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September 15, 2022

The Honorable Mitchell J. Landrieu  
Senior Advisor to the President of the  
United States and Infrastructure  
Coordinator  
Executive Office of the President  
The White House  
Washington, D.C. 20500

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Senior Advisor and Coordinator Landrieu and Administrator Regan:

The undersigned organizations represent a broad cross-section of water infrastructure stakeholders representing water, wastewater, water reuse utilities, and water technology manufacturers. We write to request certain actions to support a predictable and certain implementation of the Build America, Buy America (BABA) Mandate included in Public Law 117-58 (§70914, IIJA). As organizations dedicated to providing vital services to deliver climate resilience, improved water quality, and safe and reliable drinking water, we are concerned with the way this mandate is being implemented. This includes delays in the Federal Government issuing clear and concise implementation guidance – particularly for manufactured products, and the inconsistent applicability of proposed waivers between Federal Agencies and within Agencies that administer water and wastewater infrastructure programs.

Since President Biden signed the law ten months ago, a clear understanding on how the various departments and agencies will implement the requirements does not exist. This lack of guidance is creating significant uncertainties in the market, especially considering the time required to localize manufacturing capacity. It is leading to potential delayed project implementation as public and private water sector agencies, as well as manufacturers, are unable to answer the basic question, “Will our project(s) comply with the BABA requirements?”

We greatly appreciate the work that the U.S. EPA has done to date issuing waivers for the WIFIA and State Revolving Fund programs for projects that initiated project design planning prior to BABA’s effective date of May 14, 2022. But critical projects have continued to be designed and advanced since then, without the benefit of much-needed final guidance. For this reason, we continue to urge an adjustment period waiver following the release of final comprehensive manufactured products and domestic content guidance to allow projects to proceed and to allow time to train states, utilities, consulting engineers, contractors, and manufacturers on how to comply with the new requirements.

To add to this uncertainty, the water sector continues to face domestic supply chain disruptions, and inflationary pressures that make it difficult to provide accurate and timely price information as well as workforce and labor shortages. This is compounded by the reality that the water sector relies on many products and technologies that are not made in the U.S. and, in fact, have never been made in the U.S., to comply with federal water quality mandates. This reality means it will require years to create or expand sufficient manufacturing capacity that meet the demands of the water sector as well as other infrastructure needs. Recent decisions by the Department of Transportation to address a similar dynamic with EV infrastructure validate this concern.

In summary we call for a series of actions outlined below. We request that you:

- 1) Approve an adjustment period waiver as the Department of Transportation recently published for EV infrastructure. Specifically, issue this waiver for the period of 2023 and 2024 for all USEPA water and wastewater infrastructure projects that rely on manufactured products. This request is vital considering the need to respond to safe and reliable drinking water needs, improve water quality, and address drought resilience and flood protection issues that have afflicted all regions of the nation.
- 2) Publish, without further delay, clear administrative guidance that funding recipients can rely upon to implement the new requirements and secure a manufactured product waiver, if needed.
- 3) Move judiciously to research and issue National Waivers for manufactured products never produced in the United States or not produced in meaningful quantities to minimize the need for individual utilities to request project-by-project specific waivers for products known not to be produced here – saving significant time and money and ensuring projects can move forward on time, on task, and on budget. This will necessitate working with manufacturers and utilities to identify a list of products and technologies that may require a National Waiver based on a lack of U.S. production capacity. This may include high speed turbo and other blowers; motors; smart meters and sensors, actuators; certain types of pumps; UV technologies; membranes and membrane bioreactors; reverse osmosis system equipment and piping; ozone treatment; monitors, data analysis, and other smart technologies; and certain adsorbent media, including PFAS removal best available technologies.
- 4) Ensure an open and transparent process that provides public access to all waiver comments and a justification for why the Agency reached a particular decision about final waivers.

The *Infrastructure Investment and Jobs Act* (IIJA) can deliver the modernization of our water infrastructure and ensure safe, reliable, drinking, and clean water services to all Americans. We strongly support these efforts and want to work with the Biden Administration to ensure that these funds can be invested without

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delay. We understand the Office of Management and Budget (OMB) Made In America Office is now developing the guidance for manufactured products and specifically domestic content guidance. Given the vast array and complexity of components that comprise individual water treatment technologies, and our unique pricing and go-to-market processes, designing guidance on domestic content must be done collaboratively between OMB and EPA.

If the water sector is to be positioned to accelerate action on climate change, we must preserve access to the best available technologies to reduce carbon emissions and energy use regardless of country of origin. The water sector contributes 10 percent of global greenhouse gas emissions. This summer's historic heat waves, unrelenting drought, and the recurrence of unprecedented 1,000-year storms and floods demonstrates that the climate crisis is too severe to impose a policy change without adequate manufacturing capacity in place.

In closing, water, wastewater treatment, and water recycling systems are highly complex and technologically advanced, and utilities must design and invest in projects that ensure federal and state regulatory compliance. Our facilities are not "plug and play," but integrated systems that depend on computers and specialized technologies with components universally sourced to guarantee a reliable supply and compliance with public health, water quality, and drinking water quality regulations for all Americans. We look forward to working with your offices to ensure a proper and effective approach to the implementation of the mandate.

Sincerely yours,

American Water Works Association  
Association of California Water Agencies  
Association of Metropolitan Water Agencies  
California Association of Sanitation Agencies  
National Association of Clean Water Agencies  
National Water Resources Association  
Rural Community Assistance Partnership  
Water and Wastewater Equipment Manufacturers Association  
Water Environment Federation  
WateReuse Association  
Evoqua Water Technologies  
Grundfos  
Hach  
McCrometer  
Ott HydroMet  
Sea-Bird Scientific  
Suez  
Trojan  
Xylem

CC: The Honorable Radhika Fox, Assistant Administrator, Office of Water