



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

OCT - 5 2015

OFFICE OF
WATER

DECISION MEMORANDUM

SUBJECT: Public Interest Waiver of American Iron and Steel Requirements for Projects Funded through Washington's Emergency Loan Program
Waiver Number 10-DW-0002

FROM: Peter Grevatt, Director
Office of Ground Water and Drinking Water

A handwritten signature in black ink, appearing to read "Peter Grevatt", written over the printed name.

The U.S. Environmental Protection Agency is hereby granting a public interest waiver of the American Iron and Steel requirements, pursuant to Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," to the State of Washington for specific types of natural disaster-related projects going to community water systems serving 10,000 persons or fewer. This statewide public interest waiver applies only to projects funded through the Emergency Loan Program of the Washington Drinking Water State Revolving Fund. This waiver permits projects funded by the Washington ELP to use non-domestic iron and steel products that they would otherwise be prohibited to use under the American Iron and Steel requirements in Public Law 113-235.

Rationale: A loss of water supply or the imminent significant reduction in water availability is an immediate and critical public health threat that communities must address as quickly as possible. Therefore, the EPA is waiving the AIS requirements for specific types of natural disaster-related projects funded through the ELP of the Washington DWSRF. This waiver only applies to small community water systems serving a population of 10,000 or fewer people. Projects must be in response to a natural disaster that caused damage to, or is disrupting the normal operation of, a public water system and requires immediate action to protect public health and safety.

Background: At the direction of the Governor, on May 21, 2015, the Director of the Washington Department of Ecology expanded the state's current drought emergency to include all of the State of Washington. In response to the current drought and increasing number of wildfires, the State created the Emergency Loan Program within its Drinking Water State Revolving Fund to assist affected communities. Projects funded through the ELP are intended to either restore or prevent imminent water outages and ensure an adequate supply of safe drinking water for the preservation of public health. The ELP will only fund projects that are necessary to address drinking water outages caused by natural disasters, and have a cap of \$100,000 per project. On July 17, 2015, the State of Washington submitted a public interest waiver request that would allow communities receiving financial assistance through the ELP to use non-domestic iron and steel products for short-term emergency projects. This waiver request was only for community water systems serving 10,000 persons or fewer.

The State provided a list of example projects in their request that this waiver could address. Projects could include, but are not limited to: deepening an existing well where the drought has caused water levels to drop dangerously low, drilling a replacement well for one that has gone dry or collapsed,

providing a storage tank and booster pump so that trucked-in water can be put into the distribution system to supplement supplies where well yields have declined, extending an intake line, constructing a relatively short interconnection to connect to another water system to supply water or replacing infrastructure damaged by fire or other natural disaster.

Coverage: For projects to be eligible to be exempt from AIS requirements under this waiver, the project must meet the criteria described below. Where U.S.-made iron and steel products are readily available and easily accessible, the community should make every effort to use the U.S. products first.

- (1) The community water system receiving the funding must serve a population of 10,000 or fewer.
- (2) The proposed project must qualify for the funding through the Washington Emergency Loan Program.
 - To qualify for the ELP, communities must be experiencing a loss of critical drinking water services or facilities due to an emergency. An emergency refers to a natural disaster that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety.
 - ELP funding will be available for construction, reconstruction, replacement, rehabilitation, temporary repair or improvement necessary to continue or restore operation of a community water system that is in violation of health and safety standards due to an emergency.
- (3) Project funding cannot exceed \$100,000 per project (ELP-imposed cap).
- (4) The proposed projects can be one or a combination of the following types that have a short construction duration:
 - Deepening an existing well;
 - Drilling a replacement well;
 - Rehabilitating a well;
 - Extending or relocating an intake line into a surface water source;
 - Constructing a short interconnection to another water system;
 - Treating an alternative source;
 - Replacing or repairing damaged drinking water infrastructure;
 - Installing infrastructure to handle trucked-in water (but not the cost of trucked-in water itself).

Additional Information: All projects funded through the Washington ELP are covered by this waiver, as long as the community serves 10,000 persons or fewer. Projects covered by this waiver are for communities in imminent danger of having no drinking water, an immediate public health threat. If the timely availability of American iron and steel products affects short-duration emergency projects, then these projects could use non-domestic iron and steel to meet immediate needs for water supply. Because of the immediate public health threat, product availability should not delay these projects. For example, if U.S.-made steel pipe is not readily available for an emergency connection to another system, but the community has an available stockpile of non-domestic steel pipe, or can readily order and receive such pipe, then the community could use non-domestic pipe.

The types of projects not covered in this waiver include providing trucked-in water supplies¹, creating new surface water sources and constructing complex treatment plants or large storage projects. Projects of a long-term nature that require significant design, engineering and environmental studies before they are constructed are not eligible, as the community would have time to seek U.S.-made products.

¹ Trucked-in water is not an eligible DWSRF expense

The State must report the public water system name, identification number and the type of project to the EPA Office of Ground Water and Drinking Water at DWSRFwaiver@epa.gov for each project covered by this waiver within ten business days of assistance agreement award. The State must continue to report quarterly on the project to the DWSRF Project and Benefits Reporting System. The project description field in PBR must indicate that the project is using this waiver.

Legal Authority: Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015,” under Section 424(b)(1) and also previously under P.L. 113-76. These provisions require DWSRF assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through a DWSRF assistance agreement, unless the Agency determines that it is necessary to waive this requirement. The EPA has the authority to issue waivers in accordance with Section 424(b)(1) of Public Law 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015.” The provision states in part: “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency...finds that...applying subsection (a) would be inconsistent with public interest.” This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as in Section 424 of the "Consolidated and Further Continuing Appropriations Act, 2015."