

EXECUTIVE COMMITTEE

PRESIDENT

Marian A. Orfeo

Director of Planning

& Coordination

Massachusetts Water

Resources Authority

Boston, MA

VICE PRESIDENT

Kevin L. Shafer

Executive Director

Milwaukee Metropolitan

Sewerage District

Milwaukee, WI

TREASURER

Jeff Theerman

Executive Director

Metropolitan St. Louis

Sewer District

Saint Louis, MO

SECRETARY

David R. Williams

Director of Wastewater

East Bay Municipal

Utility District

Oakland, CA

PAST PRESIDENT

Christopher M. Westhoff

Assistant City Attorney

Public Works General Counsel

City of Los Angeles

Los Angeles, CA

EXECUTIVE DIRECTOR

Ken Kirk

June 22, 2009

Marguerite Pridgen

Office of Federal Financial Management

Office of Management and Budget

New Executive Office Building, Room 6025

Washington, DC 20503

Re: Comments on Office of Management and Budget Guidance for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards

Dear Ms. Pridgen:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments on the Office of Management and Budget (OMB) *Guidance for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 (ARRA) for Financial Assistance Awards (Guidance)*. NACWA represents the interests of nearly 300 publicly owned wastewater treatment agencies nationwide, serving the majority of the sewered population in the United States. NACWA is pleased with the funds allocated through the ARRA for important wastewater infrastructure projects across the country, and many NACWA members have applied for ARRA funds to undertake projects that will create jobs and improve infrastructure in their local communities. However, NACWA has concerns with OMB's guidance regarding implementation of Section 1605 of the ARRA on "Buy American" requirements.

Section 1605 of the OMB Guidance clarifies that any projects funded through the ARRA must use iron, steel, and manufactured goods produced in the United States, with only limited exceptions. Among the exceptions is if compliance with the requirements would result in violation of international trade agreements. However, the overwhelming majority of municipalities are not covered by international trade obligations, meaning that municipal entities like wastewater treatment agencies are directly affected by Section 1605's restrictive Buy American procurement requirements. The other potential exemptions available to clean water agencies are extremely narrow in scope and require a formal waiver from the U.S. Environmental Protection Agency (EPA).

The application of Section 1605's Buy American requirements to ARRA wastewater projects may cause complications for the nation's clean water agencies. Although the stated purpose of the ARRA is to create jobs and promote economic recovery, many wastewater utilities may be unable to initiate new projects with ARRA funds due to an inability to meet Section 1605 Buy American requirements. These restrictive

requirements may in turn prevent utilities from funding projects that could create much needed jobs and install needed new infrastructure in their local communities, thus frustrating the overall intent of the *ARRA* and slowing economic recovery.

A large part of the problem clean water utilities have in meeting the Buy American requirements relates to the unique nature of wastewater infrastructure projects. Unlike highway or other transportation projects that use primarily concrete and steel, many wastewater projects also involve the use of pumps, membranes, computer equipment, and other specialized electronic components that must meet very precise specifications for a given project. Often the exact parts called for in the specifications are either not produced in the United States or not available from domestic suppliers. In some situations the component might be made by a US company but actually produced in a foreign nation, thus preventing the part from meeting Buy American requirements. Many wastewater utilities are concerned they will be unable to bid otherwise "ready to go" projects because the specifications call for use of certain foreign components and it would be too expensive, too time consuming, or simply impossible to redo the project specifications to meet Buy American requirements. While the current *ARRA* guidance does provide an opportunity for waiver requests from Buy American requirements, the waiver process involves an application procedure through EPA that could cause additional administrative costs for wastewater utilities and unnecessary delay in commencing construction projects. As a result, projects with the potential for much needed job creation and infrastructure improvement may not occur, reducing the overall effectiveness and impact of the *ARRA* stimulus effort.

In order to address these significant problems with the current interim OMB *ARRA* guidance, NACWA encourages OMB to publish a final guidance document that directs EPA to make broad use of its waiver authority for Buy American requirements in wastewater projects, with an emphasis on issuing national waivers to expedite construction of as many *ARRA* wastewater projects as possible. The final guidance should additionally direct EPA to consider the job creation and infrastructure improvement goals of the *ARRA* as paramount factors when reviewing and issuing waivers.

NACWA members provide critical public health and environmental protection to their communities and serve a vital role in supporting economic activity and development. Many clean water utilities also have acute infrastructure needs and are eager to take advantage of *ARRA* funds to create jobs and stimulate economic recovery. The *ARRA* Section 1605 Buy American requirements could be an impediment for wastewater utilities in implementing stimulus projects due to the unique needs and procurement requirements of wastewater projects. NACWA strongly encourages OMB to consider these issues and issue a final guidance document that facilitates rapid and efficient use of *ARRA* funds on wastewater projects without burdensome Buy American requirements. Such an approach would meet the overall goals of the *ARRA* for job creation and economic stimulus while also allowing clean water utilities to implement *ARRA* projects as quickly as possible. NACWA looks forward to working with OMB and EPA to resolve these issues and facilitate implementation with stimulus funds of wastewater infrastructure projects across the nation.

Sincerely,

A handwritten signature in black ink, reading "Nathan Gardner-Andrews". The signature is written in a cursive, flowing style.

Nathan Gardner-Andrews
Counsel