

Dated: September 29, 2011.

**Al McGartland,**

*Director, National Center for Environmental Economics.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9476-7]**

### **Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Equivalent Method**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the designation of one new equivalent method for monitoring ambient air quality.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, one new equivalent method for measuring concentrations of ozone (O<sub>3</sub>) in the ambient air.

**FOR FURTHER INFORMATION CONTACT:** Robert Vanderpool, Human Exposure and Atmospheric Sciences Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. E-mail: [Vanderpool.Robert@epa.gov](mailto:Vanderpool.Robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at <http://www.epa.gov/ttn/amt/criteria.html>.

The EPA hereby announces the designation of one new equivalent method for measuring pollutant concentrations of O<sub>3</sub> in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on June 22, 2010 (75 FR 35597).

The new O<sub>3</sub> equivalent method is an automated monitoring method (analyzer) utilizing a measurement principle based on chemiluminescence reaction of O<sub>3</sub> with nitric oxide (NO). (Note that this is the first O<sub>3</sub> equivalent method designated by EPA that utilizes this particular measurement principle, which is distinguished from the measurement principle of chemiluminescence reaction of O<sub>3</sub> with ethylene specified for EPA reference methods for O<sub>3</sub>.) The newly designated equivalent method is identified as follows:

EQOA-0611-199, "Teledyne—Advanced Pollution Instrumentation, Inc. Model 265E or T265 Chemiluminescence Ozone Analyzer," operated on any full scale range between 0–100 ppb and 0–1000 ppb, with any range mode (Single, Dual, or AutoRange), at any ambient temperature in the range of 5 °C to 40 °C, and with a TFE filter in the sample air inlet, operated with a sample flow rate of 500 ± 50 cm<sup>3</sup>/min (sea level), with the dilution factor set to 1, with Temp/Press compensation ON, and in accordance with the appropriate associated instrument manual, and with or without any of the following options: Internal or external sample pump, Sample/Cal valve option, Rack mount with or without slides, analog input option, 4–20 mA isolated current loop output.

The application for an equivalent method determination for this candidate method was received by the EPA on November 7, 2010. The analyzer models are commercially available from the applicant, Teledyne Advanced Pollution Instrumentation, Inc., 9480 Carroll Park Drive, San Diego, CA 92121-2251.

A representative test analyzer has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on June 22, 2010). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual

associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program," EPA-454/B-08-003, December, 2008 (both available at <http://www.epa.gov/ttn/amt/qalist.html>). Vendor modifications of a designated equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler, analyzer, or method that is identical to the sampler, analyzer, or method described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (e.g., by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical

aspects of the method should be directed to the applicant.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9476-9]

### Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Airway Heights (the City), Washington

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 10 is hereby granting a waiver from 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 City for the purchase of six Carrier split ductless air conditioning (AC) units, manufactured in Mexico and South Korea. This is a project specific waiver and only applies to the use of the specified products 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 waiver applicant states that AC systems are required to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City's consulting engineer requested the Carrier AC system products based on specifications on the project plans for six Carrier split ductless AC units. The City has provided sufficient documentation to support their request. This action allows the installation of the six specified ductless AC units as noted in the City's June 22, 2011, request and additional follow up documentation.

**DATES:** *Effective Date:* September 21, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Michelle Tucker, CWSRF Coordinator, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553-1414, U.S. EPA Region 10 (OWW-137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

**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 Section 1605(a) of Public Law 111-5, Buy American requirements, to the City for purchase of six non-domestic manufactured Carrier split ductless (AC) units. The City requires the AC systems to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City planned to purchase and install the identified six ductless split AC units and one ducted unit from Carrier. The units are needed to keep the motor starters, control equipment, power transformers, circuit breakers, and other electronic controlling equipment at the wastewater treatment plant from overheating. The City's consultant conducted due diligence and research with five product suppliers of AC systems in the Eastern Washington area. The City's consultant concluded that there are no domestically produced ductless AC systems that could meet the product specifications.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per OMB regulations 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 contact 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 regulation, 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 the City's requirement for ductless split AC units. The waiver request was submitted after contract signing; however, it was reasonably unforeseeable. ARRA Buy American documentation for the AC units was not supplied with the initial submittal in January 2010. Pending re-submittal of the documentation, the City discovered that the units had a plate stamped "Made in Mexico" in September 2010. The City checked with

the Department of Ecology and EPA to determine if the units were eligible under the Section 1605(d) trade agreement exception; EPA confirmed the units were not eligible for that exception. The City spent several months coordinating back and forth with the manufacturer and the contractor to explain that they were not covered by any international trade agreements and that an alternate means of compliance was necessary. The drafting of the project-specific availability waiver began in March 2011. The City delayed submitting the waiver request to investigate a potential domestic manufacturer (Enviromaster International) lead, which ultimately did not work out. Since the City was investigating various means of Buy American compliance through gathering adequate documentation, coordinating with the manufacturer and contractor, and researching potential domestic manufacturers, the circumstance of applying for a waiver after the start of construction was not foreseen. EPA has evaluated this information and will consider the City's waiver request as a timely request since it was reasonably unforeseeable.

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", defines "satisfactory quality" as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City provided information to the EPA representing there are no current domestic manufacturers of the six ductless split air conditioning units. EPA's contractor reviewed the information provided by the City and determined that City's claim that no domestically manufactured air conditioner units exist that meets the project specifications for the six split ductless AC units is supported by the available information.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The implementation 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. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA, to create or retain jobs.