



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

OFFICE OF WATER

## **DECISION MEMORANDUM**

**SUBJECT:** Project Waiver of American Iron and Steel Requirements to the Passaic Valley Sewerage Commission in New Jersey, for Double Check Detector Assemblies (Backflow Preventers)

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

The U.S. Environmental Protection Agency (EPA) is hereby granting a project waiver pursuant to the “American Iron and Steel” (AIS) requirements of the Clean Water Act Section 608 under the authority of Section 608(c)(2) to the Passaic Valley Sewerage Commission, Newark, New Jersey (the Commission) for two 12-inch double check detector assemblies (backflow preventers). This waiver permits the use of these backflow preventers, manufactured outside of the United States, in the Standby Facility project in Newark, because no domestic manufacturers produce alternatives that meet the project’s technical specifications.

This is a product specific waiver and only applies to the use of the specified products for the proposed project funded by the Clean Water State Revolving Fund (CWSRF). Any other jurisdiction with projects funded by either the Clean Water or Drinking Water State Revolving Fund that wishes to use the same products must apply for a separate waiver.

**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)(2) 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 – (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.”

The Commission provided information to EPA asserting that there are no manufacturers producing any 12-inch backflow preventers in sufficient and reasonably available quantities. The Standby Power Generation Facility project is being constructed in Newark to provide the Commission reliable backup emergency power when there is a loss of utility power. The project requires a new water service dedicated for fire protection of the facility. The flow requirements of the system specifically require 12-inch backflow preventers, and the required fire flow is 2,500 gallons per minute (GPM).

EPA conducted market research and a public comment period on the supply and availability of the backflow preventers. The basis of evaluation included thorough review of the waiver request submission, examination of domestic manufacturer catalogs or other technical data and marketing materials, personal communication with domestic manufacturers, inquiries of state staff, and outreach to contractors and engineers with expertise and familiarity of the project. EPA contacted thirteen manufacturers, and ten responded. None (zero) of the ten respondents stipulated they could produce AIS-compliant backflow preventers. EPA received no comments from manufacturers claiming to make the product. Therefore, EPA agrees with the assessment that no domestic manufacturers can produce available products meeting the project specifications.

Since the applicant established a proper basis to specify particular products required for this project, and because EPA substantiated the applicant's claim through market research, that these products are not available from a manufacturer in the United States, the Passaic Valley Sewerage Commission is hereby granted a waiver from the AIS requirements. This waiver permits the purchase of the specified two 12-inch double check detector assemblies (backflow preventers), documented in the State of New Jersey's waiver request submittal on behalf of the applicant dated August 18, 2020.

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](mailto:connor.timothy@epa.gov) or (202) 566-1059.