



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

JAN 16 2018

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Public Interest Waiver of American Iron and Steel Requirements to the Village of Derby Line, Vermont

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

A handwritten signature in black ink, appearing to read "A. Sawyers", written over the printed name and title.

The EPA is hereby granting a public interest waiver pursuant to the “American Iron and Steel” requirements of the Clean Water Act Section 608 under the authority of Section 608(c)(1) to the village of Derby Line, Vermont. This public interest waiver permits the use of iron and steel products manufactured in the United States and Canada in the Rock Island Wastewater Treatment Facility Refurbishment project. This is a project specific waiver and only applies to the proposed project funded by the Clean Water State Revolving Fund.

Rationale: According to Section 608 of the Clean Water Act, CWSRF assistance recipients must use specific domestic iron and steel products that are produced in the United States if the project is funded through the SRFs. EPA has the authority to determine whether it is necessary to waive this requirement based on certain circumstances set forth in Section 608(c)(1) of the Clean Water Act. The 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 – (1) applying [the requirements] would be inconsistent with the public interest.”

The village of Derby Line, Vermont applied for a public interest waiver from the AIS requirements for the Rock Island Wastewater Treatment Facility Refurbishment project citing unique project circumstances as justification for the waiver. Derby Line has conveyed their wastewater across the international border to a wastewater treatment facility in Stanstead, Quebec for the past 35 years. Derby Line entered into an intermunicipal agreement with Stanstead in 1980, which stated that Derby Line would be responsible for 50 percent of any future maintenance, upgrade or expansion costs associated with the village’s use of the wastewater treatment facility. The town of Stanstead is now undertaking a major upgrade project at the wastewater treatment facility which includes replacing aging equipment to meet new discharge requirements. Derby Line is seeking a CWSRF loan to finance their portion of the project costs and asserts that applying the AIS requirements to the project would be impractical since the project is being undertaken by a Canadian utility and is located wholly in Canada.

Derby Line also claimed that if a waiver is not granted, the village would not be able to use CWSRF assistance to finance its share of the project, which it claims is not in the public’s interest. Derby Line meets several of the hardship criteria that are examined for affordability in

the CWSRF program including population loss, joblessness and a low median household income. Since 1980 the village of Derby Line has seen a nearly 30 percent decline in population. In addition, the unemployment rate is two percentage points greater than the statewide average and the median household income is 18 percent lower than the statewide average. If Derby Line is able to use the CWSRF to finance their share of the project it may have access to a low administrative fee of 2 percent with no interest over 20 years and may also qualify for principal loan forgiveness. Without a waiver of the AIS requirements, the village would need to rely on traditional financing with higher interest rates and no principal loan forgiveness. As a result, the village would need to charge higher user rates, which would be a significant burden on an economically disadvantaged community, and would not be in the public's interest.

The EPA solicited public comments on Derby Line's waiver request and received two substantial public comments—one from Senator Patrick Leahy of Vermont and one from a manufacturer. The letter from Senator Leahy supported Derby Line's request for a public interest waiver and noted the unique circumstance in which Derby Line is seeking CWSRF financing for a project located across the international border in Canada. The letter also stated that Derby Line is a small, economically stressed, rural community and will depend on CWSRF financing to complete the project and noted that the Canadian utility would have its own imperative to use Canadian iron and steel products in the project. The comment from the manufacturer noted that a federally funded transportation project conducted in a partnership between an American and Canadian municipality was granted a public interest waiver allowing the use of both American and Canadian iron and steel in the project.

After evaluating the village of Derby Line's waiver request and public comments, the EPA concluded that it would be in the public's interest to waive the application of the AIS requirements to the Rock Island Wastewater Treatment Facility Refurbishment project allowing either Canadian or AIS compliant products. The waiver request presents a unique circumstance in which a Canadian municipality is managing and equally financing the construction of the wastewater treatment project, which also benefits the village of Derby Line. The EPA determined that it would be fair and in the public's interest to allow the use of Canadian iron and steel along with American iron and steel, as long as no iron and steel products from any other country are used in the project. The EPA is hereby granting a public interest waiver from the AIS requirements to the village of Derby Line. This waiver permits the purchase of American or Canadian iron and steel products in the Rock Island Wastewater Treatment Facility Refurbishment project documented in the state of Vermont's waiver request submittal on behalf of the applicant dated May 31, 2017.

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Water Infrastructure Division, at connor.timothy@epa.gov or (202) 566-1059.