

## **American Iron and Steel (AIS) Requirement in Pennsylvania Frequently Asked Questions (FAQ)**

### **What is AIS?**

AIS is a requirement that involves the use of iron and steel products in drinking water and wastewater infrastructure improvement projects funded with federal money by the Pennsylvania Infrastructure Investment Authority (PENNVEST). These products include lined or unlined pipes and fittings, manhole covers or other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete and construction materials. Construction materials include such items as wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners, welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging equipment, manhole steps, fencing and fence tubing, guardrails, doors and stationary screens made of iron and steel that are permanently incorporated into the project. This requirement does NOT apply to any mechanical or electrical components or equipment that include iron or steel parts.

### **How will a funding recipient know if this requirement applies to a project?**

The applicant will be informed by the PENNVEST Project Specialist. In addition, this requirement will be included in the funding offer for the project.

### **What does a funding recipient and/or project engineer need to do?**

1. Construction Contract Bidding Documents: Include in all bidding documents and construction contracts a requirement that the contractor:
  - Use iron and steel products made in the U.S. as required or request a waiver (see below),
  - Solicit certifications from manufacturers to document domestic production,
  - Request approval for items to include on the De Minimus list from the project engineer (see below).Example contract language is included in the March 20, 2014 EPA guidance (see the link on the DEP website).
2. Materials Certifications: Obtain and maintain certifications from manufacturers, through the contractor, for each iron and steel product used on the project demonstrating that it was made in the U.S. The format for an acceptable certification is provided in the March 20, 2014 EPA guidance. Certifications are not needed for iron and steel products that receive a waiver, or for those on the De Minimus list (for both, see below).
3. Waivers: Request a waiver if the use of foreign-made iron and steel products meets one or more of the following criteria:

- Public interest: An example where this may be applicable is in a situation where it is essential to use a foreign-made iron/steel component because of compatibility with existing components in the water or wastewater system.
- Availability: The required product is not produced in the U.S. in sufficient quantities or quality at the time and place needed in the proper form as specified in the project plans and design.
- Cost: Use of iron/steel components will increase the cost of the project by more than 25%.

Waivers will need to be fully explained using the DEP form, 3850-FM-BCW0509. This form can be found on the DEP website, under Tools, eLibrary. Search the Forms Directory under the Bureau of Clean Water. All waiver requests using this form must be sent to Richard Wright at [riwright@pa.gov](mailto:riwright@pa.gov) for review and submittal to EPA for approval. This approval process does require an EPA public comment period, so expect 45 to 60 days for the processing of a waiver request.

4. De Minimus List: Virtually all projects use some foreign-made products, or products whose country of origin is difficult or impossible to establish. These products can be used in the project so long as they do not exceed five percent (5%) of the total cost of construction materials used in the project.

The Professional Engineer for the project can maintain a De Minimus List of those products that:

1. A manufacturer's certification cannot be obtained.
2. Do not have an EPA approved waiver
3. Are typically very small in cost and are either of unknown origin or are known to have been foreign-made.

The cost of any single item on the De Minimus list may not exceed one percent (1%) of the total cost of the products used in and incorporated into the project.

The engineer will need to know the cost of materials used in the project in order to calculate the De Minimus percentage. Product costs can be obtained from the bid form. In cases where the bid form does not provide sufficient detail to establish the cost of the iron and steel products, costs will need to be supported with invoices.

It is recommended that funding recipients maintain a spreadsheet, or other documentation, demonstrating that the cost of items on the De Minimus list is within 5% of the project cost. DEP has a "De Minimus Product Template" spreadsheet for funding recipient use. A copy of this template can be found on the DEP website at the link below or by contacting Richard Wright at [riwright@pa.gov](mailto:riwright@pa.gov).

## **What Approvals Does a Funding Recipient Need to Get?**

Funding recipients are not required to send any of the documentation described above to PENNVEST or DEP unless a waiver is requested. If a waiver is needed, this request is sent to DEP as discussed above using the DEP form, 3850-FM-BCW0509. The funding recipient is required to maintain a copy of the bidding documents, material certifications, approved waivers (if any) and a De Minimus list for seven (7) years after amortization of the loan in the event of an EPA or PENNVEST audit.

### **Additional Resources**

A recommended format for the De Minimus list can be found on the DEP website at: <http://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/default.aspx>  
Look for the link to the American Iron and Steel link on the right.

For further information see the EPA memorandum entitled “Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014,” March 20, 2014, on the EPA website at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)