

**FOR FURTHER INFORMATION CONTACT:**

Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:**

Under the authority of the Recovery Act, Public Law 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that (1) motorized automatic two wing revolving doors that open via the motor upon a fire alarm to accommodate smoke evacuation, retract to full open position under Fire Alarm status and remain in the open position until the alarm is cleared, are compliant with the Americans with Disabilities Act, and possess both sliding and swinging door that allows entry/exit through the sliding doors while the revolving section is being serviced; (2) self-contained photovoltaic LED area lighting systems with a non-corrosive, stainless steel, powder-coated anti-weathering shell, that do not succumb to the sail effect, possess flat plate lens optics with directional lamp lens, dark sky capability, and full cutoff conformity; (3) ultrasonic directional sensors and DC300 facility controllers for a parking guidance system which integrates with American designed intelligent parking guidance system software allowing real-time updates to a central location and via the Internet; (4) Load Management Ripple Control Receivers for an existing load management system; and (5) LED tube lights to replace T8 fluorescents that meet the April 2010 DOE recommended performance specifications, available at [http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/t8\\_replacement-lamps.pdf](http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/t8_replacement-lamps.pdf) that will be used on eligible EERE-Recovery Act funded projects qualify for the "nonavailability" waiver determination.

EERE has developed a robust process to ascertain in a systematic and

expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the five products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The NIST MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on September 30, 2010 five nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra*. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

**Authority:** Pub. L. 111-5, section 1605.

Issued in Washington, DC, on September 30, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9216-6]

### Access in Litigation to Confidential Business Information

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

**ACTION:** Notice of Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation.

**SUMMARY:** The EPA has authorized the United States Department of Justice ("DOJ") to disclose, in response to discovery requests received in the litigation styled, *Tronox Incorporated, et al., v. Anadarko Petroleum Corp., et al.*, Adv. Proc. No. 09-01198 (ALG), pending in the United States Bankruptcy Court for the Southern District of New York (the "Litigation"), information which has been submitted to EPA by its contractors that is claimed to be, or has been determined to be, confidential business information ("CBI"). The EPA is providing notice of past disclosure and of ongoing and contemplated future disclosure. Interested persons may submit comments on this Notice to the address noted below.

**DATES:** Access by the DOJ and/or the parties to the Litigation to material discussed in this Notice that has been either claimed or determined to be CBI is ongoing, and is expected to continue in the future during the pendency of the Litigation. The EPA will accept comments on this Notice through October 30, 2010.

**ADDRESSES:** For further information contact Craig Kaufman, Attorney-Advisor, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (Mail Code 2272A), Washington, DC 20460; telephone number: (202) 564-4284; e-mail address: [kaufman.craig@epa.gov](mailto:kaufman.craig@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 40 CFR 2.209(c)(1), the EPA has disclosed information, including CBI, to the DOJ in response to a written request for information from the DOJ and/or on the initiative of the EPA because such disclosure was necessary to enable the DOJ to carry out a litigation function on behalf of the EPA. The DOJ has been served with discovery requests seeking, among other things, documentation supporting the proofs of claim filed by the United States of America in the bankruptcy styled, *In re Tronox Incorporated, et al.*, Case No. 09-10156 (ALG) (Chapter 11), pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy"). Those proofs of claim were filed on behalf of, *inter alia*, the EPA regarding the debtors' environmental liabilities, including liabilities at sites at which the EPA's contractors may have provided services.

The parties to the Litigation have entered into an Agreed Protective Order, see Document No. 248 in the Bankruptcy docket, as amended on August 12, 2009, see Document No. 622 (together, the "AGP"), that will govern the treatment of information, including CBI, that is designated "Confidential" pursuant to the AGP. The AGP provides for limited dissemination of confidential information and for the return or destruction of confidential information at the conclusion of the Litigation. See, e.g., AGP, at ¶¶ 1, 10, 12-16, 21.

In accordance with 40 CFR 2.209(d), the EPA is hereby giving notice that it has authorized the DOJ to disclose information that originated from the EPA to the extent required to comply with the discovery obligations of the United States in the Litigation, including its obligations under the AGP. Accordingly, business information that is ordinarily entitled to confidential treatment under existing Agency

regulations (40 CFR Part 2) may be included in the information that the DOJ will release to parties in the Litigation pursuant to the AGP.

As explained by EPA's Office of General Counsel at its Web site, <http://www.epa.gov/ogc/documents.htm>, the CBI that may be disclosed in the Litigation could include, but is not limited to, business information submitted by contractors and prospective contractors, see generally Class Determination 1-95; business information submitted in technical and cost proposals, see generally Class Determination 2-78; and business information submitted in contract proposals and related documents, see generally Class Determination 2-79. CBI may also include information obtained by the EPA under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), including information provided to the EPA, directly or indirectly, pursuant to section 104 of CERCLA. All CBI that is disclosed in the Litigation will be designated "Confidential" pursuant to the AGP.

Information, including CBI, discussed in this Notice may relate to certain companies and agencies that have provided services for the EPA at sites involved in the Litigation, including but not limited to the following: Agency for Toxic Substances and Disease Registry; Alion Science & Technology Corporation; Alpha Woods Hole Laboratories; Arctic Slope Regional Corporation; ASRC Management Services, Incorporated; CDM Federal Programs Corporation; CH2M Hill Incorporated; Clayton Environmental Consultants; Columbia Analytical Services; Computer Services Corporation; Contract Laboratory Program; Datachem Laboratories, Incorporated; DynCorp International; Ecology & Environment, Incorporated; Environmental Control Technology Corporation; EnviroSystems, Incorporated; Foster Wheeler Environmental Corporation; GRB Environmental Services, Incorporated; Illinois Environmental Protection Agency; Industrial Economics, Incorporated; InStep Software, LLC; Integrated Support Systems, Incorporated; Keystone Environmental Resources Incorporated; Lancaster Laboratories; Lata-Kemron Remediation, LLC; Laucks Testing Laboratories, Incorporated; Liberty Analytical Corporation; Lockheed Environment Systems and Technologies Company; Lockheed Environmental & Technologies Remote Sensing Support; Lockheed Martin Services Incorporated;

Malcolm Pirnie, Incorporated; Metcalf & Eddy, Incorporated; Mitkem Laboratories; NewFields; OHM Remediation Services Corporation; Resource Applications, Incorporated; Ronson Management Corporation; Routine Analytical Services; Roy F. Weston, Incorporated; Science Applications International Corporation; Special Analytical Services; S.S. Papadopulos & Associates, Incorporated; Stevenson; STN Environmental Joint Venture; TechLaw, Incorporated; Tetra Tech EM Incorporated; The Conti Group; Toeroek Associates, Incorporated; TRC Environmental Corporation; United States Environmental Services, LLC; United States Army Corps of Engineers; United States Department of the Interior; and Westinghouse Remediation Services, Incorporated; Weston Solutions, Incorporated; Wisconsin Department of Natural Resources; WRS Infrastructure and Environment Incorporated; York Laboratories.

Dated: October 18, 2010.

**Sandra Connors,**

*Acting Deputy Director, Office of Site Remediation Enforcement.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9216-4]

### Science Advisory Board Staff Office Request for Nominations of Experts for the Consultation on Revisions to the Multi-Agency Radiation Survey and Site Investigation Manual

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

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to augment the SAB's Radiation Advisory Committee (RAC) to conduct a consultation on revision to the Multi-Agency Radiation Survey and Site Investigation Manual.

**DATES:** Nominations should be submitted by November 12, 2010 per instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564-2064, or via e-mail at [kooyoomjian.jack@epa.gov](mailto:kooyoomjian.jack@epa.gov). General