



December 20, 2023

The Honorable Radhika Fox  
Assistant Administrator  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20004

RE: Docket No. EPA-HQ-OW-2023-0396 – Request for Information: Products and Categories of Products Used in Water Infrastructure Programs

Dear Assistant Administrator Fox:

The organizations signed below collectively submit the following comments to the Environmental Protection Agency's (EPA) *Request for Information: Products and Categories of Products Used in Water Infrastructure Programs*. We appreciate the opportunity to share our perspective of this review as it relates to our construction materials.

Though this request for information does not, on its face, directly address construction materials that our associations produce and are used in water infrastructure projects, we continue to encounter a lack of clarity on the applicability of the Build America, Buy America Act (BABAA) to our construction materials among various federal agencies, states, and project sponsors. Since information obtained through this RFI will be supplied the USDA, USACE, FEMA, HUD, DOT, and Interior to assist their management of water infrastructure programs, we request inclusion in the information supplied to those federal entities of the exemption contained in Section 70917.

Section 70917 contained a limitation to BABAA applicability for cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. This section also contains a limitation to Section 70915(b)(1) that prohibits the standards developed under section 70915(b)(1) from including cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material.

In Office of Management and Budget's (OMB) final guidance implementing BABAA issued in August 2023, and referenced in this RFI, our materials are referred to as Section 70917(c) materials, and consistent with the law, are correctly excluded from BABAA applicability, the details of which are set forth in the OMB guidance. However, confusion persists among some federal agencies, states, and project sponsors. We request that EPA include in the information supplied to the federal agencies listed in this RFI a clear explanation of the non-applicability of BABAA to Section 70917(c) materials.

A discussion of our materials and their critical use in water infrastructure programs follows below.

### **Other Critical Water Infrastructure Products – Concrete Mix**

The mixture of cement, cementitious materials, aggregates, and water makes the building material concrete. Concrete is essential to the modern world. It is used in the pipes and facilities that deliver safe and clean water, to a range of different transportation infrastructure, including building the pipes and



culverts that are part of a transportation project that help divert stormwater, to ports and dams essential to facilitating commerce, and the buildings we live in. Other than water, concrete is the most-used material on the planet. Across the country, investments in water infrastructure translate to cement use. For every billion spent on water infrastructure construction, approximately 211,000 metric tons of cement will be consumed, representing nearly 850,000 yards of concrete, and over 1 million cubic yards of aggregates.

### **Domestic Materials Sourcing and Manufacturing**

Aggregates, cement, and concrete are ubiquitous and essential construction materials. Across the United States, there are 94 cement plants in 34 states and Puerto Rico; cement terminals in all 50 states and Puerto Rico with more than 7,000 ready mixed concrete plants. Around 10,000 aggregates facilities are located across all 50 states, producing millions of tons of aggregates each year essential for water infrastructure projects, as well as other construction materials used in water infrastructure projects.

Our industries operate and have facilities in every state and Congressional District in America. Even so, there are regions of the country that rely on imported cement and aggregates. Some of this is related to a lack of availability of the materials to make cement and aggregates in certain regions of the country. In total, the demand for cement and aggregates exceeds what can be produced in the United States. For example, according to the United States Geological Survey, the United States consumed 110 metric tons of cement while producing 91 metric tons of cement.<sup>1</sup> Over 15 million metric tons of aggregates were imported last year.

Recognizing that more cement and aggregates, the key ingredients to making concrete mix, are consumed in the United States to build a range of federally-funded infrastructure, than are produced domestically or where imported cements and aggregates are in closer proximity to an infrastructure product resulting in reduced transportation emissions, the Infrastructure Investment and Jobs Act included two important provisions to exempt both the ingredients as well as concrete mix from Buy America requirements.

### **Limitation of BABAA applicability**

As discussed above, Section 70917(c)(1) of the Infrastructure Investment and Jobs Act established an important limitation to the term “construction materials.” Specifically, prohibiting the term construction materials from including “cement and cementitious materials, aggregates such as stone, sand, or gravel, and aggregate binding agents and additives.” Additionally, Section 70917(c)(2) prohibits the same construction materials from being included as inputs in “all manufacturing processes.” Section 70917(c) exempts these materials both as standalone materials and additionally when mixed together in the form of concrete mix from Buy America requirements.

The OMB’s August 2023 Guidance for Grants and Agreements Related to Buy America makes clear that concrete mix is a construction material for which Buy America does not apply. As you evaluate

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<sup>1</sup> <https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/s3fs-public/media/files/mis-202212-cemen.pdf>



manufactured products used in water infrastructure construction, we highlight that OMB has classified concrete mix as a construction material and not a manufactured product.

We look forward to working with you as the Environmental Protection Agency builds critical drinking and wastewater infrastructure and other federal agencies build a range of different types of water infrastructure projects from dams to ports. If you have any questions, please do not hesitate to reach out to Michele Stanley ([mstanley@nssga.org](mailto:mstanley@nssga.org)), with the National Stone, Sand and Gravel Association, Andrew Tyrrell ([atyrell@nrmca.org](mailto:atyrell@nrmca.org)), with the National Ready Mixed Concrete Association, or Sean O’Neill ([soneill@cement.org](mailto:soneill@cement.org)), with the Portland Cement Association.

Sincerely,

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