



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 30 2015

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Request for Waiver of the American Iron and Steel Requirements for Clean Water and Drinking Water State Revolving Fund Assistance Recipients Serving 10,000 or Fewer Persons – Not Approved

FROM: Andrew Sawyers, Director
Office of Wastewater Management

Peter Grevatt, Director
Office of Ground Water and Drinking Water

This memorandum documents the U.S. Environmental Protection Agency's response to a request from several states to waive the American Iron and Steel requirements for Drinking Water State Revolving Fund and Clean Water State Revolving Fund assistance recipients serving 10,000 or fewer persons. P.L. 113-76, the "Consolidated Appropriations Act, 2014," included an AIS requirement in section 436 that required Clean Water State Revolving Fund and Drinking Water State Revolving Fund assistance recipients to use iron and steel products that are produced in the United States for projects including construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed on or after January 17, 2014. P.L. 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," and P.L. 114-53, the "Continuing Appropriation Act, 2016," continue the AIS requirement for DWSRF projects, and Section 608 of the Clean Water Act now contains AIS requirements for CWSRF projects. P.L. 113-235, P.L. 114-53 and Section 608 of the CWA set forth circumstances under which the EPA may waive the AIS requirement.

Background: Beginning in May, 2015, the states of Idaho, Alabama, Georgia, Oklahoma, Arizona and Arkansas requested a waiver from the AIS requirements for CWSRF and/or DWSRF assistance recipients serving 10,000 or fewer persons. During the required 15 day public comment period, other states, manufacturers and trade associations provided comments both in favor of, and opposed to, the waiver requests. The EPA has reviewed all comments and provides the following decision, including rationale for that decision, below.

Decision: The EPA does not approve the requests for a waiver of the AIS requirements for assistance recipients serving 10,000 or fewer persons.

Rationale for Disapproval: (a) Approximately 70 percent of DWSRF projects and 60 percent of CWSRF projects were for communities serving fewer than 10,000 persons. Some commenters asserted that waiving the majority of assistance recipients from the AIS requirement undermines the purpose of the requirement. The EPA agrees that a public interest waiver amending the requirements set forth by

Congress for such a large percentage of the SRF program would significantly reduce the applicability of AIS and be contrary to congressional intent.

(b) While some requestors asserted a disparity in cost differences for domestic purchasing versus imported materials, none expressed cost increases in excess of 25% of the project cost. The AIS provision provides the authority for the EPA to waive these requirements if EPA determines that “inclusion of iron and steel products produced in the United States will increase the overall project by more than 25 percent.” Because the AIS provision includes this cost threshold in order to grant a cost based waiver, the EPA will not approve a public interest waiver request solely based on cost implications.

(c) Requestors did not provide substantiating qualitative or quantitative evidence to support claims of adverse administrative burden and/or impacts for small communities. While several commenters in favor of the waiver referred to administrative burden and adverse impacts, there were no specific facts or statistical evidence provided with specific quantitative or qualitative analysis. The EPA does not possess or know of an existing source of information providing the evidence to demonstrate that adverse administrative burden and/or impacts for small communities are occurring.

(d) Requestors did not distinguish anecdotal claims of administrative and programmatic impacts from other SRF policies. Many commenters and requestors conflated the potential burden of the SRF program requirements, as a whole, with those solely from the AIS requirements. The EPA does not possess or know of an existing source of information providing specific evidence of the potential administrative burden and/or impacts for small communities that is solely related to the AIS requirements.

Conclusion: The EPA does not approve the requests for a waiver of the AIS requirement for assistance recipients serving 10,000 or fewer persons. The EPA does recognize, however, that small communities can have special challenges with regulatory compliance with SRF requirements. The EPA has worked from the outset of the AIS requirements to minimize any burden and/or impact on all assistance recipients, especially small communities. To date, the EPA has:

- Issued a national *de minimis* waiver allowing all assistance recipients to use up to 5 percent of material cost per project for non-domestic iron and steel products.
- Issued a national waiver for minor components, allowing manufacturers to incorporate a small percentage of foreign components within otherwise AIS compliant products.
- Provided national product waivers when domestic supplies have been insufficient (i.e., pig iron and stainless steel nuts and bolts for pipe restraints), after conducting market research and offering open public comment periods.
- Conducted free training webinars for over 1500 assistance recipients, States, consulting engineers, manufacturers and other stakeholders.
- Provided specialized regional and State training. EPA provides these trainings free of charge and will continue to do so indefinitely.
- Provided free and timely product and market searches where communities require assistance, and will continue to do so.

The EPA is currently considering whether there is a more appropriate size threshold for a national waiver of the AIS requirements. The EPA requires information (empirical, surveyed, or otherwise) to substantiate whether very small communities are significantly adversely affected specifically by the implementation of the AIS requirement. The EPA seeks substantive information from States, assistance recipients, and their representative organizations as to why and specifically how administrative burdens (as a result of the AIS requirements) may be more difficult to bear for these very small communities.