



Clow Valve Co.
Mike Vore, Sales Manager

902 South 2nd Street
Oskaloosa, IA 52577

Telephone: 641 673-8611
Fax: 641 673-8269

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To: All Clow Valve Company Distributors

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.