



STATE OF WASHINGTON

June 29, 2022

Radhika Fox
Assistant Administrator
U.S. Environmental Protection Agency, Office of Water
1200 Pennsylvania Avenue NW
Washington, DC 20004

Re: Public Comment on EPA's Decision Memorandum, "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"

Dear Assistant Administrator Fox:

We write to request additional waiver flexibility for the Build America, Buy America Act (BABA) as we work to bring big investments to communities in Washington State. The Washington State Departments of Ecology and Health are the agencies responsible for stewarding the Clean Water State Revolving Fund and Drinking Water State Revolving Fund (SRFs), respectively. We appreciate the historic funding provided by Congress through the Bipartisan Infrastructure Law (BIL) to support water infrastructure improvements, and look forward to the U.S. Environmental Protection Agency's (EPA) continued partnership in putting them to beneficial use across our state. For this reason, we offer the following comments to EPA on the draft 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.

While the proposed waiver provides relief to borrowers who began construction or submitted engineering plans before the effective date of the law, the narrow scope of the waiver leaves too many communities with uncertainty. This model leaves out borrowers that narrowly missed the deadline for lack of knowledge. Still, other borrowers who had initiated, but not completed, planning have put their projects on hold until EPA issues the comprehensive implementation guidance. Based on the final guidance, borrowers may have to return to the drawing board to redesign their projects, further increasing the cost of construction and delaying the health benefits of clean water to Washingtonians.

Applying new federal mandates on water infrastructure projects at this time will compound the extraordinary economic conditions facing our state and the nation. The cost of redesigning projects, sourcing American made products, and rebidding contracts will be compounded for utilities who are already facing historic inflation rates, unprecedented supply chain disruptions, and once-in-a-generation worker shortages that will impact the cost of water infrastructure projects as well as day-to-day operations. Increased costs are likely to erase the savings of SRF subsidized loans, which can alleviate the pressure on utilities to raise rates to achieve the full cost of service. Much of this burden will fall on our small, disadvantaged communities receiving BIL funding.

We urge the EPA and the Office of Management and Budget to issue a public interest waiver of domestic preference requirements for construction materials and manufactured goods for SRF borrowers who initiated design planning prior to the effective date of the law. This should also apply to borrowers applying during the period of time from the effective date of the law until such a time as EPA issues comprehensive implementation guidance. Additionally we request the waiver be applied for at least six months after the EPA issues final comprehensive implementation guidance that clearly defines the rules of compliance.

“Initiated design planning” should include efforts to procure services related to the water infrastructure project, such as the date of a bid or execution of a contract for rates studies, feasibility studies, design, planning, or engineering services, whether funded by SRFs or conducted independently. An executed assistance agreement with the SRF or inclusion on SRF Project Priority List or approved Capital Improvement Plan can also reflect “initiation” of design planning. This temporary waiver for construction materials and manufactured products will provide a minimal adjustment period for development of policies and procedures to implement these new mandates within Washington’s SRF programs.

Please consider applying the same waivers across all recipients of federal assistance. Holding SRF borrowers to a higher standard of compliance than other recipients of federal assistance, many of them grant recipients, is fundamentally unfair. All federal programs under BABA should be treated the same under the law.

While well intentioned, every federal mandate on SRF borrowers increases the cost of construction of water infrastructure projects. Prescriptive procedures and excessive paperwork to demonstrate compliance with federal mandates also increases the cost of administration for federally financed water infrastructure projects. Those who lack the full-time professional capacity to manage capital improvement projects disproportionately hurts low-income, disadvantaged and underserved communities, those who can least afford the increased cost of construction and compliance. Please consider offering a waiver to help small and disadvantaged communities address their aging infrastructure needs without additional burdens.

Thank you for your consideration. If you have any follow-up questions, please contact Sharlett Mena, Special Assistant to the Director at Sharlett.mena@ecy.wa.gov or (360) 688-6229.

Sincerely,



On behalf of

Vincent McGowan, P.E.
Water Quality Program Manager
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Lauren Jenks, MPH, CHES
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