.

In implementing ARRA section 1605, EPA must ensure that the section’s requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions of ARRA applicable to projects funded under the Clean Drinking Water State Revolving Funds (SRF), particularly considering the SRFs’ 12 month “contract or construction” requirement. Further, in the context of ARRA’s SRF “contract or construction” deadline, Congress’ overarching directive to

*[t]he President and the heads of Federal departments and agencies [is that they] shall manage and expend the funds made available in this Act so as to achieve the purposes [of this Act], including commencing expenditures and activities as quickly as possible consistent with prudent management.* [ARRA Section 3(b)]

Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel, and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation and control equipment, treatment process equipment, and relevant materials to build structures for such facilities as treatment plants, pumping stations, pipe networks, *etc.* In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every water infrastructure project also involves the use of literally thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project, such as nuts, bolts, other fasteners, tubing, gaskets, *etc.* For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental.

EPA undertook multiple inquiries to identify the approximate scope of these *de minimis* incidental components within water infrastructure projects. EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and a contractor performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings. The contractor asked the following questions:

- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (*drinking water vs. wastewater treatment plant vs. pipe*)?

The responses were consistent across the variety of settings and project types, and indicated that the percentage of