



OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Availability-Based Project Waiver of American Iron and Steel Requirements for Stainless Steel Nozzle Check Valves for Hawaii Department of Water Supply in Hawaii
Waiver Number 09-DWB-0025

FROM: Jennifer L. McLain, Director

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 of the Safe Drinking Water Act (SDWA) to the Hawaii Department of Water Supply, for stainless steel nozzle check valves in the Kahaluu Shaft Pump Discharge Piping Repair project. This waiver permits the use of nozzle valves because no known domestic manufacturers produce a product that meets the project's 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 the EPA determines that it is necessary to waive this requirement. The EPA has the authority to issue waivers in accordance with Section 1452(a)(4)(C)(ii) of the SDWA. 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.”

The Build America, Buy America Act (BABA) was enacted as a part of the Infrastructure Investment and Jobs Act (P.L. 117-58, Nov. 15, 2021) and includes a Savings Provision in Section 70917(b). BABA's Savings Provision states that "Nothing in this part affects a domestic content procurement preference for a Federal financial assistance program for infrastructure that is in effect and meets the requirements of section 70914." The statutory American Iron and Steel requirements were in effect at

the time BABA became law and satisfy the BABA iron and steel requirements. Therefore, the statutory AIS requirements that have previously applied to SRF-funded projects will continue to do so, and compliance with AIS requirements will satisfy the BABA iron and steel requirements. In cases where the EPA approves a project-specific waiver from the AIS requirements for an iron and steel product, the corresponding category of iron and steel products for BABA is also waived, based on the same criterion of non-availability in Section 70914(b)(2) of IJJA.

Background of Waiver Request: The project will involve the replacement of the pumping assemblies, including replacement of the pump pad and the discharge piping. The valves required for the project must be 12-inch stainless steel, non-slam, nozzle type, with ASTM A351 rating. The valves shall have full open flow velocity of 3.68 feet per second.

Assessment of Waiver Request: The Hawaii Department of Water Supply conducted research to find a domestic manufacturer of AIS and BABA compliant stainless steel nozzle valves but were unable to locate any potential domestic manufacturers. The EPA conducted market research on the supply and availability of stainless steel nozzle check valves and reached out to 10 known manufacturers, suppliers, and distributors. None (zero) indicated they could provide valves that meet the project's technical specifications. Per statutory requirement, the waiver request was posted on the EPA's AIS website for the mandatory 15-day public comment period. The EPA received one public comment from a manufacturing firm that was also contacted during market research. The commenter indicated that they could provide an alternate valve, however, the valve they provide has different specifications than the project's technical performance specification and thus this product will not work for this project.

Finding: The EPA is granting an availability-based waiver from the AIS requirements to Hawaii Department of Water Supply for the Kahaluu Shaft Pump Discharge Piping Repair project. This waiver permits the purchase of stainless steel nozzle check valves using DWSRF funds as documented in the State of Hawaii's waiver request submittal on behalf of the assistance recipient, dated May 14, 2024.

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 Leslie Corcelli, Physical Scientist, Drinking Water Infrastructure Development Division, at Corcelli.leslie@epa.gov.