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March 27, 2009

An Open Letter from Jim Keffer, President – EBAA Iron Sales, Inc.

The American Recovery and Reinvestment Act of 2009 (a.k.a. the “Stimulus Bill”) was enacted on February 17, 2009. The purpose of the Act – as noted in the opening sentence of its preface – is for ***“Making supplemental appropriations for job preservation and creation, infrastructure investment ...etc...”*** To that end, we (along with many other observers) contend the Act is intended to stimulate the American economy by supporting American jobs, and more specifically, the “preservation and creation” of American manufacturing jobs. In support of this, Congress has included a very strong “Buy American” provision in the Act (Sec. 1605) whereby the language requires that, ***“None of the funds appropriated or otherwise made available by the 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.”***

Even though there is strong language and an obvious preference for American made products in the Stimulus Bill, the American tax payer is protected with certain allowed exceptions that are included in this provision. For example, some of the “summarized” criteria for granting waivers to this provision would be in the event no domestic made product is available or where the use of domestic products would increase the overall total project cost by more than 25%.

As is well known throughout the water works industry, many of our joint restraint competitors import their products from China. Yet, given this fact, some of them are now making claims that their non-American produced products are eligible for use on these federally funded projects under the auspices of their unique interpretation to Buy American provision. They even offer to “certify” their products to this end – contending, that by doing so, this alone justifies a waiver to the “Buy American” provision – apparently due to how this provision should be ***“...applied in a manner consistent with United States obligations under international agreements.”***

Do **not** accept such certifications or claims. Per a 3/2/09-dated memorandum from the US EPA Office of Water, http://www.epa.gov/water/eparecovery/docs/2009-03-02_Final_ARRA_SRF_Guidance.pdf only the assigned EPA State Administrator who is monitoring the use of these ARRA funds can grant a waiver to any provision or requirement cited in the Stimulus Bill. Also, for transparency purposes, the memo further states that if a waiver is granted by the Administrator, EPA will publish such waiver, with a sufficient explanation, in the Federal Register. And furthermore, we believe the responsibility for developing and coordinating international trade falls under the jurisdiction of the Office of the US Trade Representative. http://www.ustr.gov/Who_We_Are/Mission_of_the_USTR.html

Thus, the “Buy American” provision in the Act is far reaching. Whether or not an exception or waiver to the “Buy American” provision would apply in any given instance will likely require detailed legislative interpretation as well as legal analysis. Furthermore, a potential violation of the Act by purchasing non-American made products is a very serious matter. As such, this is a matter in which we believe the opinion or certification from a foreign products producer will ultimately have no bearing.

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In conclusion, we should remember that “produced in the United States” means just that. Products must be 100% manufactured, finished, coated and other activities related to the production of the product must have occurred in the United States. We would hope that the use of this simple logic and rationale would help clarify the inevitable claims to come, such as “packaged here” or “painted here.”

The choice is clear. Either use domestic made products in compliance with the intent and the wording of the “Buy American” provision or risk involving yourself and your project in what will likely be a protracted legal battle over specific legislative interpretations of the wording and possible loopholes. Numerous legal precedents have always upheld your right to specify domestic made products on your water works projects prior to the implementation of the ARRA of 2009. Under the provisions of this recently enacted Stimulus Bill, we believe that it is now your obligation.

Our country needs a strong manufacturing base to ensure a viable and prosperous American economy. We, at EBAA Iron, appreciate your study and understanding of this important piece of the legislation. We stand ready to provide quality products at competitive prices on these as well as all of your future water work project needs.