



January 20, 2022

The Honorable Celeste E. Drake
Director, Made in America Office
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

The Honorable Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1201 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Director Drake and Assistant Administrator Fox:

The Water and Wastewater Equipment Manufacturers Association (WWEMA) has represented technology manufacturers in the water sector since 1908. We work closely with the U.S. Environmental Protection Agency (EPA) on both regulatory and technology issues. In particular, we provided input to the EPA on implementation guidance for both the American Recovery and Reinvestment Act of 2009 as it related to technology approvals and the American Iron and Steel (AIS) provisions enacted in 2014 for the state revolving loan fund programs. The AIS requirements were later included in the Federally-funded WIFIA program.

Our efforts are focused on ensuring that public health and the environment are protected through the ability of water and wastewater utilities to access and install the highest quality technologies as they construct or expand their water infrastructure. We trust these past efforts will serve as a precedent in developing the guidelines for our industry in implementing the Buy America provisions of the Bipartisan Infrastructure Law (BIL).

The historic enactment of the BIL provides a significant opportunity to support the modernization of our water infrastructure and improve the delivery of safe, reliable drinking water and clean water services to all Americans. Your Agencies will play a critical role in ensuring the successful distribution and use of these funds. Of particular importance to the water sector is the guidance you develop to implement the Buy America provisions in the new law. Currently, the water sector must comply with iron and steel requirements on a finite and Congressionally-defined list of products such as structural steel, valves, pipes, manhole covers, tanks, hydrants, etc. The new law however expands Buy America requirements to all iron and steel products used in the water sector as well as all manufactured

products, and an expanded list of construction materials. This represents a significant expansion of applicability that will challenge the current supply chain and business models used in the water sector.

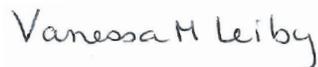
Currently, the EPA AIS requirements do not apply to a wide range of critical water sector infrastructure technologies and components including pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers and aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, laboratory equipment, analytical instrumentation, and dewatering equipment. While some of these products and components may be sourced or manufactured in the U.S., many are not and it is highly unlikely they can be re-shored by the May 15, 2022 deadline for compliance with the BIL.

Unlike the transportation sectors such as highways, public transportation, airports, aviation, and intercity passenger rail that have been subject to Buy America requirements since the Surface Transportation Assistance Act of 1978 (P.L. 95-599), the water sector has little to no experience in complying with these types of requirements. Further, it is our understanding that each of the Federal Agencies that oversee these various sectors have differing Buy America requirements.

As the Made in America Office in the Office of Management and Budget develops the implementation guidance that will direct Buy America programs across the Federal Government, it is crucial that EPA and the water sector – particularly the technology manufacturers – be a critical part of that conversation. We stand ready and willing to provide insights and real-world implementation experience as you work diligently to develop this guidance. Having this guidance quickly would be most helpful as many of our members are already fielding questions from utilities and consulting engineers with regard to these new Buy America provisions and being asked if they can comply. Until we see the final guidance, it is impossible to answer this question. We are concerned that current projects in the water sector are being put on hold pending the publication of the implementation guidance. These new requirements have also generated a lot of implementation questions for which it would be helpful to have answers sooner rather than later. Please see an attached list of preliminary issues and questions.

We look forward to working with you in the coming weeks to create effective implementation guidance that will lead to timely water infrastructure improvements and ensure safe, reliable, and affordable drinking water as well as enhance the quality of our Nation's waterways.

Sincerely,



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Questions regarding Buy America Implementation of the Bipartisan Infrastructure Law

- 1) How do these new, more expansive requirements relate to the current EPA AIS requirements? (i.e. in addition? Supersedes?)
- 2) EPA's current position is that if \$1 of Federal funding goes into a project that the AIS requirements apply to the entire project – even those portions that are being funded by non-federal dollars. Would this still be the case for the new Buy America requirements or does it only apply to that portion of the project that is receiving the Federal funding?
- 3) How will the Buy America requirements apply to complex, highly engineered water and wastewater systems with multiple components such as filtration, membrane, and bioreactor systems?
- 4) How does the component test apply for a product or system that has both iron and/or steel and other materials? For example, say a product/system is made from 80% iron and steel and 20% other material by material cost. It appears the 80% iron and steel would have to be produced in the U.S. How is the 55% domestic content of the product determined?
- 5) The current language only considers material cost, not labor. What about companies that source components abroad but complete the manufacture of the product in the U.S., using American workers?
- 6) What types of certification/compliance letters will be needed?
- 7) The current Buy American Act related to direct Federal procurement has a number of carve outs, including “domestic equivalent” for certain U.S. trading partners – would any of these apply to products covered under these new Buy America requirements for the water sector?
- 8) The language indicates that full compliance with the new requirements must be achieved within 6 months of bill signing. If so, how will the Federal Government ensure that all manufacturers have fair and affordable access to necessary iron and steel and other materials of sufficient quality and quantity and in a timely manner? Many of our products are not produced in a typical assembly line such as those for cars and washers and dryers that are purchased and resold by third parties around the country. Our products often are manufactured to order for projects with specific sizing and tolerances and result in short or small runs of more custom components. How do we compete with the other infrastructure sectors covered in this bill that have high volume and constant needs? Experience indicates we go to the back of the line and pay a premium for specialized products or small runs. How will the Federal Government ensure that our customers – U.S. municipalities – can get required products in a timely manner and at an affordable price to meet their water infrastructure needs?

- 9) How do we minimize the need to request waivers that take time, extend project deadlines, and when the Federal Government has been clear that the use of waivers should be minimized?
- 10) What if certain components just are not made in the U.S. and will likely not be made in the U.S.? Is the Government willing to issue a national waiver of these components/products so a waiver doesn't have to be requested on a project-by-project basis?
- 11) Most importantly, if the intent of the Bipartisan Infrastructure Law is to jump start the economy and expand infrastructure projects, putting Americans back to work and ensuring that we "Build Back Better", what steps will the Government take to ensure we have the tools, products, and access to the materials and resources we need to continue to provide products, systems, and technologies to protect public health and the environment from day one? We can't wait months, years, or decades for U.S. capacity to materialize to meet our current globally-sourced supply chain needs.