

[FR Doc. 02-27983 Filed 11-1-02; 8:45 am]  
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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Regulations Governing Off-the-Record Communications; Public Notice**

October 25, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if

written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the

document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659.

**EXEMPT**

	Date filed	Presenter or requester
1. Project No. 184-065 .....	10-21-02 .....	Susan O'Brien.
2. Project No. 184-000 .....	10-21-02 .....	Scott E. Shewbridge.
3. Project Nos 20, 2401 and 472 .....	10-21-02 .....	Monte Garrett
4. Project Nos. 20, 2401 and 472 .....	10-21-02 .....	Monte Garrett.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-27945 Filed 11-1-02; 8:45 am]  
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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 12068-001]

**CPS Products, Incorporated; Notice of Surrender of Preliminary Permit**

October 24, 2002.

Take notice that CPS Products, Incorporated, permittee for the proposed Upper Bear Creek Project, has requested that its preliminary permit be terminated. The permit was issued on December 13, 2001, and would have expired on November 30, 2004. The project would have been located on North Fork Bear Creek in Skagit County, Washington.

The permittee filed the request on September 17, 2002, and the preliminary permit for Project No. 12068 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday,

or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-27937 Filed 11-1-02; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7403-9]

**Update to EPA Policy on Certain Grants to Intertribal Consortia**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing public notice that it is updating its policy allowing for the award of grants to intertribal consortia to include two new grant programs that were authorized by the

recently enacted Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA). The effect of this policy change is that EPA interprets its authority to award, to Federally recognized Indian tribes, Brownfields Revitalization Grants and State and Tribal grants for the establishment and enhancement of state and tribal response programs to include awarding such grants to intertribal consortia, as the term is defined in this document. This document does not affect the eligibility status of intertribal consortia in their capacity to apply for other types of grants authorized under SBLRBRA.

**DATES:** The policy update summarized in this document is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323.

For more detailed information on specific aspects of this rule, contact Felicia Wright, Office of Solid Waste and Emergency Response, (Mail Code

5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, 202-566-1786. *Wright.Felicia@epa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 29, 1999, EPA published a document advising the public of its policy to interpret statutes authorizing EPA to make grants to Indian tribes for specified EPA grant programs to Indian tribes. This policy will allow EPA to award grants to intertribal consortia to the extent that such an interpretation would be consistent with Congressional intent (64 FR 52504, September 29, 1999). Subsequently, the Agency promulgated regulations at 40 CFR part 35, subpart B which reflect that policy with some modifications, for all but two grant programs. The two programs covered under the September 1999 document, but not affected by the regulations include grants authorized by section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and grants for the Leaking Underground Storage Tank program authorized under Subtitle I of RCRA. Today EPA is providing public notice that it is updating its September 1999 policy to include two new grant programs that were authorized by the recently enacted Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA, Pub. L. 107-118). The policy also is being updated to modify the requirements for intertribal consortia to receive grants under the grant programs covered by the September 1999 document, but not covered by regulations at 40 CFR part 35, subpart B.

SBLRBRA amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to authorize funding for Brownfields revitalization grants (*e.g.*, site assessment, cleanup, and revolving loan fund grants) and for establishing or enhancing State and tribal response programs. EPA is notifying the public today that it interprets its new authorities under section 104(k) of CERCLA to award Brownfields revitalization grants to Federally recognized Indian tribes to include awarding these grants to intertribal consortia, as that term is defined in this document. The Agency notes, however, that section 104(k)(1)(G) of CERCLA excludes Indian tribes in Alaska from the definition of entities eligible for Brownfields revitalization funding. The Agency also interprets its new

authorities under section 128(a) of CERCLA to award grants to establish and enhance tribal response programs to include awarding these grants to intertribal consortia. Intertribal consortia comprised of Alaskan Indian tribes are eligible for funding under section 128(a) of CERCLA.

On September 29, 1999, EPA announced its policy regarding the award of financial assistance to intertribal consortia under the following EPA grant programs for Indian tribes: Pesticides Program Implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides Enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276, 112 Stat. 2461, 2497-98(1998)); Underground Storage Tank Programs (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276, 112 Stat. 2461, 2499(1998)); and Hazardous Waste Management Programs (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276, 112 Stat. 2461, 2499(1998)). The September 1999 tribal consortia funding policy states:

In the absence of clear Congressional intent to the contrary and in accordance with the definition and requirements set forth [in the September 29, 1999 **Federal Register** notice], EPA interprets its statutory authorities to award grants to Indian tribes to include the authority to award grants to intertribal consortia. If Indian tribes are eligible for a particular grant, EPA will also treat a group of individually eligible tribes (an intertribal consortium) as eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested tribes strengthen environmental protection when limited funding is available to support tribal environmental program. Tribes that form an intertribal consortium may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe developed and maintained separate environmental programs. Moreover, EPA believes that making grants for tribes available to intertribal consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt "flexible policy approaches" and to respect

the principle of Indian self-government and sovereignty.

Executive Order 13084 was revoked by Executive Order 13175 dated November 6, 2000, which also encourages agencies to adopt flexible policy approaches and to recognize tribal self government and sovereignty. At the time the September 1999 document was published, EPA had also announced the same policy and rationale in a proposed rulemaking governing the award of environmental program grants to Indian tribes, which has since been promulgated as a final rule and is codified at 40 CFR part 35, subpart B (66 FR 3782, January 16, 2001). In the September 1999 document, EPA explained that it may change this policy as a result of comments received in response to the proposed rule governing grants to intertribal consortia at 40 CFR part 35, subpart B (*i.e.*, grants under the Pesticides Program Implementation; Pesticides Enforcement; Underground Storage Tank Programs; and Hazardous Waste Management Programs). EPA further explained in September 1999 that if EPA changed the treatment of consortia in grant programs covered by 40 CFR part 35, subpart B, then EPA would likely issue a subsequent **Federal Register** notice so as to treat grants to intertribal consortia consistently in all programs covered by the September 1999 **Federal Register** document. Because EPA made some changes to the eligibility requirements for intertribal consortia in the final rulemaking, this document makes the same changes for grants to intertribal consortia under the following two EPA grant programs for Indian tribes: Superfund Cooperative Agreements (section 104(d) of the CERCLA); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276, 112 Stat. 2461, 2497-98(1998)). In addition, with this document, EPA announces that it will apply the policy to grants for Brownfields revitalization awarded under section 104(k) of CERCLA and to grants for establishing or enhancing tribal response programs awarded under section 128(a) of CERCLA.

Federally recognized Indian tribes, other than excluded Indian tribes in Alaska, are eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA in accordance with the definition of "eligible entity" set forth at section 104(k)(1)(G) of CERCLA. Alaska Native Regional Corporations and Alaska Native Village

Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et. seq.*, and the Metlakata Indian community are included within the definition of entities eligible for Brownfields funding under CERCLA 104(k)(1)(H). Although Alaska Native Village Corporations and Alaska Native Regional Corporations as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) are eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA, EPA will not consider an intertribal consortium that includes one or more such Alaska Native corporations to be eligible for 104(k) grants as an intertribal consortium under this document. Those Alaska Native corporations are not federally recognized Indian tribes. Groups of Alaska Native Village Corporations and Alaska Native Regional Corporations may, however, apply for funding in combined applications as "coalitions" (*i.e.*, one eligible entity that will be accountable for grant funds applies on behalf of itself and one or more other eligible entities) under EPA's guidelines for applying for SBLRBRA grants.

EPA has determined that it would be inconsistent with EPA's policy and Congressional intent to allow intertribal consortia comprised of excluded Indian tribes in Alaska to be eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA. However, neither the eligibility provisions of section 128(a)(1)(A) of CERCLA nor the legislative history of section 128, indicate that Congress intended for Indian tribes in Alaska to be ineligible for grants to establish or enhance tribal response programs. EPA will, therefore, consider intertribal consortia comprised of Indian tribes in Alaska to be eligible for funding under section 128(a) of CERCLA. The rationale stated in the September 29, 1999 document for EPA's decision to allow intertribal consortia to be eligible for funding also applies to funding under section 104(k) and section 128(a) of CERCLA, to the extent consistent with Congressional intent: "EPA believes this approach is a practical, reasonable and prudent way to help interested Indian tribes strengthen environmental protection when limited funding is available to support tribal environmental programs. Indian tribes that form an intertribal consortium may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe developed and maintained separate

environmental programs." Making grants for Indian tribes available to intertribal consortia is consistent with Executive Order 3175, which encourages agencies to adopt "flexible policy approaches" and to respect the principle of Indian self-government and sovereignty.

An organization that characterizes itself as an intertribal consortium that does not meet the definition of intertribal consortium or the eligibility requirements in this document may be eligible for funding under section 104(k) of CERCLA or other EPA grant programs, but not as an intertribal consortium under this document. This is because some of EPA's grant programs are available to a broad range of recipients, such as public or nonprofit private agencies, institutions, organizations, and individuals. Thus, an intertribal organization that does not meet the definition of an intertribal consortium or the requirements of this document nonetheless may be eligible for a grant as another type of organization, such as a nonprofit agency. This document is not intended to affect the eligibility status of intertribal consortia for grants in their capacity as other types of eligible organizations. If the organization meets the definition of a non profit organization provided in section 4(6) of the Federal Financial Management Assistance Act of 1999, Pub. L. 106-107, it will be eligible for funding as a non profit organization under section 104(k)(3) of CERCLA for Brownfields site remediation grants and under section 104(k)(6) Brownfields research, training, and technical assistance grants. Non profit organizations are not eligible for grants to establish or enhance State and tribal response programs under section 128(a) of CERCLA.

## II. EPA Policy

The following definition and statement of eligibility requirements for awarding grants to intertribal consortia apply to the following grant programs: Superfund Cooperative Agreements (section 104(d) of the CERCLA); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105-276, 112 Stat. 2461, 2497-98(1998)); Brownfields Revitalization (section 104(k) of CERCLA); and Tribal Response Programs (section 128(a) of CERCLA).

*Definition:* The term intertribal consortium means a partnership between two or more federally recognized Indian tribes that is authorized by the governing bodies of

those Indian tribes to apply for and receive assistance under one of the EPA grant programs covered by this document.

*Eligibility Requirements for an Intertribal Consortium:* (a) An intertribal consortium is eligible to receive a grant from EPA under the statutes authorizing grants to federally recognized Indian tribes listed in this document only if the intertribal consortium demonstrates that all members of the consortium (1) meet the eligibility requirements for the grant and (2) authorize the consortium to apply for and receive assistance in accordance with paragraph (b).

(b) An intertribal consortium must submit to EPA adequate documentation of: (1) The existence of the partnership between federally recognized Indian Tribal governments, and (2) Authorization of the consortium by all its members to apply for and receive the grant(s) for which the consortium has applied.

Dated: October 29, 2002.

**Marianne Lamont Horinko,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7403-8]

### Preliminary Administrative Determination Document on the Question of Whether Ferric Ferrocyanide Is One of the "Cyanides" Within the Meaning of the List of Toxic Pollutants Under the Clean Water Act

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

**ACTION:** Notice of availability of new information and reopening of comment period.

**SUMMARY:** On January 25, 2001, EPA published a notice announcing a preliminary administrative determination document on whether Ferric Ferrocyanide is one of the "cyanides" within the meaning of the list of toxic pollutants under the Clean Water Act. The comment period ended on July 10, 2001. Today's action reopens the comment period for an additional 60 days for a limited purpose.

**DATES:** Comments will be accepted through December 4, 2002.

**ADDRESSES:** Send your comments by mail to "Ferric Ferrocyanide; Preliminary Administrative Determination" Comment Clerk (W-00-24), Water Docket (4101T), U. S.