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July 27, 2022

Timothy Connor
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Request for Comment on Temporary Public Interest Waiver of Section 70914 of P.L. 117-58, Build America, Buy America Act, 2021 for Selected EPA Funding Programs

Dear Mr. Connor:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on U.S. EPA's proposed temporary public interest waiver for selected EPA funding programs from the Build America, Buy America Act (BABAA) requirements.

NACWA represents 350 publicly owned wastewater treatment agencies nationwide who serve the majority of the sewered population in the United States. Our members have long and successful histories of leveraging federal water funding and financing to advance environmental and public health protection. Many of our member utilities have projects that will or could be funded through programs covered in this waiver.

The proposed waiver would provide a six-month transitional adjustment period from the date of signing, waiving all BABAA requirements for this select group of programs during that time. Providing this adjustment period acknowledges how achieving full enactment of BABAA will require extensive efforts by U.S. EPA and by the local communities, engineering firms, manufacturers, and other partners across the water sector involved in project implementation.

It also recognizes that clean water infrastructure projects require significant—often years—of planning and engineering prior to applying for federal funds and breaking ground and are designed to meet strict standards and regulations. The waiver will help avoid delayed implementation of critical projects seeking federal funding and helps address uncertainty surrounding the new requirements. Crucially, it will allow time for compliance guidance to be developed.

The six-month extension will clearly benefit projects that will be funded by these programs during this time and we are pleased to support it. However, there are likely many other projects that had design and engineering well underway prior to BABAA's enactment that may seek to leverage these programs beyond the adjustment period. Given this, NACWA urges U.S. EPA to consider incorporating a grandfathering process for these programs similar to what the Agency has provided for WIFIA, under which projects that clearly initiated project design planning prior to BABAA's effective date are exempt from the expanded domestic procurement requirements. Some project types are eligible to apply under multiple U.S. EPA water programs, making consistency valuable for communities seeking to navigate the federal funding process.

NACWA appreciates that the waiver mentions that U.S. EPA may consider extensions of the temporary adjustment period. NACWA encourages the Agency to be open to extensions or subsequent waivers on an as-needed basis. If implementation and compliance process guidance is not available to clean water agencies until well into the adjustment period it will be difficult for communities to take action to prepare and will reduce interest in these valuable programs.

NACWA agrees with U.S. EPA's concerns that absent a waiver, communities may find it is in their interest to decline federal funding and look to other, more costly sources of financing to keep projects on schedule, manage uncertainty, and avoid incurring re-design and engineering costs. We believe this would be counterproductive to the goal of accelerating water infrastructure investment and advancing clean, safe, affordable water for all.

Thank you again for the opportunity to comment. NACWA and our membership appreciates your continued work to implement both the historic *Bipartisan Infrastructure Law* and BABAA provisions to improve our nation's environmental and economic resilience.

Sincerely,



Kristina Surfus
Managing Director, Government Affairs
NACWA