

June 27, 2014 – VOLUME 11, ISSUE 6

Special Analysis: Buy America Rears Its Head Again, Casting Its Gaze on More Infrastructure Projects

Buy America (BA) is back and it's likely here to stay. Congress, under the guise of economic stimulus and domestic job creation, is once again limiting the use of materials from outside the United States in federally funded infrastructure projects. However, unlike in past years, recently enacted legislation contained provisions that could directly impact ACPPA members by restricting the use of non-American made steel from use in [Clean Water State Revolving Fund \(CWSRF\)](#) and [Drinking Water State Revolving Fund \(DWSRF\)](#) projects.

Buy America Was Born Without Teeth

Buy America provisions were imposed on State Revolving Fund (SRF) programs for the first time in the [American Recovery and Reinvestment Act of 2009](#) (ARRA or “stimulus”), which required all iron, steel, and manufactured goods used in any project funded by the law to be U.S. produced.¹ However, if the iron and/or steel were only a component of the final article, it didn't matter as long as the ultimate product was manufactured in America. Consequently, ACPPA members could supply concrete pressure pipe containing foreign-made steel to ARRA funded projects, so long as the completed product was U.S. manufactured.

CAA and WRRDA Give Buy America a Bite

In the current Congress, a bipartisan coalition of lawmakers has perpetuated BA policies, most prominently in two recently enacted bills: The [Consolidated Appropriations Act of 2014](#) (CAA) and the [Water Resources Reform and Development Act of 2014](#) (WRRDA). The CAA imposes American Iron and Steel (AIS) requirements in projects funded by the DWSRF and the CWSRF from January 17 to the end of fiscal year 2014 (Sept. 30).² WRRDA not only extends the AIS requirements to projects funded by the CWSRF indefinitely, but also to projects funded by the Water Infrastructure Finance Innovations Act (WIFIA), a five-year pilot program designed to provide credit assistance for drinking water, wastewater and water resources infrastructure projects.

None of the funds made available by SRF programs or WIFIA may be used for the “construction, alteration, maintenance, or repair” of public water or treatment systems unless specifically enumerated products

¹ American Recovery & Reinvestment Act, Pub. L. No. 111-16, § 1605 (2009).

² CAA § 436(a)(1).

consisting of “primarily iron or steel” are “produced in the United States.”³ Specifically, the Environmental Protection Agency’s (EPA) guidance for the CAA’s Buy America SRF provision (which is expected to be similar for WRRDA) states that while iron or steel may not amount to at least 50 percent of the total cost of reinforced concrete pressure pipe, the “reinforcing bar and wire must be produced in the U.S.” in order to satisfy the AIS requirement.⁴ This is a marked departure from the ARRA where ACPPA members could satisfy the AIS so long as concrete pressure pipes containing foreign steel were manufactured in the United States.

Furthermore, manufacturing processes such as “melting, refining, forming, rolling, drawing, finishing, fabricating” and the “application of coatings” to steel products must be performed domestically.⁵ Raw materials, such as iron ore and concrete, and the non-iron or steel components of an AIS product, such as valves, are not required to be of domestic origin.⁶ ACPPA members will not be able to avoid the AIS requirement by using non-domestic iron or steel and casting the pipe at the construction site. In such instances, the EPA will classify the pipe as a “construction material” and all components (*i.e.*, the iron or steel reinforcing bar) must be produced in the United States.⁷

Is There a Way Around This?

Entities receiving water infrastructure financing under CAA and WRRDA may request a waiver of the AIS requirements by submitting an application to their SRF program. The waiver process is not available to individual contractors or manufacturers seeking to use the waiver process in an attempt to supply non-domestic steel products. Once the SRF has received the request, it will submit it directly to the EPA for review.

EPA may waive the AIS requirement if it determines that applying the requirement would be “inconsistent with the public interest,” that there is an insufficient supply of AIS products that are of satisfactory quality, or in the event that the use of AIS products will increase the total cost of the project by more than 25 percent.⁸ Only in those limited instances will the use of products covered by the AIS requirement containing non-domestic steel be permitted.

³ CAA § 436(a)(1), WRRDA § 5004; CAA § 436(a)(2), WRRDA § 5035(b) (defining AIS products to include: “lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials”).

⁴ “Implementation of American Iron and Steel Provisions of P.L. 113-76, Consolidated Appropriations Act of 2014,” Memorandum from EPA Offices of Wastewater Management and Ground Water and Drinking Water Management Division Directors, at 5,9 (2014) (explaining that for specifically enumerated products to be subject to the AIS requirement, the product must be greater than fifty percent iron or steel, measured by the cost of materials; however reinforced precast concrete pipe exempt from this cost-based analysis).

⁵ *Id.* at 6.

⁶ *Id.* at 6-7.

⁷ *Id.* at 8-9.

⁸ CAA § 436(b); WRRDA §§ 5004, 5035(c); EPA Memorandum, *supra* note 4, at 11.

Buy America is Here to Stay

BA provisions are likely the new norm for federally funded infrastructure projects. A bipartisan coalition of lawmakers and the Obama administration have made protecting the U.S. iron and steel industry a top priority, despite strong opposition from the broader business community. Please inform ACPPA if your company is negatively impacted by the new Buy America mandates.

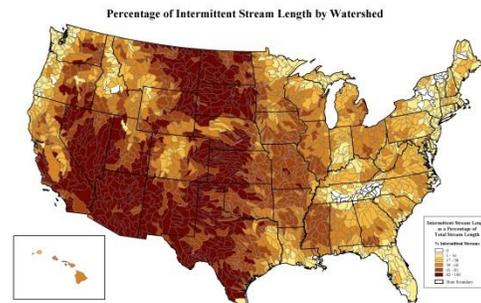
ACPPA Board Tells EPA, Corps to Scrap “Waters of the United States” Proposal

On June 9, ACPPA’s board of directors [submitted comments](#) to the Environmental Protection Agency (EPA) and the Army Corps of Engineers’ [notice of proposed rulemaking \(NPRM\)](#) that would significantly broaden the definition of “[waters of the United States](#)” for protection under the Clean Water Act (CWA).

The board urged the agencies to immediately withdraw the proposal due to its economic ramifications. The comments state, “The expansive reach of the proposed rule will have the effect of making many areas of the country “off limits” to construction and development because of the expense associated with obtaining new permits or installing the required mitigation measures on newly regulated waters of United States.”

Additionally, ACPPA is concerned the administration failed to follow basic rulemaking mandates. “The Regulatory Flexibility Act mandates agencies assess the economic impact potential regulatory changes will have on small businesses, yet the EPA ignored this important obligation,” the board said.

The association has joined a broad swath of industry stakeholders representing agriculture, construction, housing, manufacturing and energy sectors who are concerned the proposal would allow more federal intervention in local land use decisions, increase the regulatory burden on businesses, raise the cost of development without a proven benefit to the environment and give EPA unprecedented jurisdiction over private property.



Click the image for more information on “Waters of the United States”

Following a recent extension, comments are now due by Oct. 20.

In Politics, A Little Hospitality Can Go A Long Way

With the 2014 congressional elections fast approaching and distributors facing unprecedented political risk, businesses are stepping up efforts to coordinate visits by members of Congress and congressional candidates to member facilities. Not only are congressional visits easy to set up and host, they also yield major benefits for you and ACPPA.

Simply put, there’s no better way to build the relationship between your company, your association, and your elected representatives than by bringing them to your facility. Coming to Washington, D.C. and meeting with legislators on Capitol Hill is important because it shows you’re committed and invested in the

process. But a facility visit makes abstract concepts more understandable, shows firsthand how you impact the local economy, illustrates how you're affected by congressional decisions, and puts names to faces (specifically, yours and your workers).



Rep. Leonard Lance (R-NJ) (right) and State Assemblyman Donna Simon (R-NJ) (center) tour Vianini Pipe's New Jersey facility

If you don't think outreach matters, keep in mind that roughly one-third of the members of the House and Senate have been elected in the last five years. That means there are a lot of new people on Capitol Hill who know nothing about our industry. If you don't think they're interested in coming to see you, think again. Most of the lawmakers I've met want to do the right thing for their constituents; they just don't always know what that is. Visiting your company is a way to collect vital intelligence to guide their political decision making.

Coming to your company is their opportunity to build the emotional connection between them and your business and plant yourself in their political memory. When an issue comes up that affects you, they'll remember and (hopefully!) do the right thing from a policy perspective.

If you haven't had a politician to your company before, the concept might seem a bit intimidating. Just remember that you're a voter and that every elected official works for you. Also keep in mind that you know infinitely more about your company, your industry, and how you're affected by federal policy than they do. It may take a few weeks to work out the details, but it's rare that members of Congress don't ultimately seize the opportunity to come and see you.

The visits themselves usually take place mid-morning or mid-afternoon and start with a meeting in your conference room with your congressional guest and your company's senior leadership team. That meeting is your opportunity to educate the member of Congress about your company, what it does, and its economic impact. It's also a time to put policy issues in a real world context and explain how you're affected.

After telling your guest about your company, take them on a tour to show them. During the tour, explain how your customers use your products to help illustrate the markets you serve. Where the opportunity presents itself, point out where federal policy affects your operations and markets.

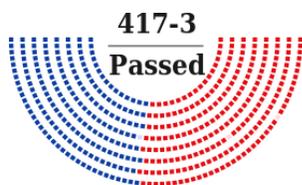
Of course, introduce your employees, show the lawmaker your facilities up close and take lots of pictures. If they want to do so, you can even gather your employees together and let your guest make some brief remarks. And don't forget to give them something with the company logo (t-shirt, baseball cap, etc.) to make the visit even more memorable.

It's time to take the plunge and set up a visit. You'll find that in politics a little hospitality goes a long way.

WRRDA Makes it to White House

On June 10, President Obama signed the [Water Resources Reform and Development Act \(WRRDA\)](#) after Congress easily passed the conference report reconciling the differences between their respective versions of the bill. The new law authorizes Army Corps of Engineers programs, including waterway and watershed management projects such as construction of locks and dams. Provisions in the final bill accelerate Corps project delivery by streamlining environmental reviews, setting hard deadlines and consolidating (or eliminating) duplicative studies.

In order to leverage private capital, WRRDA establishes a Water Infrastructure Finance Innovations Authority (WIFIA) to provide credit assistance for drinking water, wastewater and water resources infrastructure projects. The five-year pilot program will attract substantial private and non-federal investments to water infrastructure projects and is modeled after a highly successful program used in the surface transportation space (the [Transportation Infrastructure Finance and Innovation Act \[TIFIA\] program](#)).



Click image for WRRDA
conference report

The final bill also includes much needed reforms to the [Clean Water State Revolving Fund \(CWSRF\)](#), including adding greater flexibility to the program. The CWSRF has been the traditional mechanism for sewer infrastructure investment but hasn't been reauthorized since 1987.

In addition to providing much needed funding for navigation and dam projects, the completion of the WRRDA bill is significant because it clears the way for House Transportation and Infrastructure and Senate Environment and Public Works (EPW) Committee members to focus their full attention on saving the federal highway program.

Where are the projects?

While WRRDA doesn't contain any earmarks or targeted project funding, it does authorize specific Army Corps of Engineers' activities, which are usually part of larger development plans that will create concrete pressure pipe market activity. WRRDA approved work to commence or continue on the following projects:

Navigation

- Sabine Neches Waterway, southeast Texas and southwest Louisiana (TX, LA)
- Jacksonville Harbor-Mile Point (FL)
- Savannah Harbor Expansion Project (GA)
- Freeport Harbor (TX)
- Canaveral Harbor (FL)
- Boston Harbor (MA)
- Lake Worth Inlet (FL)
- Jacksonville Harbor (FL)

Flood Risk Management

- Topeka (KS)

- American River Watershed, Common Features Project, Natomas Basin (CA)
- Cedar River, Cedar Rapids (IA)
- Fargo-Moorhead metro (MN, ND)
- Ohio River shoreline, Paducah (KY)
- Jordan Creek, Springfield (MO)
- Orestimba Creek, San Joaquin River basin (CA)
- Sutter Basin (CA)
- Truckee Meadows (NV)

Hurricane and Storm Damage Risk Reduction

- West Onslow Beach and New River Inlet (Topsail Beach, NC)
- Surf City and North Topsail Beach (NC)
- San Clemente Shoreline (CA)
- Walton County (FL)
- Morganza to the Gulf (LA)

Environmental Restoration

- Mid-Chesapeake Bay Island (MD)
- Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Caloosahatchee River (C-43) West Basin Storage Project, Hendry County (FL)
- Louisiana Coastal Area (LA)
- Marsh Lake (MN)
- Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, C-111 Spreader Canal Western Project (FL)
- CERP Biscayne Bay Coastal Wetland (FL)
- Coastal and Southern Florida Project, Broward County Water Preserve Area (FL)
- Louisiana Coastal-Area Brataria Basin Barrier (LA)
- Neuse River basin (NC)
- Lynnhaven River (VA)
- Willamette River Floodplain Restoration (OR)

Stepping on the Bipartisan Gas Pedal: Senators Have Plan to Save the Highway Trust Fund

While the average price of gas has increased \$2.41 in the past 21 years, Congress hasn't raised the federal gas tax since 1993. The rate has stayed at 18.4 cents for a gallon of gasoline and 24.4 cents per gallon of diesel since President Clinton's first year in office.

However, the outdated gas tax could soon be given a reset by Congress. Senators Bob Corker (R-Tenn.) and Chris Murphy (D-Conn.) have devised a bipartisan proposal to increase the gas tax and fix the beleaguered Highway Trust Fund (HTF) before its rapidly [approaching bankruptcy](#). While other plans to save the HTF have employed [inventive math](#) or [strategy](#) to avoid raising taxes, Senator Corker [told](#) reporters, "I finally got to a point that I realized that this cannot go on. It's time for us to finally deal with this issue."

Corker and Murphy propose a six-cent gas tax increase in each of the next two years. The 12-cent total increase would raise roughly \$164 billion over the next decade, closing the HTF's revenue gap. The plan also would tie the gas tax to inflation, using the Consumer Price Index, to generate consistent future revenues in real-dollar terms.

The bipartisan effort would also add tax relief as part of its fiscally responsible strategy. Corker [announced](#) that the plan avoids disrupting the Americans for Tax Reform's Taxpayer Protection Pledge by coupling the gas tax hike with other tax-relief legislation, such as a proposal to renew certain expired tax provisions indefinitely, effectively making it "revenue neutral". Corker's plans includes continuing increased Sec. 179 expensing levels the research and development tax credit, the state and local sales tax deduction, the teacher tax credit, and the deduction for parking at mass transit sites, which would generate \$189 billion in tax relief over the next 10 years.



**DOT HTF
Tracker**

Word on the Hill is that key congressional leaders are starting to privately recognize that coupling a gas tax increase to save the federal highway program with popular tax extenders is a viable solution and Corker's endorsement gives many Republicans political cover to take a tough vote.

Tax-Writing Committees Delay Short-Term Patch Until July

Meanwhile, the Senate Finance Committee and House Ways and Means Committee will work over the Fourth of July congressional recess to develop a patch to ensure the HTF remains solvent through at least 2014. ACPPA and other construction industry associations are urging congress to enact a short-term solution so that a multiyear highway reauthorization bill can be considered after the midterm elections, during the lame-duck session where lawmakers are more willing to cast politically tough votes.



Click the envelope to join ACPPA in calling on lawmakers to save the Highway Trust Fund and Reauthorize MAP-21.

<http://acppa-action.channeldemocracy.com/>

Pressure Pipe Chronicle

ACPPA's Monthly Source for Industry News

June 2014

To keep members aware of the activities of government and standards organizations, we regularly sweep public databases and publications for the industry-specific terms indicated below. We then provide our members with links to documents identified in the search. Please note that in some cases the URLs may link to subscription-only databases. The purpose of this service is to identify emerging threats and trends as well as opportunities for collective action by ACPPA.

Search Terms:

Pressure Pipe
Concrete Pressure Pipe

Cement
Fly Ash

Silica Fume

NEWS RESULTS

Pressure Pipe

Court: Sewage Spill Mess not City's Problem

05/08/2014 <http://www.newsmagazinenetwork.com/2014052047662/the-price-of-progress-utility-costs-taking-a-bigger-bite-out-of-family-budgets/>

The Oregon Supreme Court has ruled that a sewage leak caused by high-pressure pipe cleaning that did more than \$60,000 in damage to a Milwaukie woman's home is not the fault of the city.

DOC Rules Malaysia, Thailand, and Vietnam Are Dumping Pipe

06/01/2014 <https://www.steelmarketupdate.com/blog/4136-doc-rules-malaysia-thailand-and-vietnam-are-dumping-pipe>

On May 23, 2014, the Department of Commerce announced an affirmative final determination in the anti-dumping investigation of imports of welded stainless pressure pipe from Malaysia, Thailand and Vietnam.

Commerce Keeps Duties On Chinese Pressure Pipes

06/09/2014 <http://www.law360.com/articles/545956/commerce-keeps-duties-on-chinese-pressure-pipes>

The U.S. Department of Commerce came out in favor Monday of maintaining anti-dumping and countervailing duty orders on certain circular pressure pipes from China, finding that removing the duties would harm U.S. producers.

Fly Ash

New Material Made From Coal Ash Could Solve Several Problems

06/15/2014 http://www.roanoke.com/business/news/new-material-made-from-coal-ash-could-solve-several-problems/article_c1fe2b22-be71-54b2-9bf8-05d449326386.html

N.C. A&T researchers Kunigal Shivakumar, Robert Sadler and their colleagues have developed a "miracle material" that's lightweight, waterproof, fire resistant, anti-corrosive and nontoxic.

Senate Coal Ash Plan Tightens Requirement for Cleanup at Four Sites

06/15/2014 <http://www.wral.com/senate-coal-ash-plan-tightens-requirement-for-cleanup-at-four-sites/13735975/>

Duke Energy would have to remove coal ash from four "high-risk" locations by Dec. 31, 2019, and make plans to either cap or clean 10 other sites under a bill that the Senate Agricultural, Environment and Natural Resources Committee is due to hear Monday afternoon.

New Geopolymer Pipe Material Promises Trenchless Repairs

06/10/2014 <http://enr.construction.com/products/materials/2014/0616-new-geopolymer-pipe-material-promises-trenchless-repairs.asp>

An ultra-dense geopolymer mortar product is gaining traction as a trenchless pipeline repair remedy among cash-strapped municipalities, partly thanks to a recent Environmental Protection Agency vetting. U.S. wastewater and storm water infrastructure requires \$298 billion in upgrades over the next two decades, with pipelines accounting for 75 percent of total needs, reports the American Society of Civil Engineers.

Industry Body Devises Novel Method for Fly Ash Disposal

06/06/2014 <http://www.thehindubusinessline.com/news/states/industry-body-devises-novel-method-for-fly-ash-disposal/article6089952.ece>

Indian Metals and Ferro Alloys (IMFA) is set to show a new way for productive disposal of fly ash in India, a development that could help power producers in better management of the commodity.

With Carbon Rule, Illinois Power Struggle Begins

06/03/2014 http://articles.chicagotribune.com/2014-06-03/business/ct-illinois-power-0603-biz--20140603_1_carbon-rule-nuclear-plants-exelon-corp

President Barack Obama's announcement Monday that it will be up to states to decide how to enforce his vision for a low-carbon future portends a battle among Illinois' power giants, with Exelon in a great bargaining position.

Cement

From Quick DNA Testing To Self-Cleaning Concrete, 5 Ideas Competing For The European Inventor Award

06/16/2014 <http://www.forbes.com/sites/federicoguerrini/2014/06/16/from-quick-dna-testing-to-self-cleaning-concrete-5-ideas-competing-for-the-european-inventor-award/>

The wait is almost over. Fifteen inventors, selected out of 300 original candidates will gather in Berlin tomorrow to compete for the European Inventor Award, the annual prize bestowed on those groundbreaking projects that contribute towards social, technological and economic progress.

A New, Greener Cement to Meet Future Demand

06/05/2014 <http://environmentalresearchweb.org/cws/article/yournews/57499>

An EPFL-led consortium is developing a new blend of cement that promises to reduce the carbon footprint of concrete by up to 40 percent.

New Laws Allow for Coal Ash in Cement and Asphalt

06/18/2014 <http://michiganradio.org/post/new-laws-allow-coal-ash-cement-and-asphalt>

This week Gov. Rick Snyder signed laws that allow for more uses of industrial byproducts.

Problems With Cement

06/17/2014 <http://www.cemnet.com/Articles/story/154688/problems-with-cement.html>

There are many causes for complaints about cement quality from customers, some more justified than others. A brief review of some common perceived issues indicates that a deeper look at the potential causes for problems may help reduce the incidence of complaints.

Cement Manufacturers Continue to Assist Rebuilding Efforts in the Philippines

06/02/2014 <http://theweek.com/article/index/263300/china-used-more-cement-in-the-last-3-years-than-the-us-did-in-the-20th-century#axzz34ueAlfBa>

At the beginning of May, Lafarge Republic, Inc. (LRI) announced the launch of Kapit-Balay cement.

Cement for Hip Replacement Puts Patients at Risk of Heart Failure, Death

06/15/2014 <http://www.techtimes.com/articles/8461/20140615/cement-for-hip-replacement-puts-patients-at-risk-of-heart-failure-death-study.htm>

More than 40 people in the U.K. have died due to the cement used in hip replacement surgery, and most of them died right on the operating table, according to a study conducted by a team of researchers at Imperial College London.

Doozers Become Real Thanks To These Cement-Laying Minibuilders

06/18/2014 <http://techcrunch.com/2014/06/18/doozers-become-real-thanks-to-these-cement-laying-minibuilders/>

The Institute for Advanced Architecture of Catalonia in Barcelona is working on a set of robots that will soon be able to build complex structures by extruding layers of concrete, a process that might be a bit slow but that will allow strange, unique shapes to be formed using concepts popularized by plastic 3-D printers.

The Bill Gates Book Review: Have You Hugged a Concrete Pillar Today?

06/12/2014 <http://qz.com/220220/the-bill-gates-book-review-have-you-hugged-a-concrete-pillar-today/>

The car I drive to work is made of around 2,600 pounds of steel, 800 pounds of plastic, and 400 pounds of light metal alloys. The trip from my house to the office is roughly four miles long, all surface streets, which means I travel over some 15,000 tons of concrete each morning.

China Used More Cement in the Last 3 Years than the US Did in the 20th Century

06/17/2014 <http://theweek.com/article/index/263300/china-used-more-cement-in-the-last-3-years-than-the-us-did-in-the-20th-century#axzz34ueAlfBa>

We've all seen the headlines about rampant Chinese economic growth. Many have presented evidence — from ghost cities, to excessive financial debt — that China's growth is an unsustainable bubble. And maybe the boom there will soon give way to a bust.

Maduegbuna Calls For Unified Standard For Cement In Nigeria

06/14/2014 <http://www.channelstv.com/2014/06/14/maduegbuna-calls-for-unified-standard-for-cement-in-nigeria/>

The Convener, Cement Standardization Advocacy Group, Oke Maduegbuna, who heads the civil society group concerned with reducing the number of building collapsing in the country, has called on stakeholders in the sector to adopt a unified standard for cement grade.

REGULATORY RESULTS

Cement

Environmental Protection Agency| Proposed Rule| Additions to List of Section 241.4 Categorical Non-Waste Fuels

04/14/2014 <http://www.gpo.gov/fdsys/pkg/FR-2014-04-14/pdf/2014-07375.pdf>

The Environmental Protection Agency (EPA) is proposing amendments to the Non- Hazardous Secondary Materials (NHSM) regulation under the Resource Conservation and Recovery Act (RCRA).