



Rural Development

Rural Utilities Service

Water & Environmental Programs

1400 Independence Ave SW
Washington, DC 20250

DECISION MEMORANDUM

DATE: 13 August 2024

SUBJECT: Availability-Based Project-Specific Waiver of American Iron and Steel Requirements for two and a half-inch and four-inch backflow preventor assemblies for the Village of Constantine Wastewater Treatment Plant Improvements Project in St. Joseph County, MI.

Waiver Number: 24-004

FROM: Steven Polacek
Director
Water and Environmental Programs

Decision: The U.S. Department of Agriculture (USDA) is hereby granting an availability-based project-specific waiver of American Iron and Steel (AIS) requirements to the Village of Constantine for the purchase of one (1x) two and a half-inch backflow prevention valve assembly and one (1x) four-inch backflow prevention valve assembly for its Wastewater Treatment Plant Improvements Project in St. Joseph County, MI. This waiver permits the use of non-domestic backflow prevention valve assemblies because no known domestic manufacturers can deliver a product that meets the project's technical specifications.

This is a project-specific waiver which applies only to the use of the specified product for the referenced project funded by the USDA Rural Development (RD) Rural Utilities Service (RUS) Water and Waste Disposal (WWD) Loan and Grant program under the Water and Environmental Programs (WEP). Any other project that wishes to use the same product must submit a separate waiver request based on the specific project circumstances.

Rationale: The AIS provision of the Consolidated Appropriations Act of 2017 (Public Law 115-31) and subsequent statutes require WEP assistance recipients to use domestic iron and steel products unless RD determines that it is necessary to waive this requirement. USDA has the authority to issue waivers in accordance with section 746 (b)(2) of P.L.115-31, which states in part: “[the requirements] shall not apply in any case or category of cases in which the Secretary of Agriculture ... or the designee of the Secretary finds that ... iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.” As per the delegation memo of July 2017, approval of project specific waivers has been delegated to the Engineering and Environmental Staff Director.

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Background of Waiver Request: The Village of Constantine’s Wastewater Treatment Plant Improvements Project in St. Joseph County, MI, includes installation of backflow prevention valve assemblies in their wastewater system. The contractor stated that they could not find a manufacturer to furnish an assembly that adhered to AIS requirements, and furnished documentation from eight suppliers corroborating this.

USDA RD had earlier been made aware of the lack of AIS-compliant backflow preventers regarding projects in Dubuque, IA, Murdock, MN, and Camden, ME. In all cases, the applicants reached out to multiple manufacturers or distributors, who all stated that they cannot supply backflow preventers meeting domestic preference requirements. USDA’s AIS contractor then contacted fourteen manufacturers and suppliers between June 6 – June 13, including those contacted by the applicants. Of the companies that responded, none of them manufacture backflow preventer assemblies meeting both the project specifications and domestic preference requirements. Based on this research, USDA granted the Dubuque, IA project, the Murdock, MN, project, and the Camden, ME, project a waiver of AIS for the backflow preventers on October 25, 2023 (23-006), August 23, 2023 (23-005), and May 26, 2023 (23-003).

The Village of Constantine submitted to RD a formal request to waive AIS requirements for the assemblies on July 15, 2024. Per statutory requirement, the waiver request was posted on RD’s AIS website for a 15-day public comment period, and the Agency received no comments.

Finding: USDA is granting an availability-based waiver from the AIS requirements to the Village of Constantine for one (1x) two and a half-inch backflow prevention valve assembly and one (1x) four-inch backflow prevention valve assembly. This waiver permits the purchase of these assemblies using WEP funds for the Village of Constantine Wastewater Treatment Project as documented in the waiver request submittal.

Legal Authority: Legal authority for the AIS requirements for WEP projects is included under the Consolidated Appropriations Act of 2017 and subsequent statutes, under the authority of section 746 (b)(2) of P.L.115-31.

If you have questions concerning the contents of this memorandum, please contact WEP Engineering at WEPEngineering@usda.gov.