

"BUY AMERICAN"

How does it affect your business



Trade-restrictive "American Iron and Steel" (AIS) provisions have been incorporated into two recent federal funding bills for water and wastewater projects. How will this affect your business, and what can you do to minimize the negative impacts?

The two bills are the 2014 Consolidated Appropriations Act and the Water Resources Reform and Development Act (WRRDA).

2014 Consolidated Appropriations Act

In the Appropriations Act, the AIS language applies to projects receiving Clean Water State Revolving Funds (CWSRF) and Drinking Water State Revolving Funds (DWSRF), as follows:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term **"iron and steel products"** means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

WRRDA

In WRRDA, the AIS provision applies to projects receiving loans through a new funding mechanism created by the Act called the Water Infrastructure Finance and Innovation Authority.

WRRDA uses language identical to the Appropriations Act. It also, for all practical purposes, makes permanent the requirement to use AIS for CWSRF projects by amending the Clean Water Act.

EPA Guidance - Issued March 20, 2014

The U.S. Environmental Protection Agency (EPA), which has been charged with interpreting and enforcing the language, has interpreted "primarily iron and steel" to mean that products listed in Sec. 436(a)(2) must be made of greater than 50 percent iron or steel, measured by cost, with the cost being based on the material costs. EPA also has further defined municipal castings and construction materials by producing a list of affected products as well as guidance on non-affected products.

"Produced in the United States" means all manufacturing processes, including melting, refining, forming, rolling, drawing, finishing, fabricating, and application of coatings, must take place in the United States. Metallurgical processes involving refinement of steel additives do not have to take place in the U.S., and non-iron or steel components of an iron and steel product do not have to come from the U.S.

All manufacturing processes must take place in the U.S.; even if the iron and steel is produced in the U.S., it cannot leave the country for assembly or modification and remain compliant.

Valves and Hydrants: On May 30, 2014, EPA issued a clarification regarding the AIS provision as it relates to valves and hydrants, as follows: "The EPA considers only the significant iron and steel components of a covered valve or hydrant—the body, bonnet, shoe, stem,

and wedge/disc/gate/ball—to be within the definition of “iron and steel products that must be made domestically, or otherwise must comply with the AIS requirement.”

Excluded are miscellaneous incidental components such as clips, pins, washers, nuts, and bolts.

Electric powered, motor-operated valves are included in the requirement, though the actuator (a motor that controls the valve) is considered a separate product and is not included.

Certification

CWSRF and DWSRF funding recipients must specify AIS language in all contracts, from the assistance agreement down to purchase agreements, and must maintain certification that project materials meet the AIS requirements. Manufacturers are responsible for providing those certifications to the recipients.

Waivers

As of June 2014, two national waivers had been granted for the following:

- Projects for which the engineering plans and specifications were submitted to state agencies prior to January 17, 2014 (the date of the enactment of the Act). Note that if a project has distinct phases, only

those phases that were planned and approved prior to January 17 are excluded.

- “*De minimis*” project components. Funds used for such components cumulatively may comprise “no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project” and the cost of a single item “may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.”

In addition, the EPA is considering waiver requests submitted by the states of California and Connecticut for emergency projects in those states resulting from drought and other weather-related incidents.

Project-specific waiver applications must be submitted by the CWSRF or DWSRF funding recipient through the state and must include information and documentation that supports claims that the requirement does not apply to the project because it falls into one of the exceptions noted in Sec. 436(b).

More Information

For additional details on AIS, including a PowerPoint presentation with a sample certification letter and a waiver checklist, visit http://water.epa.gov/grants_funding/aisrequirement.cfm.

WWEMA’s Position on ‘Buy American’

The Water and Wastewater Equipment Manufacturers Association (WWEMA) has been opposed to “Buy American” language since it was first included in the American Recovery and Reinvestment Act (ARRA) of 2009. The reasons for this opposition are many:

- In today’s global economy, many U.S. companies—small, mid-sized, and large—rely on global supply chains for products and parts. Trade restrictions mean a loss of business for these companies, which in turn means lost jobs and economic opportunities for the communities where they are based.
- Trade restrictions lead to monopolies for a limited number of companies. There is nothing more un-American than laws designed to stifle competition and opportunity.
- As we saw during ARRA, water and wastewater project costs increase due to “Buy American” restrictions on funding. The entire purpose of these funding mechanisms is to make it easier for localities to be able to afford water projects, yet limiting manufacturers’ ability to source products in the most cost-effective manner possible drives up costs and too often negates any potential advantages.
- Costs may increase, but that doesn’t mean local budgets will. As a result, sorely needed infrastructure projects—repairs and improvements that are vital to public health and local economies—end up being scaled back, phased over longer periods of time, or canceled altogether.
- “Buy American” can lead (and has led) to retaliation from our international trading partners as they enact their own local content policies. The inability to export to these countries could mean the loss of far more jobs than “Buy American” will ever create.
- U.S. international trade policy calls for fair, unrestricted trade. Imposing “Buy American” requirements on water and wastewater project funding flies in the face of this policy and places an unfair burden on municipalities struggling to afford much-needed infrastructure repairs and improvements.

WHAT CAN YOU DO? Together we must educate Capitol Hill and the general public about the fallacies behind the seemingly patriotic “Buy American” slogan. Contact your representatives in Congress and let them know how these restrictions affect your company and your employees.

WWEMA represents the “Voice of the Manufacturer” on this issue, engaging key legislators, the EPA, the Canadian Embassy, and many other stakeholders on a monthly, weekly, and even daily basis. The more members we have, the more effective we can be. For information on how to join the effort, visit www.wwema.org or call 703.444.1777 today.