



WATERREUSE®

625 First Street, #621 • Alexandria, VA 22314

President

Craig Lichty

Black & Veatch, CA

Vice President

Bart Weiss

Hillsborough County

Public Utilities, FL

Treasurer

Karen Pallansch

Alexandria Renew

Enterprises, VA

Secretary

Deven Upadhyay

Metropolitan Water

District of Southern

California, CA

Past President

Gilbert Trejo

El Paso Water, TX

July 27, 2022

The Honorable Radhika Fox

Assistant Administrator

Office of Water

U.S. Environmental Protection Agency

William Jefferson Clinton Building

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Dear Assistant Administrator Fox:

Thank you for your commitment to swiftly implementing the historic Infrastructure Investment and Jobs Act (IIJA), and for meaningfully engaging stakeholders throughout the process. We write today to provide comments on EPA's draft decision memorandum waiving Buy America, Build America Act (BABAA) requirements for selected EPA funding programs.

The WateReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country.

WateReuse and our members were deeply involved in the development and enactment of the IIJA. We worked closely with Congress to ensure that the legislation supports water recycling as a resiliency tool.

We support EPA's decision to waive BABAA requirements for projects with funds obligated by the proposed deadline of six months after the effective date of the waiver; however, we have several concerns related to the waiver's applicability and duration, which are outlined below.

Recommendation 1:

We are concerned that the proposed waiver leaves out projects that underwent planning and design prior to May 14, 2022 but for which funds are not obligated prior to the six month deadline. Under the proposed waiver, projects that have applied for funding, but have not yet been obligated funds within the six-month timeframe will need to re-evaluate design decisions, causing a significant delay and increased costs in project construction. We therefore urge you to expand the proposed waiver to include projects that have initiated project design prior to May 14, 2022, regardless of

whether funds have been obligated by the proposed waiver deadline. This adjustment more accurately accounts for the labor and design costs associated with project development.

Recommendation 2:

We recommend the waiver effective period extends six months from the effective date of the waiver. As currently written the proposed waiver holds two different effective durations. The first follows our recommendation of six months from the effective date of the waiver, and the second states “this waiver will apply to all funds obligated by these programs prior to November 14, 2022.” The stated mission of the waiver is to create a phased implementation approach of six months for the agency and borrowers to research the current market, prepare for the new requirements, and understand the implementation guidance. Depending on the timing for finalizing this waiver, employing the November 14, 2022 date would reduce the six month period by nearly three months or longer, which would hinder EPA’s ability to provide funding and significantly delay the essential water projects funded through these programs.

Recommendation 3:

In addition to broadening the waiver to include projects that have undergone design and planning prior to May 14 but are not obligated by the waiver deadline, WateReuse urges EPA to extend the adjustment period waiver to include projects for which assistance was obligated on or after May 14, 2022, up until the effective date of the waiver. Doing so will ensure equitable implementation of the BABAA requirements for projects for which funds were obligated between May 14, 2022 and the finalization of the proposed waiver. Without this application, any projects for which funds were obligated within that period would be held to different standards, causing confusion and leading to project delays and potential cost increases.

Recommendation 4:

The six-month waiver period allows for EPA to conduct essential market evaluations for each program to better understand the state of non-ferrous manufacturing and production of essential products for water infrastructure projects. As EPA works to perform additional market research to better understand markets, we urge you to engage water sector stakeholders and the water reuse community. For example, to safely and reliably treat recycled water to meet rigorous standards, water reuse and recycling facilities utilize certain equipment and advanced water treatment technologies that include products not able to be sourced in the United States, with no equally efficient and effective alternatives. Some examples of such products include:

- Membranes and membrane bioreactors
- Ultra-violet treatment
- Valves and appurtenances
- Pumps
- Motors
- Reverse osmosis system equipment and piping



- Ozone treatment

Additionally, the waiver notes at the conclusion of the waiver period, EPA will reevaluate if an extension is needed. We urge EPA to create a transparent decision-making process and to continue engagement with the water stakeholder community.

WaterReuse looks forward to working with you and your team to ensure that EPA programs effectively support water reuse projects across the United States.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pat. Sinicropi', with a stylized flourish at the end.

Patricia L. Sinicropi, J.D.
Executive Director

