

June 29, 2022

Submitted via email to BABA-OW@epa.gov

RE: Draft Waiver concerning the application of Buy America, Build America Act of 2021 requirements to State Revolving Fund projects

To whom this may concern,

The Northeast Ohio Regional Sewer District (NEORS) offers the following comments for consideration to U.S. EPA's proposed waiver concerning the application of Buy America, Build America Act (BABAA) requirements to State Revolving Fund (SRF) - funded projects.

NEORS is a ratepayer-funded political subdivision of the State of Ohio, responsible for sewage treatment facilities, combined sewer overflows (CSOs), regional stormwater management, and interceptor sewers across Cleveland and 61 suburban communities. NEORS's mission is to provide progressive regional management of sewage and stormwater that protects the environment and serves our community.

To reiterate comments in our May 19th letter on this topic, this issue of the proposed waiver is important to NEORS because we use the SRF for planning and implementing design and construction of our Capital Plan projects. That Capital Plan totals more than \$1.2 billion in anticipated construction project awards over the next 5 years. Many of those projects are required in NEORS's \$3 billion CSO consent decree, known as "Project Clean Lake." This 25-year program will reduce pollution in Lake Erie by 4 billion gallons per year and includes projects that are under strict deadlines for completion.

As the waiver is currently drafted, the criteria for eligible projects is restrictive and lacks flexibility for projects that would qualify. Providing a waiver to only projects that submitted engineering plans and specifications to an appropriate state agency or bid advertisement prior to May 14, 2022, excludes projects that initiated design planning to meet regulatory requirements, operational needs and/or are necessary to protect public health and water quality. The inability for these projects to be eligible for the waiver would have two primary detrimental effects – the delay of essential projects and additional costs to ratepayers, including customers in poverty.

At a minimum, we request the waiver align with the proposed WIFIA waiver which extends to projects that initiated project design planning prior to May 14, 2022 and includes efforts related to the date of a bid or execution of a contract for design, planning, or engineering services. Furthermore, the extent of the delays are unknown and could be substantial until procedures for complying with the new federal mandates are established. Therefore, we also request the U.S. EPA consider extending the period of time to include projects that initiated project design planning



from the effective date of the law until such a time as U.S. EPA issues comprehensive implementation guidance.

We support BABAA requirements. However, the manner in which the requirements are implemented is not only critical to achieving the associated economic goals but also ensuring public health and environmental benefits are not delayed or negatively impacted. Projects subject to BABAA requirements will be delayed until comprehensive implementation guidance and associated processes, procedures, and staffing are in place. Any redesign of a project or request for waiver that is required would further extend the delays. Supply chain issues especially for materials or equipment where a small American market exists is also a delay concern. These delays have the potential to not only impact regulatory compliance such as Consent Decree milestones and NPDES compliance but also delay necessary operational and safety improvements and environmental benefits.

The requested changes noted above to the Proposed Program Waiver of Section 70914 of P.L. 117-58, Buy America, Build America Act, 2021 for State Revolving Fund Projects with Submitted Engineering Plans and Specifications help address these concerns by extending project eligibility to projects that initiated design planning and extending the effective date of eligibility to such time that comprehensive implementation guidance and associated processes, procedures, and staffing are in place.

NEORSRD appreciates your consideration of these comments as you finalize the waiver concerning the application of BABAA requirements to SRF-funded projects and welcomes the opportunity to discuss them further. If you have questions, comments or concerns, please contact me at (216) 881-6600 or dreyfuss-wellsk@neorsd.org or our legislative affairs manager, Danielle Giannantonio at giannantoniod@neorsd.org or (216) 409-9715.

Kind Regards,

A handwritten signature in blue ink that reads "Kyle Dreyfuss-Wells".

Kyle Dreyfuss-Wells
Chief Executive Officer