



DECISION MEMORANDUM

SUBJECT: Availability-Based Project Waiver of American Iron and Steel Requirements for Glass-fused Steel Bolted Tank for the All Seasons Water Users District, ND System 4 Connection to System 1 and Storage Project
Waiver Number 08-DW-0026

FROM: Jennifer L. McLain, Director
Office of Ground Water and Drinking Water

Decision: The U.S. Environmental Protection Agency (EPA) is hereby granting an availability-based project-specific waiver pursuant to the American Iron and Steel (AIS) requirements to the All Seasons Water Users District, ND, for the purchase of a glass-fused steel bolted tank for the System 4 Connection to System 1 and Storage Project. This waiver permits the use of a non-domestic glass-fused steel bolted tank because no known domestic manufacturers produce a product that meets the project's schedule and technical specifications. This project-specific waiver applies only to the use of the specified product for the referenced project funded by the Drinking Water State Revolving Fund (DWSRF). Any other project funded by the DWSRF, Clean Water State Revolving Fund, or the Water Infrastructure Finance and Innovation Act that wishes to use the same product must request a separate waiver based on the specific project circumstances.

Rationale: The AIS provision requires DWSRF assistance recipients to use specific domestic iron and steel products if the project is funded through an SRF assistance agreement unless EPA determines that it is necessary to waive this requirement. EPA has the authority to issue waivers in accordance with section 1452(a)(4)(C)(ii) of the Safe Drinking Water Act. The provision states in part: “[the requirements] shall be waived in any case or category of cases in which the Administrator [of the Environmental Protection Agency] ... finds that... iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.”

Background of Waiver Request: This project consists of the construction of approximately 36 miles of water mains and a 200,000-gallon storage tank with booster pumps. The project requires the tank to be installed within a reasonable time before the conclusion of the construction season, and to keep the project on time. Having the tank in place in a timely manner is crucial for the system to function properly.

The District conducted research to find a domestic manufacturer of AIS-compliant glass-fused steel bolted tank and provided information to EPA demonstrating that no domestic manufacturers of glass-fused steel bolted tanks meet the project's schedule and technical specifications. A manufacturer

indicated that it could provide a tank meeting the project's technical specifications, but with a lead time of 40 to 50 weeks for delivery of the tank, which would cause an unnecessary delay of the project.

Assessment of Waiver Request: EPA conducted market research on the supply and availability of glass-fused steel bolted tanks and concluded that there are no domestic manufacturers of these products that meet the project's schedule and technical specifications. Per statutory requirement, the waiver request was posted on EPA's AIS website for the mandatory 15-day public comment period. EPA received four comments from manufacturers stating they had a potential alternative. Three of the potential manufacturers could not provide a tank that met the technical specifications of the project. In the project's initial research, the fourth manufacturer indicated it could provide a tank meeting the project's technical specifications but with a 40-to-50-week lead time. During EPA's subsequent research, the same manufacturer indicated a 20-week lead time. Based on the limited construction season in North Dakota, a 20-week lead time would not meet the project's schedule.

Finding: EPA is granting an availability-based waiver from the AIS requirements to the All Seasons Water Users District, for the System 4 Connection to System 1 and Storage Reservoir Project for a glass-fused steel bolted tank. This waiver permits the purchase of a non-domestic glass-fused steel bolted tank using DWSRF funds as documented in the State of North Dakota's waiver request submittal on behalf of the assistance recipient, dated May 22, 2023.

Legal Authority: Legal authority for the AIS requirements for DWSRF projects, including waiver authority, is included in the Safe Drinking Water Act section 1452(a)(4).

If you have questions concerning the contents of this memorandum, please contact Jorge Medrano, Environmental Engineer, Drinking Water Infrastructure Development Division, at medrano.jorge@epa.gov or (202) 564-1968.