



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

American Recovery and Reinvestment Act Site Visit of Combined Sewer Overflow Detention Facility, City of Goshen, Indiana

Report No. 13-R-0092

January 7, 2013



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Report Contributors:

Michael Rickey
Larry Brannon
Patrick McIntyre

Abbreviations

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General

Cover photo: Flushing gates at Goshen, Indiana, Combined Sewer Overflow Detention Facility. (EPA OIG photo)

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At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency, Office of Inspector General, conducts site visits of American Recovery and Reinvestment Act of 2009 (Recovery Act) clean water and drinking water projects. The purpose of this visit was to address a hotline complaint involving compliance with the Recovery Act's Buy American requirements by the City of Goshen, Indiana. We also reviewed contract procurement.

The City of Goshen received a \$36.1 million loan from the Indiana Finance Authority. The loan included \$5 million in Recovery Act funds. The city used these funds to construct a new combined sewer overflow detention facility.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130107-13-R-0092.pdf

American Recovery and Reinvestment Act Site Visit of Combined Sewer Overflow Detention Facility, City of Goshen, Indiana

What We Found

We conducted a site visit of the Recovery Act project to build a new combined sewer overflow detention facility in the City of Goshen, Indiana, in December 2011. As part of our site visit, we toured the project, interviewed city officials and engineering personnel, and reviewed documentation maintained by the city related to both the Buy American requirements of the Recovery Act and contract procurement.

The equipment identified in the hotline complaint was produced in the United States and complied with the Buy American requirements, as set out in Section 1605 of the Recovery Act. However, the city could not demonstrate that a positive displacement blower used in the project was manufactured in the United States, as required by the Recovery Act. Since Goshen cannot demonstrate that all equipment items used on the project complied with the Buy American requirements, the project is not eligible for the \$5 million of Recovery Act funds authorized by the state unless the U.S. Environmental Protection Agency exercises a regulatory option.

Recommendation

We recommend that the Regional Administrator, Region 5, employ the procedures set out in the Code of Federal Regulations (CFR) at 2 CFR § 176.130 to ensure compliance with Buy American requirements. If the region decides to retain the foreign manufactured goods in the project under 2 CFR §176.130 (c)(3), the region should either "reduce the amount of the award by the cost of the [foreign] steel, iron, or manufactured goods that are used in the project" or "take enforcement or termination action in accordance with the agency's grants management regulations."

The city did not agree with our conclusion or recommendation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

January 7, 2013

MEMORANDUM

SUBJECT: American Recovery and Reinvestment Act Site Visit of
Combined Sewer Overflow Detention Facility, City of Goshen, Indiana
Report No. 13-R-0092

FROM: Arthur A. Elkins, Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is placed to the right of the "FROM:" line.

TO: Susan Hedman
Regional Administrator, Region 5

Nancy Stoner
Acting Assistant Administrator for Water

This is our report on the subject site visit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains a finding on possible noncompliance with the Buy American requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act) and recommended corrective action.

We are forwarding the report to the Office of Water for information purposes because it authored substantial transformation guidance that affects decision-making by Region 5. The OIG has raised concerns that the substantial transformation guidance is inconsistent with legal precedence and may lead to incorrect determinations of Buy American compliance.

This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

We performed this site visit as part of our responsibility under the Recovery Act. The purpose of our site visit was to determine the city's compliance with Buy American requirements under Section 1605 of the Recovery Act pertaining to the Clean Water State Revolving Fund program. The Indiana Finance Authority loaned the city \$36.1 million, including \$5 million in Recovery Act funds, to complete the project.

Action Required

In accordance with EPA Manual 2750, you are required to provide us your proposed management decision for resolution of the findings contained in this report before any formal resolution can be completed with the recipient. Your proposed decision is due in 120 days, or on May 7, 2013. To expedite the resolution process, please e-mail an electronic version of your proposed management decision to adachi.robert@epa.gov.

Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objection to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or heist.melissa@epa.gov; or Robert Adachi, Product Line Director, at (415) 947-4537 or adachi.robert@epa.gov.

Table of Contents

Purpose	1
Background	1
Scope and Methodology	1
Results of Site Visit	2
Buy American Requirements.....	2
Contract Procurement	6
Recommendation	6
City of Goshen Response to Draft Report	7
OIG Comment	7
Status of Recommendations and Potential Monetary Benefits	8

Appendices

A City of Goshen Response to Draft Report and OIG Evaluation	9
B Distribution	13

Purpose

The purpose of this site visit was to determine whether the City of Goshen, Indiana, complied with the Buy American requirements, Section 1605, of the American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. 111-5, pertaining to the combined sewer overflow detention facility project jointly funded by the Recovery Act and the Indiana Finance Authority's Wastewater Revolving Loan Program. We conducted this review as a result of a hotline complaint questioning whether an equipment item for the project met Buy American requirements. We also reviewed the procurement process used to award the construction contract.

Background

In October 2009, the city accepted a \$36.1 million loan from the Indiana Finance Authority to construct a new combined sewer overflow detention facility. The terms of the loan were based on an annual fixed loan rate of 2.33 percent on a 20-year note. The loan included \$5 million in Recovery Act funds that will be forgiven. The loan balance was funded by the state's Wastewater Revolving Loan Program. The city used these funds to construct a new combined sewer overflow detention facility.

In August 2011, the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received a complaint about a sole source equipment specification for the Goshen project. Goshen's Project Manual (bid specifications) listed a Canadian company as the only manufacturer for the flushing gate assemblies. Since the Goshen project received Recovery Act funds, the project was subject to the Recovery Act's Buy American requirements.

Scope and Methodology

Because our objective was limited to assessing compliance with Buy American requirements of the Recovery Act and reviewing the procurement process, we did not perform this assignment in accordance with generally accepted government auditing standards. Specifically, we did not perform certain steps that would allow us to obtain information to assess the city's internal controls and any previously reported audit concerns. As a result, we do not express an opinion on the adequacy of the city's internal controls or compliance with all federal, state, or local requirements.

We made a site visit to the combined sewer overflow detention facility project located in the City of Goshen, Indiana, on December 21, 2011. During our visit, we:

1. Toured the project
2. Interviewed city personnel, the city's consulting engineer, and Indiana Finance Authority personnel

3. Reviewed documentation maintained by the city and its engineer on the following matters:
 - a. Buy American requirements under Section 1605 of the Recovery Act
 - b. Contract procurement

Results of Site Visit

The equipment identified in the hotline complaint complied with the Buy American requirements of the Recovery Act. However, the city could not demonstrate that a positive displacement blower used in the project was manufactured in the United States, as required by the Recovery Act. As a result, the city's project to construct a combined sewer overflow detention facility was not eligible for Recovery Act funds. We did not identify any other issues. We have summarized our results below.

Buy American Requirements

Section 1605 of the Recovery Act prohibits the use of Recovery Act funds for a project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605 also requires that this prohibition be consistent with U.S. obligations under international agreements, and provides for a waiver under three circumstances:

1. Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. Inclusion of iron, steel, or manufactured goods produced in the United States would increase the overall project costs by more than 25 percent.
3. Applying the domestic preference would be inconsistent with public interest.

The Code of Federal Regulations (CFR), in 2 CFR §176.140(a)(1), defines a manufactured good as a good brought to the construction site for incorporation that has been processed into a specific form and shape, or combined with raw materials to create a material that has different properties than the properties of the individual raw materials. There is no requirement with regard to the origin of components in manufactured goods, as long as the manufacture of the goods occurs in the United States (2 CFR §176.70(a)(2)(ii)).

Flushing System

The hotline complaint identified a Canadian firm as the manufacturer or supplier for the flushing system, which included the flushing gates and frame assemblies, a hydraulic power pack, and control panel. The Canadian firm entered into an agreement with a United States manufacturer in Plattsburgh, New York, to produce the flushing system in the United States. Based on the documents

provided, we concluded that the flushing system was produced in the United States and met the Buy American requirements of the Recovery Act.

Kaeser Positive Displacement Blower

Goshen installed one Kaeser Omega Com-Pak Plus CB 130C positive displacement blower that was marked as “MADE IN GERMANY.” To support compliance with Buy American requirements, the city provided a single electronic file that included the following documents: (1) two letters from Kaeser Compressors, Inc., dated February 4, 2010, and October 13, 2011; (2) answers to EPA’s substantial transformation questions; and (3) a copy of the positive displacement blower invoice.



Kaeser positive displacement blower marking plate. (EPA OIG photo)

The February 4, 2010, letter from the company’s vice president claimed that the Kaeser blowers were assembled in Fredericksburg, Virginia, and they complied with the Recovery Act through substantial transformation. The October 13, 2011, letter signed by Kaeser’s Omega project manager stated that for Recovery Act-funded projects, the company purchases a base chassis of proprietarily designed components from the parent company, Kaeser Kompressoren, GmbH, located in Germany. This chassis consists of components such as the blower block, silencer base, and enclosure. The items added in the United States include the electric motor, pulleys, belts, relief valves, and expansion joints. The letter described the building process as mounting and aligning the motor and v-belt pulley drive; adjusting and installing the pressure relief valve(s); and assembling and installing check valves, fan motors, gauges, and switches.

Further, the letter goes on to state that depending on the size and complexity of the specification, additional wiring and setting of ancillary devices may be required. Each unit requires 16 to 20 hours to build, and the assembly procedures, combined with the U.S.-sourced items, account for 35 to 50 percent of the package’s total value. None of the information regarding hours or value was supported by verifiable documentation.

In addition to the two letters, the electronic document provided to us by the city included answers to the three substantial transformation questions described in EPA guidance.¹ These answers state that the Kaeser Omega Blower packages comply with the substantial transformation test based on the answers to the test questions. According to these answers, Kaeser claimed that the blower was

¹ *Determining Whether “Substantial Transformation” of Components into a “Manufactured Good” Has Occurred in the U.S.: Analysis, Roles, and Responsibilities*, dated October 22, 2009.

substantially transformed in the United States and thereby compliant with the Buy American requirements of the Recovery Act, based on affirmative answers to question numbers two and three. These two questions inquired about changes in character or use of a product or component and about the complexity of processes that occurred in the United States.

Question 2 asked if there was a change in character or use of the good or component in America, and included three sub-questions:

- a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
- b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?
- c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?

When answering question 2.a., Kaeser supported its “yes” answer with the following explanation:

With U.S. sourced and purchased components such as motors, pulleys, belts, pressure relief valves etc. form, fit and function had to be considered. Considerable re-engineering by Kaeser U.S. engineering department was required to make sure that the form, fit and function still met the package intent, performance and quality.

For question 2.b., Kaeser stated that the manufacturing or processing operation did not change a product with one use into a product with a different use. For question 2.c., Kaeser supported its “yes” answer with the following:

Due to the limited availability of certain components in the U.S. the product range that can be offered per the ARRA [American Recovery and Reinvestment Act of 2009] requirement would be limited.

Question 3 asked if the process performed in the United States, including but not limited to assembly, were complex and meaningful. Question 3 included five sub-questions:

- a. Did the process take a substantial amount of time?
- b. Was the process costly?
- c. Did the process require particular high level skills?
- d. Did the process require a number of different operations?
- e. Was substantial value added in the process?

Kaeser answered “yes” to all five sub-questions but provided general explanations for each answer. For example, when describing “complex and meaningful” processes, the answer states:

Considerable re-engineering to identify, design, and source U.S. components was required. The design and manufacturing of test stands was required to verify and to performance test the packages.

For questions 3.a and 3.b, about time and costs, Kaeser stated:

Additional time was required to engineer, source, purchase, and test components and package. Additional time was required to handle individual components and repackage.... Kaeser incurred additional costs associated with the time required to engineer, assemble, test and repackage for shipping.

EPA guidance² states that answers must be documented by meaningful, informative, and specific technical descriptions of the activities in the actual process asked about in each question. The guidance also states that design, planning, procurement, and component production, or any other step prior to the process of physically working on and bringing together the components into the item incorporated into the project, cannot constitute or be a part of substantial transformation.

As previously noted, a manufactured good is something that has been processed into a specific form and shape, or combined with other raw materials, that has different properties than the properties of the raw materials.³ There is no requirement regarding the origin of components as long as the manufacturing occurs in the United States.⁴ When describing the concept of substantial transformation in its guidance, EPA refers to 2 CFR § 176.160, which defines substantial transformation as the process in the United States that transforms materials from foreign countries into a new and different manufactured good distinct from the materials from which it was transformed.

According to the Kaeser’s October 13, 2011, letter and visual inspection, the core, complex, blower component and the enclosure for the product were manufactured in Germany. The motor, a v-belt pulley drive, and valves were attached in the United States. With regard to the foreign-made blower component, the manufacturer’s literature states that the German state-of-the-art heavy manufacturing process results in a “durable design that includes rigid casings, cast bearing supports, and one-piece rotors”—with “precision machined, case-hardened, spur-type timing gears and oversized cylindrical roller bearings” along

² *Determining Whether “Substantial Transformation” of Components into a “Manufactured Good” Has Occurred in the U.S.: Analysis, Roles, and Responsibilities*, dated October 22, 2009.

³ 2 CFR § 176.140 (a)(1).

⁴ 2 CFR § 176.70 (a)(2)(ii).

with “piston-ring seals.” The literature also discusses the sophisticated instrumentation, controls, and sensors that are part of the device.

The information provided does not explain how the properties or character of the imported CB130C, 15HP Blower changed in the United States when combined with other materials, or how the blower’s use was limited. The information did not provide a meaningful and specific technical description of the assembly process in the United States that would enable us to determine whether the CB130C blower was manufactured or substantially transformed in the United States, as required by 2 CFR Part 176, Subpart B. The documentation did not explain how the addition of the drive system (motor, pulley, and belts) substantially changed or transformed the character or use of the blower chassis manufactured in Germany and imported into the United States. There is no detailed description of the assembly processes performed in the United States with supporting documentation such as photographs or other records to support the transformation. The claimed assembly time and added value were not supported by any verifiable documentation such as time records, affidavits, or accounting schedules. Therefore, the documentation provided did not establish that the blower complied with the Buy American requirements of the Recovery Act.

Contract Procurement

We did not identify any issues of concern related to contract procurement. The construction contract was competitively awarded to Bowen Engineering Corporation of Indianapolis, Indiana, based on public advertisement. Buy American requirements were included in the Project Manual that was used by the bidders to prepare their bids. Goshen received nine bids on the project and, based on the engineer’s recommendation, Goshen awarded the contract to the lowest responsible and responsive bidder. We reviewed the bid tabulation and contacted several of the unsuccessful bidders to obtain their feedback on the bidding process. We did not identify any inappropriate or unfair bidding practices.

Recommendation

We recommend that the Regional Administrator, Region 5:

1. Employ the procedures set out in 2 CFR § 176.130 to ensure compliance with Buy American requirements. If the region decides to retain the foreign manufactured goods in the project under 2 CFR §176.130 (c)(3), the region should either “reduce the amount of the award by the cost of the [foreign] steel, iron, or manufactured goods that are used in the project” or “take enforcement or termination action in accordance with the agency’s grants management regulations.”

City of Goshen Response to Draft Report

In its August 20, 2012, response, the city stated that it has diligently worked to demonstrate compliance with Buy American requirements throughout the course of the combined sewer overflow detention facility project. Based on the revised submissions, the city now believes that all three of the items noted in the OIG's draft report are fully documented to meet Buy American requirements. The city indicated it has provided detailed documentation from these three manufacturers that it believes satisfactorily demonstrates Buy American compliance through substantial transformation. Therefore, the city does not concur with the OIG's recommendation that the Recovery Act funds be rescinded from the Goshen combined sewer overflow detention facility project.

OIG Comment

We agree that the additional documentation for the actuators and flowmeters supports compliance with Buy American requirements and have removed these previously questioned items from the final report. However, we continue to disagree that the documentation provided for the positive displacement blower supports substantial transformation in the United States.

The city clarified that Kaeser's answers to EPA's three substantial transformation questions were part of an e-mail that also included Kaeser's October 13, 2011, letter. Both of these documents were considered during our field work and were discussed in the draft report. We concluded that the letters and the answers to the substantial transformation questions did not demonstrate that the blower was manufactured or substantially transformed in the United States. Accordingly, our overall conclusion that the project is not eligible for Recovery Act funds because compliance with Buy American requirements cannot be confirmed remains unchanged. We continue to recommend that the Regional Administrator exercise authority under 2 CFR § 176.130.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	6	Employ the procedures set out in 2 CFR § 176.130 to ensure compliance with Buy American requirements. If the region decides to retain the foreign manufactured goods in the project under 2 CFR §176.130 (c)(3), the region should either "reduce the amount of the award by the cost of the [foreign] steel, iron, or manufactured goods that are used in the project" or "take enforcement or termination action in accordance with the agency's grants management regulations."	U	Regional Administrator, Region 5		\$5,000	

¹ O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is unresolved with resolution efforts in progress

City of Goshen Response to Draft Report and OIG Evaluation



**Engineering Department
CITY OF GOSHEN**

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August 20, 2012

Mr. Robert Adachi
Director of Forensic Audits
Office of Inspector General
Environmental Protection Agency
75 Hawthorne Street (Mail Code IGA-1-1)
San Francisco, CA 94105

This correspondence is the City of Goshen's response to address the findings presented by the U.S. Environmental Protection Agency, Office of Inspector General Draft Report entitled, "American Recovery and Reinvestment Act Site Visit of Combined Sewer Overflow Detention Facility, City of Goshen, Indiana."

The findings of the aforementioned report by the U.S. Environmental Protection Agency Office of Inspector General (OIG) claim that three (3) products utilized by the City of Goshen CSO Detention Facility Project lack sufficient documentation to meet the American Recovery and Reinvestment Act (ARRA) Section 1605 Buy American requirements and do not meet the criteria outlined in the EPA guidance for determining substantial transformation of goods and equipment. It is the City's position that all three (3) products do comply with Buy American requirements. The City has provided additional documentation to demonstrate this compliance via substantial transformation.

Table 1 provides a summary of the items that, according to OIG, did not include the necessary detail and or documentation to demonstrate compliance with Section 1605 of the Recovery Act.

Table 1 – OIG ARRA Buy American Deficiency Summary

Section	Item	Manufacturer	Vendor
A	Electric Actuators	Rotork	BL Anderson
B	Positive Displacement Blowers	Kaeser	BL Anderson
C	Flowmeters	Endress & Hauser/ Pulsafeeder ¹	BL Anderson

¹ See Part C for explanation

Specifically, the draft report states that “EPA’s substantial transformation guidance states that answers must be documented by meaningful, informative, and specific technical descriptions of the activities in the actual processes asked about in each question. These descriptions of the activities must be sufficiently detailed and clearly written to inform the reviewer about the activities that have occurred in the process, enough to understand their nature and purpose. The (product’s) sic does not meet this requirement.”

The draft report references the document “Determining Whether “Substantial Transformation” of Components Into a “Manufactured Good” has occurred in the US: Analysis, Roles, and Responsibilities”, which was not yet available when the CSO Detention Facility Project was bid. The delayed and piecemealed guidance issued by EPA after the bidding and awarding of the construction contract for the Goshen CSO Detention Facility Project created an environment in which obtaining comprehensive documentation from manufacturers was very difficult and time intensive. The City of Goshen acknowledges that Section 1605 of the Recovery Act was in place at the time the project was bid, but practical examples were not available at this time and resulted in confusion on acceptable documentation. The City, its consulting engineer (Donohue & Associates, Inc.), and the contractor (Bowen Engineering, Inc.), and many equipment representatives worked, and continue to work, to make every effort to obtain adequate documentation based on the guidance supplied after the project was bid. The City has proceeded with due diligence in gathering the documentation throughout the project and after its substantial completion.

Apart from the issue described above, each item in Table 1 is individually addressed in the remaining portions of this letter. The findings and factual accuracies of the draft report and concurrence or non-concurrence of the City of Goshen are stated and summarized.

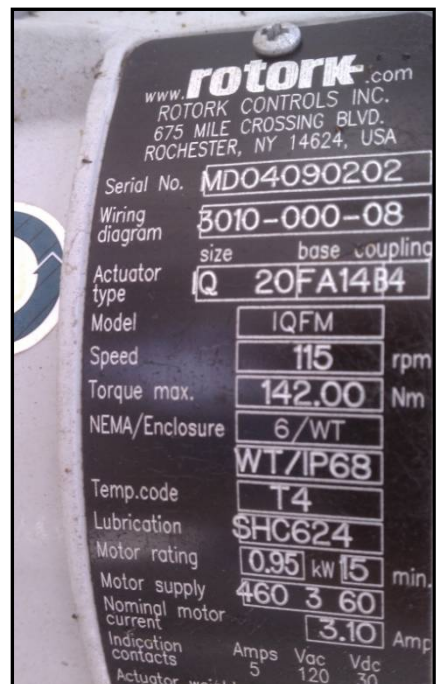
Part A - Rotork Electric Actuators

1. **OIG Comment** – “The actuator’s marking plate identified the items as “MADE IN ENGLAND” by Rotork Gears.”

Goshen Response – The marking plate mentioned by the draft report is on the gear box, which is a component of the actuator. The marking plate of the actuator, shown below, shows the actuator as manufactured in Rochester, New York. According to documentation provided by Rotork, the actuator was fully assembled in Rochester, NY and arrived at the Goshen site as one piece.

2. **OIG Comment** – EPA’s substantial transformation guidance states that answers must be documented by meaningful, informative, and specific technical descriptions of the activities in the actual processed asked The actuators ‘substantial transformation certification did not meet this requirement.”

Goshen Response – The City has requested that Rotork provide further information regarding the actual



manufacturing/assembly process. The City will provide said additional information upon receipt from Rotork.

OIG Response 1: Based on the additional documentation provided, we agree that the Rotork gears manufactured in England were a component of the actuator assembly. Title 2 CFR § 176.70 (a)(2)(ii) states that there is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurred in the United States. We agree that Rotork Controls manufactured the complete actuator assembly in the United States, as required by Section 1605 of the Recovery Act. We removed the actuator issue from the final report.

Part B – Kaeser Positive Displacement Blowers

1. **OIG Comment** – “Goshen installed one Kaeser Omega Com-Pak Plus CB 130C positive displacement blower that was marked as “MADE IN GERMANY”

Goshen Response – The City agrees that the blower is marked “MADE IN GERMANY” but believes that Kaeser has submitted the necessary documentation to prove substantial transformation.

2. **OIG Comment** – “The February 4th letter from the company’s vice president claimed that the Kaeser blowers were assembled in Fredricksburg, Virginia, and they complied with the Recovery Act through substantial transformation. The letter referred to a substantial transformation checklist enclosure. However, it was not clear if this checklist was included in the single electronic file provided to us by the city. Neither the city nor the consulting engineer could confirm if the answers to EPA’s substantial transformation questions (item 2 in the preceding paragraph) were an enclosure to either Kaeser letter.

Goshen Response – Stacy Cooke, of Donohue & Associates, Inc., received the October 13, 2011 letter and the substantial transformation checklist attached to a single email on October 14, 2011. The email, the letter, and the substantial transformation checklist are shown in **Attachment A**. It is the City’s belief that the Kaiser Blowers were assembled in the United States and therefore the blowers do comply with the Buy American requirements.

OIG Response 2: The city clarified the source of certain documentation used to evaluate Buy American compliance of the positive displacement blower used on the project. However, as noted in the results section of the final report, the documentation did not establish that the blower complied with Buy American requirements. We did not include attachment A of Goshen’s response because the Kaeser documents included in the attachment are discussed in the report on page 3.

Part C – Endress & Hauser Flowmeters

1. **OIG Comment** – The City did not provide any documentation to support that the four Endress & Hauser ProMag50 flowmeters were manufactured in the United States. The city’s consulting engineer determined that these metering devices were not compliant with Buy American requirements. The engineer stated that the cost per device was about \$1,500 and the city plans to include these item’s in their de minimus waiver.

Goshen Response – There was a misunderstanding as to which flowmeters were in question during the time when OIG was gathering information. The flowmeters shown in the picture in the draft report were installed on the chemical pumping skid by Pulsafeeder in their factory. This skid was delivered to the site in one piece and therefore, they are a component of the chemical pumping equipment. A revised Substantial Transformation checklist and explanation is shown in **Attachment B**. This explanation not only shows the meters on the skid in the factory but also explains that they were installed by Pulsafeeder. This is shown on the bottom of Page 1 of the document shown in Attachment C. Thus, the Endress & Hauser flow meters do meet the Buy American requirement because they are a component of the Chemical Feed skid.

OIG Response 3: We agree that the ProMag50 flowmeters were components on the Chemical Feed skid and that the skids were manufactured in the United States. Title 2 CFR § 176.70 (a)(2)(ii) states that there is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurred in the United States. Accordingly, we removed the question concerning the flowmeters from the final report. We also removed attachment B from the report because the issue is not included in the final report.

Conclusion

The City of Goshen has diligently worked to demonstrate compliance with Buy American requirements throughout the course of the CSO Detention Facility Project. Based on the revised submissions, the City now believes that all three (3) of the items noted in the Office of Inspector General Site Visit Draft Report dated August 2012 are fully documented to meet the ARRA Buy American requirements. The City has provided detailed documentation from these three manufacturers which satisfactorily demonstrate Buy American compliance through Substantial Transformation. Therefore, the City of Goshen does not concur with OIG's recommendation that the ARRA funds be rescinded from the Goshen CSO Detention Facility Project.

The City appreciates this opportunity to respond to the "American Recovery and Reinvestment Act Site Visit of Combined Sewer Overflow Detention Facility, City of Goshen, Indiana" draft report dated August 2012. If you have any further questions or concerns, please contact Emily Wehmeyer at Donohue & Associates, Inc. via email at ewehmeyer@donohue-associates.com or by phone at (317) 267-8200.
Sincerely,

Honorable Allan Kauffman
Mayor, City of Goshen, Indiana

Cc: Michael Rickey, EPA OIG Project Manager
John Trefey, EPA OIG
Larry Brannon, EPA OIG
Dustin K. Sailor, City of Goshen
Rich Ziemba, State of Indiana Finance Authority
Amy Henninger, State of Indiana Finance Authority
James R. Miller, Donohue & Associates
Emily J. Wehmeyer, Donohue & Associates.

Enc: Attachment A – Kaeser Blower
Attachment B – Pulsafeeder

Distribution

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