

June 04, 2009

Brock Carleton  
Chief Executive Office  
Federation of Canadian Municipalities  
Ottawa, ON.

Dear Brock

### **Buy American Policy**

The Canadian Water and Wastewater Association (CWWA) is concerned about the impact of the “buy American policy” enunciated in the US economic recovery and stimulus efforts and the way this is affecting Canadian water and wastewater product and service suppliers.

As you know, the Association represents nationally the professional and technical interests of municipal water and wastewater services and their service and product suppliers.


The buy American policy has come up in discussions initiated by the Canadian Embassy in Washington with CWWA on the nature of the Canadian – US product supplier market. We have emphasized in response that we regard this as essentially being integrated with products being supplied from either country to the other country on the basis of price and quality, with many companies actually being multinational in nature and operating in both countries.

Just recently, CWWA has become aware that some US suppliers of products and services have communicated with US water and wastewater utilities encouraging them not to purchase Mexican or Canadian made products and I have attached a copy of one such communication.

As you also know, both y President Obama and Prime Minister Harper have stated, protectionism is to be discouraged as not being helpful to the economic recovery.

Can you advise me of any position taken by FCM on this matter. The possibility of municipalities in Canada being encouraged to buy Canadian is always there as a response, but I believe would be discouraged by FCM.

Yours sincerely,



T. Duncan Ellison  
Executive Director



April 8, 2009

Notice to Valued Customers:

*Clarification on American Recovery and Reinvestment Act of 2009*

The *American Recovery and Reinvestment Act of 2009* (the “Stimulus Act”) was enacted into law on February 17, 2009. The purpose of this Stimulus Act is to stimulate the American economy by supporting American jobs, including American manufacturing jobs. As a result, Congress has included in the Stimulus Act a very strong “**Buy America**” provision that mandates that “**none of the funds appropriated** or otherwise made available by this Act **may be used for a project** for the construction, alteration, maintenance, or repair of a public building or public work **unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.**”

As you know, the McWane companies are major suppliers of American made waterworks and plumbing products. Together we employ more than 6,000 team members in the United States who make these products, who are all depending upon the Stimulus Act to protect their jobs and their families in this severe economic crisis.

Many of our competitors import products made in other countries such as China, India and Mexico. Some of them have made claims that these non-American products are eligible for projects funded under the Stimulus Act, and they offer to “certify” that their products comply with various exceptions to the Buy America mandate.

Do not accept such assurances and certifications at face value. The Buy America mandate in the Stimulus Act is far-reaching, and whether an exception under the law will apply in a given instance requires careful and detailed legal analysis. *A violation of the Buy America provision of the Stimulus Act by purchasing non-American products is a very serious matter, and could result in False Claims Act liability, contract termination for default, suspension and debarment of the contractor and, potentially, even criminal liability.* Thus, it is important that you carefully scrutinize the claims of importers who solicit purchases of foreign-made products.

For example, one manufacturer of foreign products has claimed that, under an exception requiring that the Stimulus Act be enforced consistently with international trade agreements, “under NAFTA, products manufactured in Mexico, Canada and the United States must be accorded equal procurement status.” This unqualified claim is incorrect. NAFTA only affords equal procurement status to goods and services at or above specified threshold values, for instance, \$8.8 million for construction services contracts by the Federal Government. Even more importantly, most of the stimulus funds will be disbursed by the Federal Government as grants to state and local entities. Stimulus Act contracts for goods and services at the state and local levels, even if funded by federal grants, are not entitled to equal treatment under NAFTA. Thus, *federal contracts valued at less than \$8.8 million, and state, municipal or other non-federal projects may NOT use Mexican or Canadian products.*

Similarly, the exception related to the cost of the project must be carefully scrutinized. The Stimulus Act does contain an exception allowing a project to use foreign products *only* if the use of products produced in the United States will increase the cost of the “**overall project**” by more than 25%. For example, the exception does not apply if the cost of the pipe or valves for a project will be 25% greater than foreign products; rather the use of U.S. made pipe or valves must increase the cost of the *entire project* by more than 25%.

Again, we urge you to exercise great caution in assessing the claims of foreign manufacturers about whether their products are eligible for use in projects funded by the Stimulus Act. The Stimulus Act will likely impose strict compliance certification requirements on suppliers and contractors related to domestic content. Making a false statement in such a certification could result in serious consequences, even to the point of criminal liability.

In the meantime, the 6,000 employees at McWane stand ready to supply you with high quality waterworks and plumbing products that are manufactured in the United States and that fully comply with the Buy America provisions in the Stimulus Act. We have the expertise, the capacity, and the desire to meet your needs in every respect. Please contact us if we can assist you in any way.