

availability, it plans to consider whatever data are available.

As part of the Agency's evaluation, it plans to examine, at a minimum, the following classes of facilities: hazardous waste generators, hazardous waste recyclers, metal finishers, wood treatment facilities, and chemical manufacturers. This list may be revised as the Agency's evaluation proceeds. EPA is currently scheduled to complete and publish in the **Federal Register** a notice addressing additional classes of facilities the Agency plans to evaluate regarding financial responsibility requirements under CERCLA Section 108(b) by December 2009, and, at that time, will solicit public comment.

VII. Conclusion

Based upon the Agency's analysis and review, it concludes that hardrock mining facilities, as defined in this notice, are those classes of facilities for which EPA should identify and first develop requirements pursuant to CERCLA Section 108(b). EPA will carefully examine specific activities, processes, and/or metals and minerals in order to determine what proposed financial responsibility requirements may be appropriate. As part of this process, EPA will conduct a close examination and review of existing Federal and State authorities, policies, and practices that currently focus on hardrock mining activities.⁵⁰

Dated: July 10, 2009.

Lisa P. Jackson,
Administrator.

[FR Doc. E9-16819 Filed 7-27-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8932-9]

Modification of the 1985 Clean Water Act Section 404(c) Final Determination for Bayou aux Carpes in Jefferson Parish, LA

AGENCY: Environmental Protection Agency (EPA).

⁵⁰ As part of developing proposed and final rules the Agency will consider whether hardrock mining facilities which have a RCRA Part B permit or are subject to interim status under RCRA Subtitle C and already are subject to RCRA financial assurance and facility-wide corrective action requirements need to also be subject to the financial responsibility requirements under Section 108(b) of CERCLA. In addition, EPA is aware and will consider in its development of proposed and final rules, that mining on Federal land triggers either the Bureau of Land Management's (BLM) Part 3809 regulations (43 CFR Part 3809) and the Forest Service's Part 228 regulations (36 CFR Part 228), both have financial responsibility requirements that cover reclamation costs. Many States also have reclamation laws.

ACTION: Notice.

SUMMARY: This is a notice of EPA's Modification of the 1985 Clean Water Act Section 404(c) Final Determination for Bayou aux Carpes to allow for the discharge of dredged or fill material for the purpose of the construction of the West Closure Complex as part of the larger flood protection project for the greater New Orleans area. EPA believes that this Final Determination for modification achieves a balance between the national interest in reducing overwhelming flood risks to the people and critical infrastructure of south Louisiana while minimizing any damage to the Bayou aux Carpes CWA Section 404(c) site to the maximum degree possible in order to avoid unacceptable adverse effects.

DATES: *Effective Date:* The effective date of the Final Determination for Modification was May 28, 2009.

ADDRESSES: U.S. Environmental Protection Agency, Office of Water, Wetlands Division, Mail code 4502T, 1200 Pennsylvania Ave, NW., Washington, DC 20460. The following documents used in the Bayou aux Carpes modification are listed on the EPA Wetlands Division Web site at <http://www.epa.gov/owow/wetlands/regs/404c.html>: New Orleans District of the Corps letter dated November 4, 2008, requesting that EPA modify the Bayou aux Carpes CWA Section 404(c) designation; Public Notice of Proposed Determination to modify the Bayou aux Carpes CWA Section 404(c) designation published in the **Federal Register** on January 14, 2009; April 2, 2009, Recommended Determination (RD) for modification of the Bayou aux Carpes 404(c) action; and the May 28, 2009, Modification of the 1985 Clean Water Act Section 404(c) Final Determination for Bayou aux Carpes. Additional documents that are related to the Bayou aux Carpes modification can be located on the U.S. Army Corps of Engineers New Orleans District Web site at http://www.nolaenvironmental.gov/projects/usace_levee/IER.aspx?IERID=12.

Publicly available document materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: Mr. Clay Miller at (202) 566-1365 or by e-mail at miller.clay@epa.gov. Additional information and copies of EPA's Final Determination for Modification are available at <http://www.epa.gov/owow/wetlands/regs/404c.html> or http://www.nolaenvironmental.gov/projects/usace_levee/IER.aspx?IERID=12.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq*) authorizes EPA to prohibit, restrict, or deny the specification of any defined area in waters of the United States (including wetlands) as a disposal site for the discharge of dredged or fill material whenever it determines, after notice and opportunity for public hearing, that such discharge into waters of the United States will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Congress directed the U.S. Army Corps of Engineers (Corps) to enhance the existing Lake Pontchartrain and Vicinity Hurricane Protection project and the West Bank and Vicinity Hurricane Protection project to the 100-year level of protection. One section of this much larger project is within the Bayou aux Carpes area that is subject to a 1985 EPA CWA Section 404(c) action that prohibited the discharge of dredged or fill material in the Bayou aux Carpes site south of the New Orleans metro area. On November 4, 2008, the New Orleans District of the Corps requested a modification of the Bayou aux Carpes CWA Section 404(c) designation to accommodate discharges to the Bayou aux Carpes wetlands associated with the proposed enhanced levee system in Jefferson Parish, Louisiana.

In evaluating the Corps of Engineers proposal for modification of the 1985 Bayou aux Carpes CWA Section 404(c) Final Determination, the key elements of a Section 404(c) process were followed. These include a hearing and opportunity for the public to provide written comments, preparation and submittal of a Recommended Determination proposed by EPA Region 6 to EPA Headquarters, and a Final Determination for Modification issued by EPA Headquarters.

Background

On October 16, 1985, EPA issued a Final Determination pursuant to Section 404(c) of the Clean Water Act restricting the discharge of dredged or fill material in the Bayou aux Carpes site, Jefferson Parish, Louisiana, based on findings that the discharges of dredged or fill material into that site would have unacceptable

adverse effects on shellfish beds and fishery areas (including spawning and breeding areas), wildlife, and recreational areas. EPA published a CWA Section 404(c) Final Determination prohibiting, with three exceptions, future discharges of dredged or fill material to wetlands into the Bayou aux Carpes site at 50 FR 47267 (November 15, 1985). The first exception was for discharges associated with the completion of the Corps modified design for the Harvey Canal—Bayou Barataria Levee Project. The second exception was for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline. The third exception covered discharges associated with EPA approved habitat enhancement activities. The CWA Section 404(c) action was based upon a thorough record of investigations, including field surveys, remote sensing, and other technical analyses conducted by three EPA facilities, the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), and the Louisiana State University (LSU) Center for Wetland Resources.

After completion of the Final Determination, several requests for modifications were reviewed by EPA. The one request that was granted was for an emergency exception to bury an existing pipeline deeper via horizontal drilling techniques as a response to unstable soil conditions and a leaking pipeline. Shell Pipe Line Corporation (Shell) petitioned EPA for reconsideration of exceptions identified in EPA's 1985 Final Determination concerning the Bayou aux Carpes site on December 18, 1991. Shell requested a modification to the Final Determination in order to (1) temporarily discharge dredged or fill material associated with performing emergency work to relocate an existing below ground pipeline located in the restricted Section 404(c) area; and (2) exclude from the Bayou aux Carpes Section 404(c) restriction future discharges associated with routine operation and maintenance of this pipeline. On February 28, 1992, Shell's request for modification was approved by the EPA Assistant Administrator for Water on the basis that relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering alternatives and public safety, the work would have only minimal and temporary impacts on the wetlands, and the work was essentially the same as that envisioned under the second exception granted in the 1985 Final Determination (57 FR 3757).

As a result of the residential, commercial, and industrial damage caused by Hurricanes Katrina and Rita in 2005, Congress directed the Corps to enhance the existing Lake Pontchartrain and Vicinity Hurricane Protection project and the West Bank and Vicinity Hurricane Protection project to the 100-year level of protection, as determined by the Federal Emergency Management Agency (FEMA). The overall Corps project to provide protection to southern Louisiana involves two large levee systems, the West Bank and Vicinity Hurricane Protection Project and the Lake Pontchartrain and Vicinity Hurricane Protection Project, and approximately 350 miles of earthen levees and floodwalls throughout five parishes in the New Orleans metropolitan area. One section of this much larger project is within the Bayou aux Carpes area. The Corps' proposal for providing increased hurricane and storm damage risk reduction for this area does not fall within one of the previously established exceptions to the Section 404(c) Final Determination. Since the construction of the Corps' project would result in discharges of dredged or fill material within the Bayou aux Carpes site, a request for modification of 1985 EPA's Final Determination was submitted for consideration and final decision.

On November 4, 2008, the New Orleans District of the Corps requested a modification to the 1985 EPA action, which prohibited the discharge of dredged or fill material in the Bayou aux Carpes site south of the New Orleans metro area. The Corps requested that EPA modify the Bayou aux Carpes CWA Section 404(c) designation to accommodate discharges to the Bayou aux Carpes wetlands associated with the proposed enhanced levee system in Jefferson Parish, Louisiana. The project known as the West Closure Complex proposes the construction of a "T-wall" style floodwall in lieu of an earthen levee in order to minimize the footprint. A berm to protect the floodwall from barge collisions would be constructed on the water side of the floodwall and would serve as a maintenance access road. The floodwall would be built from the water side to reduce construction impacts.

The placement of the wall within a 100 foot by 4,200 foot corridor on a previously impacted area of the Bayou aux Carpes site, along with the commitment by the Corps to augment the design as necessary to enhance the hydrology of the Bayou aux Carpes 404(c) area to offset any potential impacts due to construction, provides the most practical approach from an

environmental perspective while ensuring the 100-year level of risk reduction is accomplished. Construction of the proposed action would impact less than 10 acres within the Bayou aux Carpes 404(c) boundary.

EPA carefully reviewed the proposal and the information submitted by the New Orleans District of the Corps, comments received pursuant to the notice published in the **Federal Register** and public hearing held in New Orleans, and the existing Bayou aux Carpes administrative record. On January 14, 2009, EPA posted a notice in the **Federal Register** announcing a public comment period on the request by the New Orleans District of the Corps to amend the 1985 Bayou aux Carpes CWA Section 404(c) Final Determination. There were 25 written comments received from individuals and organizations that included opinions about whether the modification should be granted or denied, consideration of a project alternative that would avoid all impacts to the Bayou aux Carpes site, the need for a detailed mitigation plan to be included, the need to thoroughly research and plan mitigation and augmentation features, and the need for a long-term monitoring plan. A public hearing was held on February 11, 2009. Thirteen people spoke at the hearing, and raised issues about the larger plans for providing upgraded hurricane and storm damage risk reduction for a portion of the West Bank and Vicinity Hurricane Protection Levee system as well as whether EPA should grant the modification.

Conclusion

The West Closure Complex project sited on the Bayou aux Carpes area is a part of a much larger project with the intent to reduce flood risks to the 250,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more resilient and reliable storm damage and risk reduction system, as directed by Congress. In an effort to reconcile the potentially conflicting goals of increased flood protection and ecological protection, the Corps and EPA worked closely together and with other Federal partners, State and local agencies, and many stakeholders in an effort to understand fully the possibilities for accommodating these dual objectives. Having worked closely with the Corps and other resource agencies on the evaluation of the environmental aspects of this segment of the overall West Bank and Vicinity project upgrade, EPA agreed with the Corps' conclusion that

there is no reasonable and less environmentally damaging practicable alternative for achieving the Congressional directive than to locate a sector gate adjacent to the Bayou aux Carpes CWA 404(c) site.

In consideration of the above information, EPA believes that compelling circumstances justify a modification of the 1985 Bayou aux Carpes CWA Section 404(c) designation, that there are no less environmentally damaging practicable alternatives that would adequately address those circumstances, and that all feasible means of minimizing adverse wetland effects to the Bayou aux Carpes site will be implemented. Therefore, EPA is modifying the 1985 Bayou aux Carpes CWA 404(c) Final Determination with conditions to allow for discharges associated with construction of the West Closure Complex on the Bayou aux Carpes site as described in the Corps' November 4, 2008, request for modification. EPA believes that this Final Determination for modification achieves a balance between the national interest in reducing overwhelming flood risks to the people and critical infrastructure of south Louisiana while minimizing any damage to the Bayou aux Carpes CWA Section 404(c) area to the maximum degree possible in order to avoid unacceptable adverse effects.

Dated: July 21, 2009.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E9-17928 Filed 7-27-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8935-8]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Sharon Elementary School Water System, Sharon, VT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA section 1605 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 Sharon Elementary School Water System in Sharon, Vermont for the purchase of NSF-55 Class A certified Ultra Violet

(UV) disinfection equipment. This is project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. The UV disinfection equipment under consideration is manufactured outside of the United States by two companies based in Canada and meets the water system's technical and design specifications. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Sharon Elementary School Water System has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to section 1605 of the ARRA. This action permits the purchase of specific UV disinfection equipment for the proposed project being implemented by the Sharon Elementary School Water System.

DATES: *Effective Date:* July 17, 2009.

FOR FURTHER INFORMATION CONTACT:

Katie Connors, Environmental Engineer, (617) 918-1658, or David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA section 1605(c) and pursuant to section 1605(b)(2) of Public Law 111-5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Sharon Elementary School Water System (the "System") in Sharon, Vermont for the acquisition of NSF-55 Class A certified Ultra Violet (UV) disinfection equipment manufactured outside of the United States.

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 are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public 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 State of Vermont requires that water supply installations must comply with the Vermont Standards for Water System Design, Construction and Protection (Vermont Water Supply Rule—Chapter 21). In order to meet these standards the State of Vermont requires public water systems using UV disinfection to use National Sanitation Foundation (NSF) Standard 55 (Ultraviolet Microbial Water Treatment Systems) Class A certified UV equipment. The State of Vermont, Agency of Natural Resources, Water Supply Division (VTANR) has identified three lines of UV disinfection systems with NSF-55 Class A certification, all manufactured in Canada. Two of the three include the UV Pure Hallett 15xs ultraviolet water system, as well as the Trojan Technologies Sterilight SPV 200 series units. The design engineer and the VTANR have conducted research and determined that there are no domestic manufacturers that have NSF-55 Class A certification at the time of this waiver request.

The design engineer for the System indicated that he chose to use four Hallett 15xs (15 gpm) UV units for the school buildings and one Sterilight SPV 200 (2 gpm) UV unit for a remote location which receives its water supply from the school well. The designs also took into account the limited space available for retrofitting the water supply and distribution systems, as well as the attributes of the specific equipment. The estimated cost for all of the UV equipment for the proposed project was under \$10,000.

The System's submission clearly articulates functional reasons for its technical specifications and requirements, and has provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

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