



OFFICE OF WASTEWATER MANAGEMENT
WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project Waiver of American Iron and Steel Requirements to the City of Memphis in Tennessee for Flanged Backflow Preventers

FROM: Andrew D. Sawyers, Director
Office of Wastewater Management

Decision: The U.S. Environmental Protection Agency (EPA) is hereby granting a project waiver pursuant to the “American Iron and Steel” (AIS) requirements of 33 U.S.C. § 3914 under the authority of 33 U.S.C. § 3914(c)(2) to the City of Memphis in Memphis, Tennessee (Applicant) for Flanged Backflow Preventers (backflow preventers). This waiver permits the use of this product, produced outside the United States, and in the specific size requested, at the T.E. Maxson Wastewater Treatment Facility Process and Biosolids Upgrade Program project because no known domestic manufacturers produce AIS-compliant backflow preventers.

This is a product-specific waiver and only applies to the use of the specified product for the proposed project funded by the Water Infrastructure Finance and Innovation Act (WIFIA). Any other jurisdiction with projects funded by either WIFIA or the State Revolving Funds (SRFs) that wishes to use the same products must apply for a separate waiver.

Rationale: According to WIFIA at 33 U.S.C. § 3914, WIFIA loan recipients must use specific domestic iron and steel products that are produced in the United States. The EPA has the authority to determine whether it is necessary to waive this requirement based on certain circumstances set forth in 33 U.S.C. § 3914(c)(2). The applicable provision states that the requirements shall not apply: “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: The Applicant provided information to the EPA asserting that there are no domestic manufacturers producing backflow preventers in sufficient and reasonably available quantities and of a satisfactory quality. The project requires the backflow preventers to control the flow of water unidirectionally and prevent contamination of the potable water supply.

Assessment of Waiver Request: The EPA conducted market research and a public comment period on the supply and availability of backflow preventers. The basis of evaluation included thorough review of the waiver request submission, examination of domestic manufacturer catalogs or other technical data and marketing materials, personal communication with domestic manufacturers, inquiries of state staff, and outreach to contractors and engineers with expertise and familiarity with the project. For market research, the EPA contacted ten manufacturers or suppliers. Of the seven who responded,

none could provide AIS-compliant backflow preventers. The EPA also posted the waiver request for a 15-day public comment period. The EPA received one public comment indicating that a previous domestic manufacturer of this product no longer manufactured them. Therefore, the EPA agrees with the assessment that no domestic manufacturers produce backflow preventers meeting the project's specifications.

Finding: Since the Applicant established a proper basis to specify the backflow preventers required for this project, and because the EPA substantiated the Applicant's claim that these products are not produced or readily available from a manufacturer in the United States, the City of Memphis in Memphis, Tennessee is hereby granted a waiver from the AIS requirements for the T.E. Maxson Wastewater Treatment Facility Process and Biosolids Upgrade Program project. This waiver permits the purchase of the specified product as documented in the Applicant's waiver request submittal to WIFIA, dated April 4, 2024.

If you have any questions concerning the contents of this memorandum, please contact Dan-Tam Nguyen, Environmental Engineer, WIFIA Program, at Nguyen.Dan-Tam@epa.gov.