

**WWEMA BABA Summit Questions and Answers**

**July 18, 2024**

**Q1:** We are a manufacturer of wastewater treatment equipment. Some of our customers are asking us for a letter to confirm that our products are BABA compliant. What should we answer, considering that there seems to have no way to confirm compliance ahead of time? Or is there a way to confirm compliance for a product or to get an equipment-specific waiver?

**A1:** We will be covering compliance as a topic closer to lunch.

**Q2:** Has the EPA formally responded to the 2023 form letter sent by the Hydraulic Institute, and member associates, addressing BABA requirements for rotating equipment suppliers, i.e. pump vendors?

**A2:** Tim doesn’t recall the specifics. A formal response was not sent but an informal conversation may have occurred. Sorry that Tim doesn’t remember the specifics.

**Q3:** Can you give us an idea of how long a project-specific waiver takes - from first phone call to waiver?

**A3:** Waivers that are specific to a project or a product will be open for a 15-day public comment period. Once the public comment period has closed, each waiver request is reviewed by EPA. So time can vary depending on how many comments need to be reviewed.

**Q4:** Did I hear correctly that the EPA or MIA office is developing a list of components/categories that might be excluded?

**A4:** MIAO is working to approve time limited non availability waivers. Exemptions that are not time limited to a specific period are not permitted by the Act.

**Q5:** How do you evaluate or audit the absence of alternative options in the market before approving a waiver for a specific project?

**A5:** EPA sent a public request for information in October 2023. They rely on the public to comment so they can begin to evaluate and investigate data. This is what is enabling the EPA to submit the drafts that are going to the MIAO for approval.

**Q6:** I missed the names of the gentlemen from the EPA. Can those be posted here in Q&A?

**A6:** Tim Connor is speaking. Daniel La Bella discussed the types of waivers.

**Q7:** Only 4 pump mfr's that comply somewhat, out of marketplace of 20 to 30? mfr's

**A7:** Correct. the EPA's hands are tied. as with blowers, because someone came forward as compliant, a national non availability waiver is not permitted by the MIAO. So, this must be addressed by Project Waivers for now. Tim is pushing for a limited scope waiver to be approved, but it is a slow process and not a guarantee.

**Q8:** Would the transcripts for this webinar be provided to the attendees? Thank you

**A8:** By agreement with the EPA, we are not recording the session. We are capturing the questions and will provide a follow up.

**Q9:** As a UL Control Panel Shop, can we get a copy of the electrical products waiver? PLC's HMI's, VFD's, etc. Also, if we supply pumps that are made in the USA and a control panel on the same project can the percentages work together for BABA compliance?

**A9:** Waivers are publicly available on the EPA's website as soon as they are approved and released. The waiver mentioned - approval pending MIAO.

**Q10:** The EPA & other federal bodies (e.g., OMB) have provided a lot of guidance on how to interpret the section on BABA in the IIJA. Does the recent Chevron Deference ruling at the Supreme Court change the role that these bodies have in helping municipalities/manufacturers interpret BABA? (e.g., Is it more likely that areas of potential ambiguity in interpreting BABA will be reviewed by the Courts?)

**A10:** It is hard to tell at this point, but we are working on a webinar on the potential impact of Chrevon on BABA specifically we would invite speakers and attorneys who might have experience in this area of the law.

**Q11:** What I have found is as a valve manufacturer I am contacted on a regular basis if we are able to meet the spec and for an estimated delivery. With domestic foundry lead times extended out by months, the time the EPA (Cadmus) is contacted for this information, the requirement of the project is much sooner than what current deliveries are. These requests need to be made much sooner in the project that what is currently requested to have an opportunity to provide an AIS product. Very seldom had we received an order from this contact.

**A11:** We will make sure Tim takes this feedback to Cadmus and review the process.

**Q12:** So what does a make a product BABA compliant? Such as a water or sewer pump?

**A12:** Are you asking what qualifies a product compliance or for a list of compliant manufacturers?

**Q13:** Who is responsible for getting/submitting the waivers? Project owners or manufacturers?

**A13:** Only project owners, those borrowing the funds, can submit waiver requests.

**Q14:** Are there any "global" waivers that can apply for pumps? or is each waiver specific to a project?

**A14:** There may be a time limited, narrow scope, based on a size or type issued by the end of the year but most waivers will be project specific waivers.

**Q15:** Can we ask the presenters for a summary of the type of waivers?

**A15:** Yes, we can share the EPA presentation on waivers.

**Q16:** Why does it matter if it’s a kit or not?

**A16:** Because each component could need to meet the BABA test on its own.

**Q17:** Using this Kit example, what would happen if BABA and AIS apply. Would all AIS products be evaluated individually (valves, piping, etc.) and the remaining items where AIS doesn't apply (pumps, controls, etc.) then be grouped as a kit for BABA evaluation?

**A17:** A product can only be in one category at one time. It cannot be both an AIS product and a Manufactured Product. it is one or the other.

**Q18:** Follow up - Lee Ann, under BABA a product can only be one category. But where AIS and BABA apply this isn't necessarily true. EPA has explained previously that AIS components in a pump package must have AIS applied. So clarity on how an AIS/BABA projects will be implemented is important

**A18:** I believe Tim is answering the question. If not, then please email WWEMA directly and we will follow up outside of the meeting.

**Q19:** Can we revisit this discrete product vs kit discussion in reference to the Pump Station Kit? This seems to disagree with each other. would it be a KIT if the contractor is subcontracting the components of that KIT from multiple sub vendors? and thus the analysis is still on the pump station and not individually on pump/pipe/controls etc.?

**A19:** Great question. If we can’t get an answer live, we will get clarity from Tim and provide in the follow up.

**Q20:** Manufacturer Question: The product we are supplying has already received a waiver for AIS compliance. Now I just heard AIS and BABA is more or less the same. Should I assume the AIS waiver is at the same time a BABA waiver?

**A20:** The definition of iron and steel is the same under both. BABA (IIJA) eliminated the exemptions. So, if the owner project is using funding outside of the federal supplement (state level funding only), AIS still applies with the exemptions. If the project receives supplemental funding from the federal level, then AIS without the exemptions = "BABA" as defined in the BIL/IIJA applies.

**Q21:** Is the actual machining costs to be part of the cost analysis of a manufactured product or just the material cost of that?

**A21:** We will provide the EPA slides which explain how to interpret cost. You cannot include profit of making a component. You cannot include labor, testing, and finishing (coatings/paint) in the cost of a manufactured product. Only the material cost of components.

**Q22:** Are FRP goods (i.e. beams, columns, wall or cover panels, troughs and weirs) used in Water/Wastewater “Construction materials” or “manufactured goods?

**A22:** Manufactured product.

**Q23**: Is BABA strictly applicable to current infrastructure funding? Will or can future funding in the future be exempt from BABA laws?

**A23:** Yes and no. BABA applies to infrastructure but when the BIL passed, the requirements became permanent for all future federal dollars being spent on infrastructure. Specifically stating that permanent exemptions will not be allowed.

**Q24:** So, to clarify... castings from overseas, and then machining those components domestically, would the content meet BABA?

**A24:** Open to be reviewed.

**Q25:** Is there any registry of manufacturers that are compliant?

**A25:** Will try to get an answer but believe they are not allowed to publish a list because compliance could be "fluid" based on a manufacturer's supply chain. One could be compliant today and next year not. 4 years ago, it was being considered, but it is a topic that gets avoided of late.

**Q26:** What would be the penalties if component does not meet BABA within a project?

**A26:** Failure to comply with BABA can result in violations of grant agreements, potentially leading to reduced funding or other penalties.

**Q27:** If we purchase components for a printed circuit board from "anywhere" and have them stuffed into the board in the US will that mean its BABA compliant?

**A27:** Open to be reviewed.

**Q28:** In this door analogy, would a control panel be considered the handle, or would it be considered a manufactured product? For example, a control panel used in a pump station

**A28:** If you are only selling a control panel it would be the manufactured product. if you are selling rotational equipment, for example, then the control panel could be considered as part of your "kit"

**Q29:** Can the panel provide the " door" example to a standard common Pump System control panel or MCC

**A29:** Open to be reviewed. See EPA slides provided.

**Q30:** If a manufacturer purchases an expensive part that makes the end product non-compliant, how do we compare purchase costs versus manufacturing costs for the components? In order words, if I was a door manufacturer and I manufactured the door frame and handle, but purchased the glass, my “cost” for the door frame is raw material cost without my labor, but the glass cost that I purchase has raw material, labor, profit and freight included. If I cannot get that manufacturer to share the raw material cost for the glass, can I add profit and labor for the door frame to be consistent throughout components? Otherwise, we are non-compliant when in actuality we have more than 55% of domestic products in raw material value.

**A30:** Can you send this scenario directly to WWEMA? But the official answer that Tim will provide - final labor cannot be considered. Profit of making component out of subcomponents cannot be in the cost of the component, but all other overhead costs are allowed that directly go into the component, including domestic freight