

confirmed the waiver applicant's claim that there is no American-made 15 HP vertical hollow shaft electric motor available for use in a water supply well. Therefore, EPA Region 6 concludes that the District meets the "specifications in project plans and design."

EPA has determined that the District's waiver request is timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the District's request to determine if the request constitutes a late request. 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, in this case EPA has determined that the District's request, though made after the contract date, may be treated as timely. This request is submitted after the contract date because the District was unable to specify the exact size of the motor until after the development of the new well and the completion of the pumping test. The need for a waiver was not determined until after the well contractor confirmed that there was no domestically made 15 HP vertical hollow shaft electric motor available to meet the project specifications. Accordingly, EPA will evaluate the request as a timely request.

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 reasonably available quantity as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The District has incorporated specific technical design requirements for installation of electric motor in its water supply well. Therefore, it meets the requirements of the "satisfactory quality" criterion for requesting a waiver from the Buy American provisions of Public Law 111-5.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as the District, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving

Fund 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 a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by the District is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60-176.170, and in the April 28, 2009, memorandum, "Implementation of Buy American provisions of Public Law 111-5, the American Recovery and Reinvestment Act of 2009. The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the District's technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. 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 District is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111-5 for the purchase of a 15 HP vertical hollow shaft electric motor, using ARRA funds, as specified in the District's request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers "based on a finding under subsection (b)."

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

Dated: December 17, 2010.

**Al Armendariz,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 6.*

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9246-2]

**Proposed Settlement Agreement**

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

**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address lawsuits filed by the following groups of Petitioners: (1) The States of New York, California, Connecticut, Delaware, Maine, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively "State Petitioners"); and (2) Natural Resources Defense Council, Sierra Club, and Environmental Integrity Project (collectively "Environmental Petitioners"). State and Environmental Petitioners filed their lawsuits in the United States Court of Appeals for the District of Columbia Circuit, which were consolidated under the lead case *American Petroleum Institute, et al. v. EPA*, No. 08-1277 (DC Cir.). Petitioners filed petitions for review of EPA's final rule entitled "Standards of Performance for Petroleum Refineries," published at 73 FR 35838 (June 24, 2008). The proposed settlement agreement establishes deadlines for EPA's proposed and final actions for meeting its obligations in the agreement.

**DATES:** Written comments on the proposed settlement agreement must be received by *January 31, 2011*.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2010-1045, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:**

Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone*: (202) 564-1272; *fax number* (202) 564-5603; *e-mail address*: [stahle.susan@epa.gov](mailto:stahle.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Additional Information About the Proposed Settlement Agreement**

The State and Environmental Petitioners filed petitions for judicial review of the final rule promulgated under the Clean Air Act ("CAA") section 111, 42 U.S.C. 7411, entitled, "Standards of Performance for Petroleum Refineries, Final Rule," published at 73 FR 35838 (June 24, 2008). These petitions for review currently are pending before the U.S. Court of Appeals for the District of Columbia Circuit in consolidated cases under the lead case *American Petroleum Institute, et al. v. EPA*, No. 08-1277. The Final Rule includes amendments to the current standards of performance (40 CFR part 60, subpart J) and separate standards of performance for new process units (40 CFR part 60, subpart Ja) at petroleum refineries. In connection with this Final Rule, EPA declined to establish standards of performance for greenhouse gas emissions ("GHGs").

The Environmental Petitioners also filed a petition for administrative reconsideration pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), and EPA granted reconsideration with respect to some of the issues raised in that petition for reconsideration. 73 FR 55751 (Sept. 26, 2008). On December 22, 2008, EPA published a proposed rule concerning issues that were raised in the Environmental Petitioners' administrative petition for reconsideration. 73 FR 78522 (Dec. 22, 2008). On December 29, 2009, EPA granted reconsideration of all remaining issues that were raised in the petitions for administrative reconsideration, including the failure to regulate GHGs.

Under the terms of the proposed settlement agreement, within 3 business days after this Settlement Agreement is executed, the Parties shall file a joint motion with the Court notifying it of this agreement and requesting that the Petitioners' petitions for review be held in abeyance pending completion of the process under CAA section 113(g) as set forth in the agreement. Also pursuant to the proposed settlement agreement, EPA shall sign a proposed rule by December 10, 2011, that includes at a minimum, the following: (A) Standards of performance for GHGs pursuant to CAA

section 111(b), 42 U.S.C. 7411(b), for affected facilities at refineries that are subject to the following NSPS: (1) Subparts J and Ja, (2) subpart Db, (3) subpart Dc, (4) subpart GGG, and (5) subpart QQQ, and emissions guidelines for GHGs pursuant to CAA section 111(d), 42 U.S.C. 7411(d), and 40 CFR 60.22, from existing affected facilities at refineries in the source categories covered by those NSPS subparts; (B) a review of the emission standards set forth in 40 CFR Part 63, subpart UUU, pursuant to CAA sections 112(d)(6) and (f)(2), 42 U.S.C. 7412(d)(6) and (f)(2); and (C) a resolution of all other issues raised in Environmental Petitioners' August 25, 2008 petition for administrative reconsideration. EPA shall sign a final rule by November 10, 2012, that includes final determinations with regard to each of the elements in the proposed rule. If EPA fulfills its obligations, the State and Environmental Petitioners shall, no later than 5 business days after the date on which that final rule takes effect, file an appropriate pleading seeking the dismissal of Petitions for Review Nos. 08-1279 and 08-1281, with prejudice, in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

**II. Additional Information About Commenting on the Proposed Settlement Agreement***A. How can I get a copy of the settlement agreement?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2010-1045) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 23, 2010.

**Patricia A. Embrey,**

*Acting Associate General Counsel.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9246-1]

### Proposed Settlement Agreement, Clean Air Act Citizen Suit

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

**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement between the following groups of Petitioners: (1) The States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively "State Petitioners"); and (2) Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund (collectively "Environmental Petitioners"), and Respondent, the U.S. Environmental Protection Agency

("EPA") (collectively "the Parties"). This proposed settlement is intended to resolve threatened litigation over the EPA's failure to respond to United States Court of Appeals for the District of Columbia Circuit's remand in *State of New York, et al. v. EPA*, No. 06-1322. Under the terms of the proposed settlement agreement deadlines have been established for EPA to take action.

**DATES:** Written comments on the proposed settlement agreements must be received by January 31, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2010-1057, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Elliott Zenick, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564-1822; *fax number:* (202) 564-5603; *e-mail address:* [zenick.elliott@epa.gov](mailto:zenick.elliott@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Additional Information About the Proposed Settlement Agreements

EPA published a final action entitled "Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units," 71 FR 9866 (Feb. 27, 2006) (the "Final Rule"), which included amendments to the standards of performance for electric utility steam generating units subject to 40 CFR part 60, subpart Da ("EGUs") but did not establish standards of performance for greenhouse gas ("GHG") emissions. The State and Environmental Petitioners filed petitions for judicial review of the Final Rule under the CAA Section 111, 42 U.S.C. 7411, contending, *inter alia*, that the Final Rule was required to include standards of performance for GHG emissions from EGUs. The portions of State and Environmental

Petitioners' petitions for review of the Final Rule that related to GHG emissions were severed from other petitions for review of the Final Rule, and were formerly pending before the United States Court of Appeals for the District of Columbia Circuit (the "Court") under the caption *State of New York, et al. v. EPA*, No. 06-1322. Following the Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), EPA requested remand of the Final Rule to EPA for further consideration of the issues related to GHG emissions in light of that decision and the Court remanded the Final Rule to EPA for further proceedings. The State Petitioners submitted letters to EPA dated June 16, 2008 and August 4, 2009 inquiring as to the status of EPA's action on the remand and stating their position that EPA had a legal obligation to act promptly to comply with the requirements of Section 111. The Environmental Petitioners submitted a letter to EPA on August 20, 2010 seeking commitments to rulemaking on GHG emissions from EGUs as a means of avoiding further litigation. These letters are included in the docket for this notice.

Under the proposed settlement agreement, EPA will sign by July 26, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(b) that includes standards of performance for GHGs for new and modified EGUs that are subject to 40 CFR part 60, subpart Da. EPA will also sign by July 26, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(d) that includes emissions guidelines for GHGs from existing EGUs that would have been subject to 40 CFR part 60, subpart Da if they were new sources. Under the proposed settlement agreement EPA will take final action with respect to the proposed rule no later than May 26, 2012. The proposed settlement agreement provides that EPA's fulfillment of its obligations under the agreement shall result in a full and final release of any claims that State and Environmental Petitioners may have under any provision of law to compel EPA to respond to the Court's Remand Order with respect to GHG emissions from EGUs.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may