

### III. What is the Agency's Authority for Taking this Action?

As a general rule, TSCA section 14(b)(1) provides that health and safety studies and data from health and safety studies are not entitled to treatment as CBI, with an exception for information that "discloses processes used in the manufacturing or processing of a chemical substance or mixture," or, in the case of a mixture, where release of the data discloses the portion of a mixture comprised by a particular substance. 15 U.S.C. 2613(b)(1).

EPA considers information contained in a notice of substantial risk under TSCA section 8(e) to be health and safety information and, therefore, covered by the term "health and safety study," as defined in section 3(6) of TSCA. See "TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance," 68 FR 33129 at 33136, June 3, 2003 (FRL-7287-4). Chemical identity is part of a health and safety study. See e.g., 40 CFR 716.3 and 40 CFR 720.3(k). As such, chemical identity associated with a health and safety study in a TSCA section 8(e) submission is not entitled to confidential treatment unless it falls into the exemption under TSCA section 14(b)(1). Where the identity of a chemical substance is already contained on the public portion of the TSCA Chemical Substances Inventory, which is publicly available from the National Technical Information Service and other sources, EPA believes that the identity itself, even assuming it might otherwise be CBI, as well as any information that might be derived from it about processes or portions, has already been disclosed.

EPA's regulations regarding CBI at 40 CFR part 2, subpart B provide for a process where the relevant office determines that certain information clearly is not entitled to confidential treatment. See 40 CFR 2.306(d); 40 CFR 2.204(d)(2); and 40 CFR 2.205(f). As provided in the regulations, the letters will serve as the final EPA determinations concerning the subject confidentiality claims, and recipients of the letters may seek judicial review under 5 U.S.C. 701 *et seq.*

### IV. Why is EPA Taking this Action?

Part of the Agency's mission is to promote public understanding of potential risks by providing understandable, accessible and complete information on potential chemical risks to the broadest audience possible. In support of this mission, EPA posts useful information about chemicals regulated under TSCA for the public on its website ([http://](http://www.epa.gov/oppt/index.htm)

[www.epa.gov/oppt/index.htm](http://www.epa.gov/oppt/index.htm)). One important source of this information is submissions to the Agency under TSCA section 8(e). TSCA section 8(e) requires that:

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information. 15 U.S.C. 2607(e).

When EPA receives submissions under TSCA section 8(e), it makes this information available on its website. Previously, EPA's general practice had been to redact chemical identity from TSCA section 8(e) postings where the identity was claimed as CBI even when the chemical identity was listed on the public portion of the TSCA Chemical Substances Inventory. EPA believes that the posting of the TSCA section 8(e) information received is incomplete and far less informative where the public is not able to view the chemical identity associated with the new health and safety information posted. Where the identity of the chemical is already publicly available on the TSCA Chemical Substances Inventory, the new general practice will allow the public to link the TSCA section 8(e) information with the relevant chemical and will support the Agency's mission of promoting public understanding of potential risks.

#### List of Subjects

Environmental protection, Chemicals, Confidential business information, Reporting and recordkeeping.

Dated: January 14, 2010.

**Steve A. Owens,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

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### ENVIRONMENTAL PROTECTION AGENCY

[FRL-9104-9]

#### Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of North Carolina

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval, under regulations for Cross-

Media Electronic Reporting, of the State of North Carolina's request to revise its EPA-authorized program to allow electronic reporting.

**DATES:** EPA's approval is effective January 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1697, [huffer.evi@epa.gov](mailto:huffer.evi@epa.gov), or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1704, [schwarz.david@epa.gov](mailto:schwarz.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 15, 2008, the State of North Carolina Department of Environment and Natural Resources (NCDENR) submitted an application for its Integrated Build Environment for Application Management (IBEAM) electronic document receiving system

for revision of its EPA-authorized program under title 40 CFR. EPA reviewed NC DENR's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve North Carolina's request for revision to its authorized program is being published in the **Federal Register**.

Specifically, EPA has approved the State of North Carolina's request to revise its Part 52—Approval and Promulgation of Implementation Plans authorized program for electronic reporting of air emissions information under 40 CFR part 51, for electronic submissions that do not include an electronic signature, but instead provide for a handwritten signature on a separate paper submission report.

NC DENR was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Dated: January 7, 2010.

**Lisa Schlosser,**

*Director, Office of Information Collection.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9104-8]

### **Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to Gwinnett County Department of Water Resources, Gwinnett County, GA**

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to Gwinnett County Department of Water Resources, Gwinnett County, Georgia ("County") for the purchase of a foreign manufactured submersible pump. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The County's tunnel and tunnel lift station project

will include installation of two submersible pumps as well as the purchase of one spare pump. The project was originally designed between 2003 and 2006, and bids were taken on March 1, 2007. The County standardized ITT Flygt Corporation as the sole manufacturer of submersible pumps in 2003, when design of the project started. At the time of design, the County already had in operation 88 Flygt pumps out of the 106 pumps in the system. The County has submitted a detailed memorandum dated October 17, 2003, explaining the rationale for standardization. According to the memorandum, the County desired to, "standardize on a single brand of submersible pumps for wastewater pump stations in order to provide greater reliability in the operation of pump stations and avoid the increased costs of inventory, service, maintenance, and engineering associated with using several different brands." This is a project whose earlier phases began prior the enactment of ARRA and was undertaken for the principal purpose of Clean Water Act compliance. The procurement for those prior phases standardized on a particular manufactured good that is subject to ARRA section 1605 requirements for its ARRA-funded phase but the performance from and operation and maintenance of such good in the performance of the facility would be detrimentally affected by a requirement to use a non-standardized good(s). Based on the review of the information provided, EPA has concluded that a waiver of the Buy American provisions is justified. 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 County to purchase Flygt submersible pumps, manufactured by ITT Flygt Corporation, as specified in its September 1, 2009, request.

**DATES:** *Effective Date:* December 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Y. Edwards, Project Officer, Grants and SRF Section, Water Protection Division (WPD), (404) 562-9340, USEPA Region 4, 61 Forsyth St. SW., Atlanta, GA 30303.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Sections 1605(a) of Public Law 111-5, Buy American requirements, to Gwinnett County Department of Water Resources, Gwinnett County, Georgia, for the

purchase of Flygt submersible pumps, manufactured by ITT Flygt Corporation of Sweden. EPA has evaluated the County's basis for standardizing to the Flygt submersible pumps. Based on the information provided by the applicant, EPA has determined that it is inconsistent with the public interest for the County to pursue the purchase of a domestically manufactured submersible pump.

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 is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with public the 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 County has requested a waiver from the Buy American Provision for the purchase of the foreign made submersible pumps as part of its tunnel and tunnel lift station project. The purchase of the submersible pumps is part of a project that, according to the County, "consists of a wastewater conveyance and linear storage tunnel from the existing Jack's Creek wastewater treatment facility to the existing No Business Creek pump station to convey wastewater flows from the tunnel to the pump station and a lift station to lift the flow from the tunnel invert to the pump station. The tunnel is an approximate 16,000 linear feet, 12-foot diameter hard rock bore. The lift station is constructed inside an approximate 180 feet deep shaft constructed through hard rock and lined with concrete and shotcrete. The completed project will have a design flow capacity of 7.5 million gallons per day (mgd) and overflow storage capacity in excess of 13 million gallons of raw sewage."

The project requires the installation of two submersible pumps, plus an additional spare submersible pump. The pumps are specified at a maximum 335 hp and 5.5 mgd pumping capacity at a total head of 207 feet. The project specification provided prospective bidders with one acceptable