

TO: EPA BABA Implementation Team – BABA-OW@epa.gov

FROM: South Dakota Department of Agriculture and Natural Resources (DANR)

RE: Program Waiver of section 70914 of P.L. 117-58, Buy America, Build America Act (BABA), 2021 for State Revolving Fund Projects with Submitted Engineering Plans and Specifications

Introduction

DANR administers all aspects of both the Clean Water and Drinking Water State Revolving Fund programs in South Dakota and is currently making a \$600 million investment in water and wastewater infrastructure using American Rescue Plan Act (ARPA) funds. By combining ARPA funds with SRF loans, DANR has obligated more than \$1.6 billion to water and wastewater infrastructure projects across the state. In addition, DANR anticipates SRF funds approved under the Jobs Act/Bipartisan Infrastructure Law will be used to support these and other projects across the state. DANR has significant concerns with the proposed waiver eligibility date and the delays and cost increases it will cause on existing projects already in motion.

Specific Comments

- The May 14, 2022, eligibility date in the proposed waiver is unreasonable and forces many projects, that have been working through the planning and design process for months, to adjust their project to comply with BABA requirements. This arbitrary regulatory deadline will cause significant project delays and cost increases due to the lack of BABA compliant materials.
- Waiver eligibility should not be based on a specific date but on the availability of BABA compliant construction materials. Delaying necessary infrastructure improvements will lead to reduced environmental and public health protection and is not in the best interest of our citizens.
- To date, EPA has not published implementation guidance on how projects are to address and comply with the BABA requirements. No project should be expected to comply with the BABA requirements until after implementation guidance has been issued.

Conclusion

DANR respectfully requests EPA reconsider the waiver eligibility date to ensure projects currently in the design phase can move forward as planned without unnecessary delays and cost increases.

Sincerely,

Hunter Roberts,
Secretary