



June 29, 2022

Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Via Email: BABA-OW@epa.gov

RE: 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

To Whom It May Concern:

The Water and Wastewater Equipment Manufacturers Association (WWEMA) appreciates the opportunity to comment on EPA's *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*. The waiver would exempt from the expanded BABAA requirements those projects that submitted engineering plans and specifications to an appropriate state agency prior to May 14, 2022, the statutory effective date of the BABAA requirements in the Bipartisan Infrastructure Law (BIL).

WWEMA has significant concerns with the SRF waiver as proposed due to its narrowly defined parameters and applicability. The waiver's current applicability only to projects with plans and specifications submitted by May 14 will not help utilities that are well into the design and engineering process but whose plans have not yet been submitted to the state. These utilities have already made key decisions and calculations based around specific equipment and materials, changes to which could quickly become time- and cost-consuming. Planning, designing, and engineering drinking water and clean water projects can take years and the projects are typically designed to meet strict regulations, compliance deadlines, and technological requirements. As EPA notes in the waiver, at any time thousands of SRF projects may have finalized engineering plans and specifications, making it impractical to retroactively change and apply new domestic procurement requirements. But thousands more may have design and engineering near completion or pending submission. These potential SRF recipients were not able to reasonably plan for taking BABAA into account when their design got underway.

In addition, the parameters of the proposed waiver are inconsistent with a similar waiver EPA recently proposed under the Water Infrastructure Finance and Innovation Act (WIFIA) program that waived BABAA requirements for projects that "initiated design planning" prior to the May 14, 2022 effective date of the BIL. To avoid confusion and inconsistency in applicability, WWEMA strongly urges the Agency to revise the language of this waiver to say "initiated design planning" to be consistent with the WIFIA program.

Public Interest Adjustment Period Waiver Needed

Further, WWEMA urges EPA to issue a short-term public interest waiver of domestic preference requirements in the BIL until such time as the EPA issues comprehensive implementation procedures that clearly defines compliance requirements for BABAA and for at least six months after those procedures are published to allow for training and education on the new requirements for states, utilities, manufacturers, consulting engineers, and contractors each of whom play a critical role in understanding and correctly and consistently implementing these new requirements. Successful implementation of the law necessitates comprehensive implementation guidance to be issued *first*, followed by a short-term adjustment period that provides sufficient time to educate the water sector on the procedures for complying with the new federal mandates. Additionally, clarity on the rules, consistency across programs, and continuity of policy through implementation will ensure critical water infrastructure projects remain on track, on time, and on budget.

Domestic Non-Availability of Critical Water Treatment Products and Technologies

In addition, the proposed waiver request solicits information regarding manufactured products and non-ferrous construction materials that are critical to public health protection or information and communications technologies that are currently not sourced in the U.S. The water sector depends on highly engineered and sophisticated technologies to ensure public health and environmental protection. This covers a wide range of critical 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., some are not and it is unlikely existing manufacturing operations can be expanded or relocated to the U.S. in the near term.

WWEMA has surveyed its members and identified the following types of products that we believe are currently not manufactured in the U.S. or in sufficient supply. These are critical components needed to operate our drinking water and wastewater treatment plants or to provide treatment for removal of contaminants to protect public health and the environment. While this is not an exhaustive list, it does highlight many of the types of products that are not made in the U.S. They include:

- motors, including long-shaft motors
- ceramic and polymeric membranes
- appropriate quality and priced glass for fiberglass
- woven belts for belt press sludge dewatering
- engineered stainless steel UV reactor vessels including UV lamps, quartz sleeves and lamp drivers, and hydraulic cylinders
- high-speed turbo blowers
- actuators
- high current/high voltage power supplies, transformers, and converters
- programmable logic controllers, human machine interface technologies

- circuit breakers, circuit boards, and fuses
- variable frequency drives and motor starters
- submersible pumps
- control panel components
- instrumentation
- electronics
- energy saving monitoring equipment
- controllers
- gear boxes
- rubber products
- certain elastomers and paints
- drives and reducers
- ion exchange resin
- stainless steel and ductile iron castings
- membranes
- gauges
- basket strainers
- flow meters
- pressure transmitters
- greensand filter media
- 8" ductile iron pipe (>1 year lead time)

Some products such as cartridge and bag filters and granular activated carbon (used for PFAS removal) have only one U.S. source – thus creating a monopoly which can lead to price manipulation, lack of competition that stifles innovation, and insufficient supply.

One of the goals of the Administration is to “Build Back Better.” This is particularly important for the water sector which has products and technologies that can last 20, 30, 40 or more years before needing to be replaced. As we make this historic investment in our infrastructure, we want to ensure that our water utilities have access to the best available technologies as well as products that improve energy efficiency, reduce carbon emissions, conserve water, remove emerging contaminants, and increase water use efficiency. Access to commercial information technology is also critical to improving knowledge and decision-making on water quality and contaminant removal to protect public health and the environment. The unique opportunity to upgrade the U.S. water infrastructure for generations to come should be flexible to include technological advances that provide more resilient and cost-effective solutions in the water sector. Building a clean energy future, taking action to address climate change, and ensuring the best available technologies are available to monitor, treat, and transport water will maximize our collective investments.

WWEMA strongly urges the EPA to initiate or expand their research into the domestic availability of these products, as well as others, to assess whether domestic sources are currently available. If not, EPA needs to expeditiously issue short-term public interest waivers of the BABAA requirements for these technologies to eliminate the need for individual utilities to pursue project-specific waivers which will add weeks to their project timelines and incur unnecessary additional costs. If any of these products are determined to fall under key industrial bases, EPA should work with the Made In America Office and the Biden Administration to help bring manufacturing of those technologies to the U.S.

Thank you for the opportunity to comment on this proposed waiver. WWEMA and its members look forward to working with you and the Biden Administration to efficiently and effectively implement BABAA requirements to strengthen our nation's commitment to clean water and to grow our domestic manufacturing base.

Sincerely,

A handwritten signature in black ink that reads "Vanessa M. Leiby". The signature is written in a cursive, slightly slanted style.

Vanessa M. Leiby
Executive Director
WWEMA

About WWEMA

The Water and Wastewater Equipment Manufacturers Association (WWEMA) is a Washington DC-based non-profit trade association representing water and wastewater technology and service providers since 1908. We advocate, inform, and connect our members with key policy and decision-makers and help our members increase their competitiveness and profitability in the U.S. and abroad. Our members supply the most sophisticated leading-edge technologies and services, offering solutions to every water-related environmental problem and need facing today's society. WWEMA is made up of many of the most prominent and influential companies in the industry who are working together to shape the future of water and wastewater technology in the U.S. and around the world.