



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

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Project Waiver of American Iron and Steel Requirements to Ivanhoe, Texas for Reused Railroad Tank Cars

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

Decision: 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)(3) to Ivanhoe, Texas (the City), for two reused 42-foot long, 10-foot diameter railroad tank cars. This waiver permits the use of these tank cars of unknown origin in the City’s emergency egress safety enhancement project, because the use of railroad tank cars produced in the United States would increase the overall project cost by more than 25 percent.

This waiver applies only to the proposed project funded by the Clean Water State Revolving Fund (CWSRF). Any other jurisdiction with projects funded by the CWSRF, the Drinking Water State Revolving Fund, or the Water Infrastructure Finance and Innovation Act that wishes to use the same products must apply for a separate waiver.

Rationale: Section 608 of the Clean Water Act requires CWSRF assistance recipients for treatment works projects to use specific iron and steel products that are produced in the United States. EPA has the authority to determine whether it is necessary to waive this requirement based on certain circumstances set forth in Section 608(c) 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 EPA] finds that – . . . (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.”

Background of Waiver Request: The City of Ivanhoe plans to use two 42-foot long, 10-foot diameter half-round railroad tank cars in culverts for their emergency egress safety enhancement project. After Hurricane Harvey, Lake Ivanhoe Dam was breached due to its vulnerable condition. The tank cars will be used to reduce the chance of catastrophic failure during a future significant storm event, thereby compromising the primary ingress/egress path for the City during flood events. To address the critical safety issue, the City is rehabilitating the culvert crossing. The project plans include replacing two damaged culverts with reused 42-foot long, 10-foot diameter railroad tank cars. According to the City, the re-purposed, half-round railroad tank cars, once fabricated into the culverts, would be more resistant to bending and cracking than traditional pipe or concrete culverts and offer a greater flow capacity along with an easier installation process.

The City researched sources for reused railroad tank cars and found that the majority of the stock dates from the 20th Century. Because of the age of the reused railroad tank cars, certification of country of origin for the steel is not available, and compliance with the AIS requirements could not be demonstrated. As a result, the State of Texas, on behalf of the City, requested a waiver from the AIS requirements. Although the request cited the public interest rationale as a basis for the waiver request, the State also submitted cost information for the proposed project. The cost information indicated that use of AIS-compliant railroad tank cars would cost significantly more than the two reused railroad tank cars of unknown origin, increasing the cost of the overall project well in excess of 25 percent.

Assessment of Waiver Request: EPA conducted market research and public comment on the reused railroad tank car waiver request from the City. 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 and suppliers, inquiries of state staff, and outreach to contractors and engineers with expertise and familiarity with the project. In total, EPA contacted 11 known manufacturers and suppliers of railroad tank cars and railroad tank car culverts. EPA received no public comments to the waiver request. After conducting market research and public comment solicitation, EPA staff and contractors were unable to find domestic reused railroad tank cars that met the project's technical specifications and that could be affirmatively certified as AIS-compliant. EPA determined that no supplier or manufacturer could provide assurance that reused, AIS-compliant railroad tank car culverts could be provided to the project. EPA did, however, identify new, unused railroad tank cars that could be affirmatively certified as AIS-compliant.

In response to the cost information submitted on behalf of the City, EPA conducted an analysis of the itemized project costs and prices for AIS-compliant new railroad tank cars and reused tank cars of unknown origin. EPA requested cost information from the 11 known manufacturers and suppliers of railroad tank cars and culverts on all forms of reused railroad tank cars and new AIS-compliant railroad tank cars. EPA received substantive responses from nine of the inquiries, including cost and material of origin information. EPA conducted a cost comparison analysis of the itemized project costs (submitted to EPA on behalf of the City) utilizing the cost information obtained through the manufacturers and suppliers. Based on this technical evaluation, the City's claim that the use of AIS-compliant railroad tank cars would increase the cost of the overall project by more than 25 percent is supported by the available evidence. According to EPA's cost comparison analysis, inclusion of new AIS-compliant railroad tank cars increases the cost of the overall project by at least 40 percent.

Finding: EPA was unable to find any domestic manufacturers or suppliers of the specified AIS-compliant railroad tank cars that would not increase the cost of the overall project by more than 25 percent. The City established a proper basis to specify particular products required for this project. Because EPA substantiated the City's claim, through market research, and verified the cost comparison analysis that inclusion of these products would increase the cost of the overall project by more than 25 percent, the City of Ivanhoe, Texas is hereby granted a waiver from the AIS requirements. This waiver permits the purchase of the two reused 42-foot long, 10-foot diameter railroad tank cars as documented in the State of Texas' waiver request submittal on behalf of the City of Ivanhoe dated October 12, 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 or (202) 566-1059.