

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____))
In the Matter of)) **PUBLIC**
))
McWANE, INC.,)) DOCKET NO. 9351
a corporation.))
_____))

**COMPLAINT COUNSEL’S MOTION TO COMPEL RESPONDENT
MCWANE, INC.’S RESPONSES TO REQUESTS FOR ADMISSION**

Pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Practice for Adjudicative Proceedings, Complaint Counsel respectfully moves the Court to compel Respondent to provide complete and responsive answers to Request Nos. 1-12, 15, 17, 18, 22, 33, 37, 38, 40, 42-43, and 48-50 of Complaint Counsel’s Requests for Admissions to Respondent McWane, Inc. (1-50), dated May 22, 2012 (“RFAs”), and to produce any evidence in its possession relating to its denial of RFAs 37 and 48-50. Respondent McWane, Inc.’s Objections and Responses to Complaint Counsel’s Requests for Admission, dated June 8, 2012 (“Responses”) are evasive and nonresponsive, and contain inappropriate and inapplicable objections.

Complaint Counsel has met and conferred with counsel for Respondent regarding this motion, but counsel could not reach a resolution. *See* attached Meet and Confer Statement.

I. Background

Complaint Counsel’s RFAs address preliminary matters – such as market structure and characteristics, market participants, and certain well established business practices of Respondent and its competitors – that may need to be proven by Complaint

Counsel at trial in the absence of an admission. Holleran Decl., Exh. A (RFAs).

Complaint Counsel's RFAs are plainly worded, discrete, and direct statements on uncontroversial matters as to which Complaint Counsel is aware of no record evidence to the contrary.

As such, the RFAs fit squarely within the long understood salutary purpose of this discovery device – to “expedite the trial and to relieve the parties of the costs of proving facts that will not be disputed at the trial, and the truth of which can be easily ascertained by reasonable inquiry.” *In Re General Motors Corp.*, 1977 FTC Lexis 293, at *3 (1977). However, Respondent repeatedly failed to answer the specific question asked by an RFA, failed to conduct a reasonable investigation before asserting that it could not answer multiple RFAs, and for others, failed to provide responsive discovery in response to Complaint Counsel's Requests for the Production of Documents to support its denials. *See* Holleran Decl., Exh. B (Responses).

II. Argument

Rule 3.32(b) governs RFA responses, and requires that where an RFA is not admitted,

[any] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny.

16 C.F.R. 3.32 (b). The Respondent may not reply “in an ambiguous or equivocal manner which evades the central point of the requested admission.” *General Motors*, 1977 FTC

Lexis 293, at *6. Rather, a response must be “clear, specific, direct and straightforward.” *In Re Sterling Drug Inc.*, 1976 FTC Lexis 272, at *2-*3 (1976).

Respondent has failed to comply with these requirements, providing nonresponsive and evasive answers and interposing improper objections. Part A below discusses the inappropriate objections raised by Respondent. Part B discusses certain Responses that fail to address the specific matter presented by the RFA. Part C discusses Responses that implausibly assert Respondent’s inability to admit or deny an RFA, despite clear indications that Respondent has access to the necessary information and has simply failed to conduct a reasonable inquiry into the matter. Finally, Part D discusses certain denials contained in the Responses that are unsupported by discovery produced to date.

A. Respondent Raises Improper Objections That Do Not Relieve It of the Obligation to Provide Good Faith Responses (RFA Nos. 1-11, 15, 17, 18, 22, 33, 37, and 42-43)

As a preliminary matter, Respondent repeatedly raises various objections that an RFA either (1) requires speculation, (2) seeks information beyond Respondent’s custody and control, (3) is vague and ambiguous, (4) prematurely seeks expert opinion, or (5) seeks an improper legal conclusion. These objections are misplaced and do not justify Respondent’s failure to provide adequate Responses.

The first two of these categories are not proper objections to a request for admission – if Respondent lacks sufficient information to admit or deny a matter, the proper response is to make a reasonable inquiry and then set forth detailed reasons why Respondent cannot truthfully admit or deny. Rule 3.32(b).

Respondent’s vagueness objections are improper and evasive. The RFAs are plainly worded in language that is commonly used in Respondent’s business, and use

clearly defined terms. In any event, a vagueness objection does not relieve Respondent of the obligation to make a good faith effort to respond – if necessary, Respondent must qualify its admission or denial to explain how any supposedly vague term is being interpreted. *See General Motors*, 1977 FTC LEXIS 293, at *6-7 (“[R]eservations due to slight inaccuracies or for any other reason should be so stated as qualifications to a general admission.”); *Vlasich v. Fishback*, 2009 U.S. Dist. LEXIS 43098, at 12-13 (E.D. Cal. May 11, 2009) (in response to vague request, party should “frame an intelligent reply using wording clarifying what [it] believes is meant.”).

For example, the Response to RFA 18 raises a vagueness objection on the ground that it is “unclear whether [the term used] is referring to a percentage of total jobs or the amount of discount on each job.” This “vagueness” may be remedied by simply specifying which meaning Respondent is adopting, and then proceeding to answer the RFA. Similarly, rather than invoking vagueness and offering no substantive response to RFAs 42 and 43, Respondent should have provided good faith Responses, qualified or otherwise, that fairly address the RFAs.

Respondent also improperly invokes “expert opinion” and “legal conclusion” objections to avoid answering RFAs. For example, it provides no substantive answer to RFA 2, and instead asserts an objection that the RFA, which concerns the “Buy American” requirement of the American Recovery and Reinvestment Act (ARRA), seeks legal conclusions and premature expert opinion. Such objections should be overruled. The application of law to fact is an appropriate subject for a request for admission. *See* Rule 3.32(a) (RFA may relate to “application of law to fact”). For example, in *Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.*, 2007 U.S. Dist. LEXIS 80182 (D.

Kan. Oct. 29, 2007), defendant requested that plaintiff admit that “no state law required an identified Defendant to contract with [the plaintiff].” The request was upheld because it “require[d] no more than the application of law to the facts of the case.” *Id.* at *17-18; *see also Argus & Assocs. v. Prof’l Benefits Servs.*, 2008 U.S. Dist. LEXIS 105753, at *8-9 (E.D. Mich. Dec. 31, 2008) (providing other examples of proper RFAs involving application of law to fact). Like the application of state law to the parties in *Heartland*, the application of the ARRA’s “Buy American” requirement to the businesses of Respondent and its competitors is a permissible RFA topic.

Respondent’s objections that RFAs 1, 2, 4, 7, 15, and 17, which relate to the ARRA, prematurely seek expert opinion should also be overruled. Respondent has identified its only expert, an economist, not an expert on the ARRA. Respondent’s counsel conceded during the meet and confer that the matter would not constitute an expert opinion, but rather might be included in the industry background section of an expert report. Whether or not these facts are addressed in the background of an experts report is irrelevant. The RFAs relate to basic facts impacting Respondent’s business that are well known to Respondent and its employees and will not be the subject of expert “opinion.” These objections, as well as Respondent’s similar objection to RFA 22, should be overruled.

B. Respondent Provides Nonresponsive and Evasive Responses (RFA Nos. 1, 3-6, 8, 10-12)

Many of Respondent’s RFA Responses are nonresponsive by eluding the plain language of the RFAs. In *General Motors*, the Administrative Law Judge rejected a number of responses that – like Respondent’s here – evaded essential elements of the request. For example, complaint counsel in *General Motors* sought to have GM admit

- The Response to RFA 8 addresses {
} rather than the matter requested – whether Respondent was *competing for relevant sales* after February 2010.
- The Response to RFA 10 addresses {
} not what the Request asked – whether Respondent and Star are the *only* current manufacturers of such products.
- Finally, the Response to RFA 12 addresses {
} rather than whether Respondent was at the relevant time the only manufacturer of such fittings.

Each of the above Responses impermissibly “evades the central point” of the RFA, *id.* at *6, and Respondent should be compelled to respond in a manner that “fairly meet[s] the substance of the requested admission.” *See* Rule 3.32(b).

C. Respondent Improperly Claims Lack of Information To Admit or Deny RFAs Without Having First Conducted a Reasonable Investigation (RFA Nos. 9, 18, 22, 33)

Some Responses assert a lack of sufficient knowledge to admit or deny a matter, even though the discovery record – in some cases depositions of Respondent’s own employees – contains the information required to admit or deny the matter.² In light of the information available to Respondent, it should be compelled to admit or deny the straightforward proposition set forth in each of these RFAs, or “set forth in detail the reasons why [it] cannot truthfully admit or deny the matter.” Rule 3.32(b) (emphasis added); *see also* *Louis v. Martinez*, 2011 U.S. Dist. LEXIS 51744 (N.D. W. Va. May 13, 2011) (RFA response not necessarily adequate “merely because it includes a statement

² Indeed, in some cases (*e.g.* the Responses to RFAs 38 and 40) Respondent does not even claim to have conducted a reasonable inquiry.

that the party has made reasonable inquiry and that the information necessary to admit or deny the matter is not readily obtainable by him.”); *Asea, Inc. v. Southern Pacific Transp. Co.*, 669 F.2d 1242, 1247 (9th Cir. 1981) (response that fails to admit or deny is inadequate if party “has not, in fact, made ‘reasonable inquiry,’” or if sufficient information is “‘readily obtainable’”).

For example, the Response to RFA 9 contains the evasive and implausible suggestion that Respondent does not know what projects it is competing for today. Respondent provides no detailed explanation for its inability to admit or deny this matter, and {

}

Likewise, in its Response to RFA 18, Respondent implausibly states that it cannot ascertain its own historical pricing practices. As to RFA 22, Respondent claims a lack of sufficient information to admit or deny an assertion about the costs of Relevant Products, even though {

} Finally, in responding to RFA 33, Respondent implausibly suggests that it does not know and cannot ascertain the basic business needs of its customers.

Respondent should be compelled to admit or deny each of these matters, or provide a more detailed explanation of its investigation and its inability to do so.

D. Respondent’s Denials Are Unsupported by the Record (RFA Nos. 37, 48-50)

Finally, in its Responses to RFAs 48-50, Respondent has denied certain matters relating to the way it uses data obtained from the DIFRA Information Exchange. {

} Any evidence

supporting the denial of these RFAs should have been produced during discovery, *see* Holleran Decl., Exh. D at 2 ¶¶ 6, 8 (Complaint Counsel’s First Requests for Production of Documents), and Respondent should therefore be compelled to produce such documents immediately.

Relatedly, Complaint Counsel limited the scope of its discovery based on representations by counsel for Respondent, A. Stargard, that Respondent was not asserting a free-riding justification for its Exclusive Dealing Arrangements. In its Response to RFA 37, Respondent now denies that it is not asserting a free-riding justification. Accordingly, Respondent should be compelled to produce relevant discovery.

III. Conclusion

As discussed above, Respondent’s RFA Responses are inadequate. Accordingly, Complaint Counsel respectfully moves this Court for an order compelling Respondent to provide adequate and complete responses to RFAs 1-12, 15, 17, 18, 22, 33, 37, 38, 40, 42-43, and 48-50, and to produce any evidence in its possession relating to its denial of RFAs 37 and 48-50.

Dated: June 27, 2012

Respectfully submitted,

s/ Linda Hollera

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)	
In the Matter of)	
)	
McWANE, INC.,)	DOCKET NO. 9351
a corporation.)	
_____)	

PROPOSED ORDER

On June 25, 2012, Complaint Counsel filed Complaint Counsel’s Motion to Compel Respondent McWane, Inc.’s Responses to Requests for Admission. Upon consideration of this motion, this Court grants Complaint Counsel’s motion. Respondent is ordered to answer Complaint Counsel’s Requests for Admissions Nos. 1-12, 15, 17, 18, 22, 33, 37, 38, 40, 42-43, and 48-50, and to otherwise supplement discovery, in accord with this Court’s opinion.

ORDERED:

D. Michael Chappell
Administrative Law Judge

_____, 2012

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In the Matter of)	PUBLIC
McWANE, INC.,)	DOCKET NO. 9351
a corporation.)	

**COMPLAINT COUNSEL’S STATEMENT REGARDING MEET AND CONFER
PURSUANT TO SCHEDULING ORDER**

Complaint Counsel has met and conferred with counsel for Respondent McWane, Inc., regarding Respondent McWane Inc.’s Responses and Objections to Complaint Counsel’s Requests for Admission (“Respondent’s Responses”). On or about June 20, 2012, Complaint Counsel spoke with counsel for Respondent. Despite the good faith efforts of counsel, Complaint Counsel was unable to reach a resolution with respect to these RFAs, and we remain at an impasse related to the issues raised by the motion.

During initial meet and confer discussions regarding the scope of Complaint Counsel’s requests for production, counsel for Respondent, Andreas Stargard, stated that McWane was not asserting a free-riding justification for its exclusive dealing arrangements. Based on that representation, Complaint Counsel limited the scope of its document requests.

Dated: June 25, 2012

Respectfully submitted,

s/ Linda Holleran
Linda Holleran, Esq.
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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)	
In the Matter of)	
)	
McWANE, INC.,)	DOCKET NO. 9351
a corporation.)	
)	

DECLARATION OF LINDA M. HOLLERAN

Pursuant to 28 U.S.C. § 1746, I make the following statement:

1. My name is Linda M. Holleran. I am making this statement in In the Matter of McWane, Inc., FTC Docket No. 9351. All statements in this Declaration are based on my personal knowledge as Attorney for the U.S. Federal Trade Commission, Bureau of Competition, or, if so-indicated, on information and belief.
2. Attached as Exhibit A is a true and correct copy of Complaint Counsel’s Requests for Admissions to Respondent McWane, Inc. (1-50), dated May 22, 2012.
3. Attached as Exhibit B is a true and correct copy of Respondent McWane, Inc.’s Objections and Responses to Complaint Counsel’s Requests for Admission, dated June 8, 2012.
4. Attached as Exhibit C is a true and correct copy of excerpts of the Transcript of the May 9, 2012 deposition of Jerry Andrew Jansen in this matter.
5. Attached as Exhibit D is a true and correct copy of Complaint Counsel’s First Set of Requests for Production of Documents to Respondent McWane, Inc. (Numbers 1-23), dated February 21, 2012.

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 27, 2012

Respectfully submitted,

s/ Linda Hollera
Linda Holleran, Esq.
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel for Respondent McWane, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 27, 2012

By: s/ Linda Holleran
Attorney

Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	PUBLIC
)	
McWANE, INC.,)	DOCKET NO. 9351
a corporation, and)	
)	
STAR PIPE PRODUCTS, LTD.,)	
a limited partnership.)	

**COMPLAINT COUNSEL’S REQUESTS FOR ADMISSIONS
TO RESPONDENT McWANE, INC. (1-50)**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.32, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that Respondent McWane, Inc. admit within ten (10) days the following:

1. All ARRA Waterworks Projects are subject to a Buy American requirement.
2. The Environmental Protection Agency (“EPA”) must grant or approve any and all waivers to the Buy American requirement of ARRA for any ARRA Waterworks Project.
3. Respondent cannot Identify any sale of Imported Relevant Product for use in an ARRA Waterworks Projects pursuant to a Public Interest Waiver other than the three Public Interest Waivers set forth in Exhibit A.
4. Respondent is unaware of any statement or opinion by the EPA that Imported Relevant Product is an “incidental component,” as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.
5. Respondent cannot Identify any sale of any Imported Relevant Product for use in any ARRA Waterworks Projects pursuant to the waiver for *de minimus* incidental components as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.
6. Respondent cannot Identify any sale of any Imported Relevant Product that was Manufactured in Mexico or Canada for use in any ARRA Waterworks Project.
7. The ARRA increased the number of Waterworks Projects being built, repaired or otherwise commissioned in the United States.

8. Respondent competed for sales of Domestic Relevant Product for use in ARRA Waterworks Projects after February 2010.
9. Respondent continues to compete for sales of Domestic Relevant Product for use in ARRA Waterworks Projects today.
10. The only Persons that currently Manufacture a Full-Line of Domestic Relevant Product that is 24" in diameter or smaller are Respondent and Star.
11. Respondent is unaware of any Person that has Plans to begin Manufacturing Domestic Relevant Product that is 24" in diameter or smaller within the next two years.
12. Prior to Star's entry in 2009 when it began Manufacturing Domestic Relevant Product, Respondent was the only Manufacturer of a Full-Line of Domestic Relevant Product that was 24" in diameter or smaller since at least 2007.
13. At least 90% of all Relevant Products sold in the United States, as measured by revenue, are 24" in diameter or smaller.
14. Any Relevant Product that meets AWWA standards and a particular specification is functionally interchangeable with any other Relevant Product that meets the same standards and specifications.
15. Imported Relevant Products are not a substitute for Domestic Relevant Products when the specification for a Waterworks Project has a Buy American requirement.
16. Certain municipalities, counties, and states in the United States have regulations, codes or statutes that require publicly funded Waterworks Projects to be built or repaired with Domestic Relevant Products.
17. When a regulation, code or statute requires Domestic Relevant Products be used for publicly funded Waterworks Projects, Imported Relevant Products generally cannot be used for those projects.
18. Respondent has historically offered less Job Pricing on its Domestic Relevant Product than its Imported Relevant Product.
19. Respondent has lowered its price on sales of Domestic Relevant Product in response to competition from Star's Domestic Relevant Product.
20. Respondent's share of sales of Domestic Relevant Products has been greater than 80% since at least 2007.
21. Demand for the Relevant Product is Inelastic.
22. The Relevant Product represents five percent (5%) or less of the cost of a typical Waterworks Project.

23. Respondent does not consider the price of any other type of fittings when it sets the price of the Relevant Product.
24. No other product constrains the price of the Relevant Product.
25. Respondent sells all, or nearly all, of its Relevant Product to distributors.
26. Distributors are critical to the success of Respondent.
27. Distributors sell Relevant Products in local geographic markets.
28. Distributors typically sell to end users all of the products needed for a specific Waterworks Project (*e.g.*, pipe, hydrants, valves, fittings, *etc.*).
29. To begin selling Relevant Product in the United States, a new entrant must secure Manufacturing through one or more foundries.
30. To begin selling Relevant Product in the United States, a new entrant must develop, purchase or otherwise obtain forms for casting numerous fittings in different shapes and sizes.
31. To sell Relevant Product Successfully in the United States, a new entrant must develop a distribution network with a sufficient number of distributors that allows the entrant to sell a minimum amount of Relevant Product to be efficient.
32. To sell Relevant Product Successfully in the United States, a new entrant must develop a reputation for quality and service with distributors and end users.
33. Distributors need access to a Full-Line of Domestic Relevant Product that can be delivered in a timely fashion, *i.e.*, generally less than 12 weeks.
34. In 2009, Respondent perceived that Sigma had an incentive to begin Manufacturing Domestic Relevant Product.
35. One factor that Respondent considered when deciding to enter into the Master Distribution Agreement (“MDA”) with Sigma was the likelihood of Sigma Manufacturing its own Domestic Relevant Product.
36. On or about November 23, 2009, Respondent put all Hajoca orders for Domestic Relevant Product on hold.
37. Respondent does not assert a free-riding justification for its Exclusive Dealing Arrangements.
38. The MDA between Respondent and Sigma did not lower the price of Domestic Relevant Product.
39. The MDA between Respondent and Sigma did not increase the output of Domestic Relevant Product.

40. Sigma, Star and Respondent together account for 90% or more of the sales in Imported Relevant Product in the United States.
41. In the first half of 2008, the costs of the raw materials used to Manufacture Imported Relevant Product were increasing faster than the costs of the raw materials used to Manufacture Domestic Relevant Product.
42. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical list prices.
43. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical multiplier maps.
44. In January 2008, Respondent announced its intention to reduce or eliminate the Job Pricing it offered to customers.
45. Job Pricing is a form of competition among or between SIGMA, Star and Respondent.
46. Job Pricing reduces the stability of pricing of Relevant Product.
47. Job Pricing reduces the transparency of pricing of Relevant Product.
48. Respondent did not use data obtained from the DIFRA Information Exchange to manage its inventory.
49. Respondent did not use data obtained from the DIFRA Information Exchange to manage its production schedules.
50. Respondent did not use data obtained from the DIFRA Information Exchange to reduce its costs.

DEFINITIONS

1. The terms “McWane,” “Company” or “Respondent” mean Respondent McWane, Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
2. The terms “Agreement” or “Contract” mean any oral, written, or implied contract, arrangement, understanding, or Plan, whether formal or informal, between two or more Persons, together with all modifications or amendments thereto.
3. The term “ARRA Waterworks Project” means any Waterworks Project that was funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009.

4. “Buy American requirement” means any provision in a specification, contract, code, regulation, or statute that requires that the Relevant Product used in a waterworks project be Manufactured in the United States.
5. The term “Communication” means any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
6. The term “Competitor” means each and every Person actually or potentially engaged in the Manufacture or importation of any Relevant Product for sale or resale within the United States, including without limitation, McWane, Star, Sigma, and Serampore Industries Private, Ltd.
7. The term “Containing” means containing, describing, or interpreting in whole or in part.
8. The term “DIFRA” means the Ductile Iron Fittings Research Association, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives.
9. The term “DIFRA Information Exchange” means the submission, aggregation, transmittal and receipt of sales information Relating to any Relevant Products through DIFRA.
10. The terms “Discuss” or “Discussing” mean in whole or in part constituting, Containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that “Discusses” another document includes the other document itself.
11. The term “Domestic Relevant Product” means any ductile iron pipe fitting, of any size, shape or configuration, as well as accompanying accessories, lining and coating, that was Manufactured or otherwise produced within the United States.
12. The term “Effect” means the actual, intended, forecast, desired, predicted, or contemplated consequence or result of an action or Plan.
13. The term “Exclusive Dealing Arrangement” includes any proposed or actual Agreement, arrangement, policy, program, or practice of McWane or Sigma (i) that requires any customer to refrain from purchasing or to limit its purchases of any Relevant Products of any Competitor, (ii) that conditions the provision of any benefit to any customer on refraining from or limiting its purchases of any Relevant Products of any Competitor, (iii) that threatens the imposition of any adverse consequences for any customer that purchases or does not limit its purchases of any Relevant Products from any Competitor, or (iv) that extends a benefit to a customer for purchasing a certain dollar amount, quantity, or percentage of any Relevant Product from McWane or Sigma.

14. The term “Full-Line of Domestic Relevant Product” refers to, at a minimum, the most commonly sold Domestic Relevant Products that represent at least 80% of all Domestic Relevant Products sold in the United States, commonly referred to as ‘A’ items.
15. The term “Hajoca” means Hajoca Corporation, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
16. The term “Identify” means to state:
 - a. in the case of a natural person, his or her name, employer, business address and telephone number, title or position, and dates the person held that position(s);
 - b. in the case of a Person other than a natural person, its name and principal address, telephone number, and name of a contact person;
 - c. in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages;
 - d. in the case of an event, the time and date of the event, the participants, and a description of the substance of the event; and
 - e. in the case of a communication, the date of the communication, the parties to the communication, the method of communication (oral, written, etc.), and a description of the substance of the information exchanged during the communication.
17. The term “Imported Relevant Product” means any ductile iron pipe fitting, of any size, shape or configuration, as well as accompanying accessories, lining and coating, that was Manufactured or otherwise produced outside of the United States.
18. The term “Inelastic” means that the demand for a product does not change significantly in response to an increase or decrease in price.
19. The term “Job Pricing” means any Discounts that apply to a single, specified job or Waterworks Project.
20. The terms “Manufacture” or “Manufacturer” means a Person’s use of their own productive assets as well as the productive assets of any other Person, including contracting for the use of those assets.

21. The term “Person” includes the Company, and means any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.
22. The terms “Plan” or “Plans” mean tentative and preliminary proposals, strategies, recommendations, analyses, reports, or considerations, whether or not precisely formulated, finalized, authorized, or adopted.
23. The term “Public Interest Waiver” means, in the context of a waiver of the Buy American requirement of ARRA by the EPA, that: i) a Domestic Relevant Product was not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; ii) use of a Domestic Relevant Product would increase the cost of the overall project by more than 25 percent; or that iii) applying the Buy American requirement of ARRA would be inconsistent with the public interest.
24. The terms “Relate” or “Relating to” mean in whole or in part Discussing, constituting, commenting, Containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to. The term “Relevant Product” means both Domestic Relevant Products and Imported Relevant Products, and either of these individually. In response to a Specification calling for the production of Documents concerning the Relevant Products, produce Documents that contain the specified information for either or both of the Relevant Products, stated separately as applicable.
25. The term “Sigma” means Sigma Corporation, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
26. The term “Star” means Star Pipe Products, Ltd., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
27. The term “Successfully” means that a Person sells more than than \$1 million dollars of a Relevant Product and has the opportunity to increase its sales.
28. The term “Waterworks Projects” means the construction or repair of a water distribution system that uses Relevant Product.

INSTRUCTIONS

1. Provide separate and complete sworn written responses for each Request for Admission (“Request”).
2. Your answers to any Request must include all information within your possession, custody, or control, including information reasonably available to you and your agents, attorneys, or representatives. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the matter.
3. A Request will be deemed admitted unless, within ten days of service of this request, you serve a sworn written answer to the Request.
4. Your answer should specifically admit or deny the Request or set forth in detail the reasons why you cannot truthfully admit or deny it after exercising due diligence to secure the information necessary to make a full and complete answer, including a description of all efforts you made to obtain the information necessary to answer the Request fully.
5. If you object to a portion or an aspect of any Request, state the grounds for your objection with specificity and respond to the remainder of the Request.
6. When good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, specify so much of it as is true and qualify or deny the remainder.
7. If you consider that a matter of which an admission has been requested presents a genuine issue for trial, you may not, on that ground alone, object to the request; instead, you must deny the matter or set forth reasons why you cannot admit or deny it.
8. Answer each Request fully and completely based on the information and knowledge currently available to you, regardless of whether you intend to supplement your response upon the completion of discovery.
9. If in answering any Request you claim ambiguity in either the Request or any applicable definition or instruction, identify in your response the language you consider ambiguous and state the interpretation you are using in responding.
10. Each Request is continuing in nature and requires prompt amendment of any prior response if you learn, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect. *See* 16 C.F.R. § 3.31(e).
11. If you object to any Request or any portion of any Request on the ground that it requests information that is privileged (including the attorney-client privilege) or falls within the

attorney work product doctrine, state the nature of the privilege or doctrine you claim and provide all other information as required by 16 C.F.R. § 3.38A.

12. Whenever a Request is stated in the conjunctive, it shall also be taken in the disjunctive, and vice versa.
13. Whenever a Request is stated in the singular, it shall also be taken in the plural, and vice versa.
14. Estimated dates should be given when, but only when, exact dates cannot be supplied. Any estimates should be identified as such.

May 22, 2012

By: s/ Linda Holleran
Edward Hassi, Esq.
Linda M. Holleran, Esq.
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Federal Trade Commission
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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel for Respondent McWane, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 22, 2012

By: s/ Linda Holleran
Attorney

EXHIBIT A

commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.

DATES: The meeting will be held on November 10, 2010 starting at 9 a.m. and ending at 4 p.m.

Location: Sheraton Boston, 39 Dalton Street, Boston, Massachusetts 02199; (617) 236-2000 or (888) 627-7054.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508-3840; e-mail: ozone@otcair.org; Web site: <http://www.otcair.org>.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTR is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508-3840; by e-mail: ozone@otcair.org or via the OTC Web site at <http://www.otcair.org>.

Dated: September 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010-23994 Filed 9-23-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9205-4]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lewiston, ME and the Auburn, Maine Water District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality]

to the City of Lewiston, Maine and the Auburn, Maine Water District ("Auburn-Lewiston") for the purchase of thirteen separate types of ductile iron pipe fittings (with various quantities for each individual fitting configuration totaling 33 fittings) that are foreign manufactured as part of an upgrade project at the Auburn-Lewiston Water Treatment Facility. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by Auburn-Lewiston, it has been determined that there are currently no domestically manufactured pipe fittings available to meet the Auburn-Lewiston's project construction schedule. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of foreign manufactured pipe fittings by Auburn-Lewiston, as specified in its July 28, 2010 request.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918-1658, or David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109-3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City of Lewiston, Maine and the Auburn, Maine Water District for the purchase of foreign manufactured pipe fittings as part of its water treatment facility upgrade project. The specific ductile iron fittings are not available from a domestic manufacturer to meet the project construction schedule. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or

unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the Auburn-Lewiston's request, though made after the date that the contract was signed on March 11, 2010, can be evaluated as timely because the supplier informed the subcontractor of the recipient on July 19, 2010 that the domestic manufacturer would not be able to deliver the required type and number of fittings to meet the project schedule/delivery date. The need for a waiver was not determined until after the subcontractor had been informed of the extended delivery delay and further research indicated that there were no domestic manufacturers that could provide the necessary pipe fittings to meet the required project delivery schedule. The recipient could not reasonably foresee the need for such a determination until it was informed that the specific domestic pipe fittings would not be available at the originally scheduled time frame. Accordingly, EPA will evaluate the request as if it were timely.

Auburn-Lewiston is constructing a new Ultraviolet (UV) disinfection treatment facility in order to comply with the Long Term 2 Enhanced Surface Water Treatment Rule requirements of the Safe Drinking Water Act, and part of the work involves the installation of new pipe and pipe fittings. According to information provided by Auburn-Lewiston, there are 13 different fitting types of various sizes and connection types, resulting in a total of 33 individual fittings. The fittings are also required to meet the following specifications: (1) Manufactured to conform with ANSI/AWWA A21.51/C151; (2) inside bituminous coating; and (3) outside primer of TNEMEC Omnithane Series 1.

According to Auburn-Lewiston, the subcontract to furnish and install the ductile iron pipe and pipe fittings was awarded on March 11, 2010 and none of the subcontractors raised any concerns about getting the pipe fittings delivered on time. A purchase order for the ductile iron piping and fittings was placed on April 29, 2010 with an agreed upon shipping date of July 19, 2010 to meet the project schedule.

On July 19, 2010, the supplier received notification from the domestic foundries manufacturing the subject fittings that due to production order backlog, delivery of standard fittings would be delayed at least 4 weeks and delivery of the special, non-standard fittings (long radius bends and large diameter tees) could be delayed at least 8 weeks. The project procurement manager reported that the estimated 4 and 8 week delays were not guaranteed and that the delays could be longer. The possibility of delays was confirmed by EPA's national contractor in conversation with the manufacturer.

The project schedule called for delivery and installation of the ductile iron pipe fittings between July 16, 2010 and August 12, 2010, so the testing of the lines could be initiated prior to September 1, 2010. In addition, the ultraviolet disinfection treatment system testing completion and operator training milestone date is December 8, 2010, with an overall project completion and transfer of facility to the owner date of January 5, 2011. If the delivery of the pipe fittings is delayed until mid-September of 2010, it is estimated that final completion date will be pushed back to at least several weeks. There also has been no guarantee given by the manufacturer that the fittings will be delivered by mid-September, the revised delivery date. According to Auburn-Lewiston, delivery times for certain items are being quoted as long as six months for existing orders.

The project procurement manager solicited quotations and committed delivery times for non-domestic manufactured ductile iron fittings from two local suppliers. Based on the information that was obtained, the non-domestic manufactured ductile iron pipe fittings necessary for the project, with the exception of one 24" x 4" tee, could be delivered within a time frame to meet the project schedule. The work could be coordinated to accommodate the later delivery of the 24" x 4" tee and preserve the December 8, 2010 overall system testing and operator training milestone date, as well as the January 5, 2011 overall project completion date.

Based on the review conducted by EPA's national contractor, Auburn-

Lewiston's claim that the specific ductile iron fittings are not available from a domestic manufacturer to meet project schedule milestones is supported by the available evidence. At least eight additional potential domestic manufacturers of ductile iron pipe fittings were contacted and it was determined that none would be able to meet the required project delivery schedule.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Auburn-Lewiston to either revise their design standards and specifications, or in this situation significantly alter its construction schedule. The imposition of ARRA Buy American requirements in this case would result in an unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Pub. L. 111-5, the 'American Recovery and Reinvestment Act of 2009'" ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by Auburn-Lewiston establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured good is currently not available to meet the construction schedule for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their

respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the City of Lewiston, Maine and the Auburn, Maine Water District are hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the purchase of non-domestic manufactured pipe fittings documented in Auburn-Lewiston's waiver request submittal dated July 28, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111-5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010-23989 Filed 9-23-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9206-3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Bristol, RI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the Town of Bristol, Rhode Island (Town) for the utilization and installation of two influent and two effluent sluice gates for the facility's two final clarifiers as part of a larger overall wastewater treatment plant upgrade project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The Town had been assured by the manufacturer that the sluice gates would be made in a facility in Massachusetts. However, the manufacturer informed the Town of Bristol in writing on July 8, 2010 that

manufacturer is aware of the scheduling implications and has offered to provide the sluice gates at no cost, other than for freight and field service charges. The Town, which could not reasonably foresee the need for a waiver to the Buy American provision of the ARRA, submitted a waiver request immediately (July 9th, 2010) after they were informed by the manufacturer of the delivery oversight.

Re-ordering the gates and having them manufactured in the Massachusetts facility would delay the upgrade work to the final clarifiers by at least three months. Unfortunately, the existing final clarifier equipment has already failed, and since existing wastewater flows at the wastewater treatment plant are currently at seasonal lows, the most opportune time to install the new sluice gates would be during the July and August time frame.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Bristol, Rhode Island Wastewater Treatment Plant. The implementation of the ARRA Buy American requirements in this case would result in additional cost for this project and unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the Town of Bristol, Rhode Island. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative

manufactured good would be inconsistent with the public interest, the Town of Bristol, Rhode Island is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the installation and utilization of foreign manufactured influent and effluent sluice gates as documented in the Town's waiver request submittal dated July 9, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111-5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010-23968 Filed 9-23-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9206-3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lowell, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City of Lowell, Massachusetts (City) for the purchase of a foreign manufactured 30-inch diameter pipe tee fitting for a finished water pipe at the Lowell Water Treatment Facility. This is a project-specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project-specific circumstances. The proposed work involved repairing an existing 30-inch cement lined ductile iron fitting on a finished water line in the Lowell Water Treatment Facility. Based upon information submitted by the City's consulting engineer, EPA has concluded that, under the given circumstances (*i.e.* emergency standby situation, the need to minimize disruption in water transmission service), requiring the installation of an alternative domestic

manufactured pipe fitting would be inconsistent with the public interest, and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the purchase and installation of the foreign manufactured 30-inch pipe fitting media, as specified in its June 18, 2010 request.

DATES: *Effective Date:* September 15, 2010.

FOR FURTHER INFORMATION CONTACT:

Katie Connors, Environmental Engineer, (617) 918-1658, or, David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109-3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City of Lowell, Massachusetts for the purchase of a non-domestic 30-inch diameter pipe fitting for a finished water pipe at the Lowell Water Treatment Facility. EPA has evaluated the City's basis for procuring a 30-inch diameter pipe fitting from China at a cost of \$4,000. Based on the information provided by the City's design engineer, EPA has determined that it is inconsistent with the public interest for the City to have pursued the purchase of a domestically manufactured 30-inch diameter pipe fitting under the specific circumstances encountered by the City.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available

quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

When a recipient or sub-recipient has used foreign iron, steel, and/or manufactured goods for an ARRA project without authorization, as is the case here, OMB's regulation at 2 CFR 176.130 directs EPA to take appropriate action, which may include processing a determination concerning the inapplicability of Section 1605 of ARRA in accordance with 2 CFR 176.120. Consistent with the direction of 2 CFR 176.120, EPA will generally consider a waiver request made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed and after use of the foreign pipe fitting, can be evaluated as timely because the City could not reasonably have foreseen the need for such a determination until after initiating the work. Accordingly, EPA will evaluate the request as if it were timely.

The City is requesting a waiver of the Buy American provision for a 30-inch diameter pipe fitting that was manufactured in China which replaced an existing 30-inch diameter cement lined ductile iron fitting on a finished water line at the Lowell Water Treatment facility. According to the City's design engineer, the existing 30-inch diameter pipe fitting had been leaking for some time at the threaded connection with a 2-inch air release valve. The original intent of the City was to remove the air release valve, clean the threads, perform the necessary repairs, and re-install the existing 30-inch fitting. However, in the event of a possible break in the pipe delivery system or if the existing fitting failed during the repair work, a new 30-inch diameter pipe fitting had to be on-site on an emergency standby basis. As a result, the City explored having a 30-inch diameter pipe fitting on-site before they could start any additional repair work.

During the week of May 3rd, 2010, the City was informed by three suppliers/vendors that a 30-inch diameter domestic pipe fitting would not be available on an emergency standby basis unless the City purchased it outright. Based on information provided by the City's consulting engineer, due to the large size of the fitting, vendors would only make their imported 30-inch tee pipe fittings available on standby status, but not their domestic pipe fittings. As a result, no domestic-made fittings of

that size were available for stand-by in an emergency situation that would meet technical specifications. The City could not find a supplier/vendor that would promise right of first refusal on a domestic manufactured pipe fitting without purchasing it in full. None of the available vendors would allow the City the opportunity to return a 30-inch diameter domestic pipe fitting, if the City had decided on not installing it.

The City decided to order a 30-inch diameter foreign manufactured pipe fitting (made in China at a cost to the City of Lowell of \$4,000) to have it available on an emergency standby basis to minimize plant shutdown and any disruption of water service delivery, in the event total replacement became necessary or if the pipe delivery system failed. The City had planned to repair and re-install the existing pipe fitting, but once the repair work had begun, it was determined that complete replacement was the proper approach to take. During the week of June 14th, the new foreign manufactured 30-inch diameter pipe fitting was installed. Fortunately, and more importantly, no disruption of water transmission service took place due to proper planning. The City then made the request to the EPA for a waiver on June 18, 2010, immediately after the emergency replacement work took place and it could not reasonably foresee the need for such a determination until after initiating the repair work and determining that a complete replacement of the pipe fitting was the proper course of action.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Lowell Water Treatment Plant. The imposition of ARRA Buy American requirements in this case would have likely resulted in unreasonable additional cost for this project and delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition could have resulted in a risk to public health had water service been interrupted for any extended period of time.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the City's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the City of Lowell. The information

provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, the City of Lowell, Massachusetts is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the purchase of a foreign manufactured 30-inch diameter pipe fitting documented in the City's waiver request submittal dated June 18, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111-5, section 1605.

Dated: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010-23988 Filed 9-23-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9205-5]

Science Advisory Board Staff Office Request for Nominations of Experts for the Review of Great Lakes Restoration Initiative Action Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form an SAB panel to review the interagency Great Lakes Restoration Initiative (GLRI) Action Plan which describes restoration priorities, goals, objectives, measurable ecological targets, and specific actions.

DATES: Nominations should be submitted by October 15, 2010 per instructions below.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9159-7]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Richland (the City) Washington**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a late waiver request from the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase and use of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, manufactured outside of the U.S. This is a project specific waiver and only applies to the use of the specified product for the ARRA project discussed in this notice. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The City's waiver request included the project schedule and purchasing efforts attempting to meet Buy American compliance by the applicant, contractor and pipeline materials supplier. The domestic manufacturer notified the piping supplier that the shipment of the product would be delayed and it appears that the supplier on behalf of the City, the ARRA recipient, did an extensive, seemingly comprehensive, and ultimately unsuccessful search for a U.S. manufacturer who could meet the project specifications in accordance with the construction schedule.

The Regional Administrator is making this determination based on the review and recommendations of the Grants & Strategic Planning Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* May 21, 2010.**FOR FURTHER INFORMATION CONTACT:** Bryan Fiedorczyk, CWSRF ARRA Program Management Analyst, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553-0506, U.S. EPA Region 10 (OWW-137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.**SUPPLEMENTARY INFORMATION:**

In accordance with ARRA Section 1605(c) and OMB regulations at 2 CFR Part 176, Subpart B, the EPA hereby provides notice that it is granting a late project waiver request of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City for the purchase and use of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, manufactured outside of the U.S. The AWWA C153 reducer fittings will be incorporated as part of a wastewater treatment system upgrade project that will replace an energy intensive inefficient aeration treatment process with a plug flow fine bubble aeration system. The improvements will reduce energy consumption by more than 70% and reduce the discharge of suspended solids, biochemical oxygen demand and nitrogen into the Columbia River. The City received \$3,049,304 of ARRA funding through the Clean Water State Revolving Fund to complete this project. The City was unable to find a supplier that could provide American manufactured reducer fittings to meet the project specific requirements and the construction schedule agreed upon for the project.

There are several noteworthy factors that impact this waiver analysis: (a) It is a late request because the waiver request came after the construction contract was signed; (b) under 2 CFR 176.130(c)(1) the applicable non-compliance provision regarding unauthorized use of foreign manufactured goods, EPA is authorized to process a waiver under 2 CFR 176.120(a) if "the need for such determination otherwise was not reasonably foreseeable," and EPA has further outlined this process in its April 28, 2009 memorandum: Implementation of Buy American provisions of Public Law 111-5, the "American Recovery and Reinvestment Act of 2009" (the April 28 memorandum); (c) EPA has determined that the applicant ordered domestically manufactured AWWA C153 reducer fittings, and due to the supplier's inability to deliver one of the fittings on schedule, the applicant could not reasonably foresee they would need to request a waiver for a foreign made product.

The project contractor's piping supplier (H.D. Fowler) issued a purchase order to the manufacturer (Star Pipe Products) for the AWWA C153 reducer fittings (2 each) on February 23, 2010. One fitting is associated with the modification to the WWTF Aeration Basin 2 and the second fitting is associated with the modification to the WWTF Aeration Basin 1. The contract schedule requires that the subject

product for Basin 2 be delivered to the project site by June 2, 2010, which will ensure the startup of Basin 2 by August 5, 2010 and the commissioning of Basin 2 by September 15, 2010. Work on the modification to Basin 1 is scheduled to commence immediately following the commissioning of Basin 2. The piping supplier placed the order with the manufacturer on the basis of an agreed ship date of May 24, 2010 [90 days from receipt of purchase order] for one of the two products and an agreed ship date of June 23, 2010 [120 days from receipt of purchase order] for the second of the two products. On March 30, 2010, the manufacturer notified the piping supplier that the shipment of the product would be delayed. The estimated time of arrival at the site would be June 26, 2010. The delay in shipment poses a negative impact to project construction costs, schedule, and employment. Late delivery would push the site piping installation into the same time frame as the diffuser installation in order to meet the project's contractual completion schedule. Since the reducer fitting is a central part of the piping scheme, most pipe cannot be installed prior to this central node being completed. Delay of the piping installation would impose extra costs of installation equipment (excavator, dump truck, and loader) that would need to remain on site for an additional month. Additionally, the contractor would need to lay off two full-time equivalent (FTE) employees (of the three FTE positions assigned to the project) for approximately 18 work days (between June 2nd and June 26th, 2010). Based on the technical evaluation conducted by EPA's consulting contractor (Cadmus), the available evidence supports the applicant's claim that the AWWA C153 reducer fitting for Basin 2 is not available from a domestic manufacturer within a timeframe that meets the project's schedule (*i.e.*, delivery to the project site by June 2, 2010). Further, the domestic manufacturer has advised the Grants and Strategic Planning Unit that it has a substantial back log of orders and will not be adversely affected if the City cancels the purchase order.

Section 1605 of the ARRA requires that none of the appropriated funds may be used 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 is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided under Section 1605(b) if EPA determines that, (1)

Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The April 28 memorandum defines "reasonably available quantity" as the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design. Based on additional research by EPA's consulting contractor (Cadmus), and to the best of the Region's knowledge at this time, the City attempted without success, to meet the Buy American requirements. Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to halt construction pending manufacture of domestically produced goods. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28 memorandum: Iron, Steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of U.S. production of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, in order to meet the City's design schedule and specifications. The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from

the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting from a manufacturer outside of the U.S. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111-5, section 1605

Dated: May 21, 2010.

Dennis J. McLerran,

Regional Administrator EPA, Region 10.

[FR Doc. 2010-13619 Filed 6-7-10; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2010, from 1 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883-4009, TTY (703) 883-4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on System Performance

Open Session

A. Approval of Minutes

- March 25, 2010 (Open and Closed)

B. Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Policy Statement Concerning Appraisals
- Mid-Year Review of Insurance Premium Rates
- FCSIC Strategic Plan FY 2010-2015

Dated: June 2, 2010.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2010-13605 Filed 6-7-10; 8:45 am]

BILLING CODE 6710-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority to discontinue the following report:

Report title: Survey of Financial Management Behaviors of Military Personnel.

Agency form number: FR 1375.
OMB control number: 7100-0307.

Frequency: Semi-annually.

Reporters: Military personnel.

Estimated annual reporting hours: 2,640 hours.

Exhibit B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	PUBLIC
McWANE, INC.,)	
a corporation, and)	DOCKET NO. 9351
)	
STAR PIPE PRODUCTS, LTD.,)	
a limited partnership.)	

**RESPONDENT MCWANE, INC.’S OBJECTIONS AND
RESPONSES TO COMPLAINT COUNSEL’S
REQUESTS FOR ADMISSION**

COMES NOW, McWane, Inc. (“McWane”), and objects and responds as follows to Complaint Counsel’s Requests for Admission (“Requests”):

GENERAL OBJECTIONS

1. McWane objects to the Definitions and Instructions to the extent they seek to impose discovery obligations exceeding the requirements of the Federal Trade Commission’s Rules of Practice.

2. McWane submits its objections and responses without conceding the relevancy or materiality of the subject matter of any of the Requests, and without prejudice to all objections to the admissibility of any response. McWane’s responses are made without waiving, or intending to waive, the right to object on the grounds of incompetency, privilege, relevancy, or materiality (or any other grounds) to the use of any documents provided in response to the Requests, in any subsequent proceeding in this action or any other action. McWane reserves the right to object on

any and all grounds, at any time, to subsequent interrogatories and requests, or any other discovery procedures, involving or relating to the subject matter of the Requests.

3. McWane objects to the Requests to the extent that they seek (a) confidential communications between McWane or its representatives and its counsel or its counsel's representatives; (b) the work product of McWane's attorneys; (c) information compiled in anticipation of litigation by, on behalf of, or at the direction of McWane's in-house or outside counsel; (d) information protected by the common interest privilege; (e) information protected by the First Amendment associational privilege; or (f) any other applicable privilege or protection.

4. McWane objects to the Requests to the extent they improperly seek from a party legal conclusions or expert opinions, the latter of which may be discovered only through expert reports or expert depositions.

5. McWane's responses to the Requests shall not be deemed or construed to be a waiver of any privilege, right or objection. In the event privileged or work product information is inadvertently produced by McWane, such production is not and shall not be deemed or construed as a waiver of any privilege, right or objection, and McWane hereby reserves the right to claw back such inadvertently produced information.

6. McWane objects to the Requests to the extent that they are not reasonably limited in time, geographic, or subject matter scope; to the extent they seek information outside McWane's custody and control; or to the extent they seek information regarding third parties with no relationship to the claims set forth in the Federal Trade Commission's January 4, 2012 administrative complaint ("Complaint"). The disclosure of the latter information would be unduly and unnecessarily invasive of the privacy of third parties with no relationship to the Complaint.

7. McWane objects to the Requests to the extent that they seek information in the public domain, within Complaint Counsel's or the Commission's possession, or obtainable from a source other than McWane at less cost or burden to Complaint Counsel than to McWane.

8. McWane objects to the Requests to the extent they are duplicative; call for the disclosure of information irrelevant to any claim or defense in this action; are not reasonably calculated to lead to the discovery of admissible evidence; or are overly broad or unduly burdensome.

9. McWane reserves the right at any time to revise, correct, add to, or clarify its objections or responses to the Requests.

10. Each of the above General Objections shall be deemed to apply to each of McWane's specific responses set forth below.

SPECIFIC OBJECTIONS AND RESPONSES

In response to Complaint Counsel's requests that McWane admit the following, McWane responds as follows, subject to the General Objections set forth above:

1. All ARRA Waterworks Projects are subject to a Buy American requirement.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. To the extent McWane can answer this

Request, it avers that to the best of its knowledge, ARRA provided a number of waivers and exemptions that permitted Waterworks Projects to buy non-domestic fittings and/or other products under certain circumstances and, thus, denies this Request.

2. The Environmental Protection Agency (“EPA”) must grant or approve any and all waivers to the Buy American requirement of ARRA for any ARRA Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

3. Respondent cannot Identify any sale of Imported Relevant Product for use in an ARRA Waterworks Projects pursuant to a Public Interest Waiver other than the three Public Interest Waivers set forth in Exhibit A.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague, ambiguous, and misleading as to the phrase “any sale of Imported Relevant Product for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. Subject to

and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED] After reasonable inquiry, McWane lacks sufficient information to admit or deny whether third parties sold Imported Relevant Product pursuant to additional Public Interest Waivers, beyond the three Public Interest Waivers set forth in Exhibit A to the Requests and, thus, denies this Request.

4. Respondent is unaware of any statement or opinion by the EPA that Imported Relevant Product is an “incidental component,” as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as seeking a legal conclusion, seeking information equally available to Complaint Counsel as to McWane, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

5. Respondent cannot Identify any sale of any Imported Relevant Product for use in any ARRA Waterworks Projects pursuant to the waiver for *de minimus* incidental components as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague, ambiguous, and misleading as to the phrase “any sale of Imported Relevant Product for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED] after reasonable inquiry, lacks sufficient information to determine whether third parties sold Imported Relevant Product for use in any ARRA Waterworks Project pursuant to the waiver for *de minimus* incidental components as described in 74 Federal Register No. 152 (Monday, August 10, 2009) 39959-60, and thus denies this Request.

6. Respondent cannot identify any sale of any Imported Relevant Product that was manufactured in Mexico or Canada for use in any ARRA Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel’s definition of “Manufactured”, which incorrectly lumps together use of one’s own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as “Sourcing”). McWane further objects to this Request as vague and ambiguous as to the undefined term “any sale”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control,

and is more properly directed to third parties. Subject to and without waiving its objections, and to the extent it understands this Request [REDACTED]

[REDACTED] After reasonable inquiry, McWane lacks sufficient information to determine whether any third parties sold Imported Relevant Product that was Manufactured in Mexico or Canada for use in any ARRA Waterworks Project, and thus denies this Request.

7. The ARRA increased the number of Waterworks Projects being built, repaired or otherwise commissioned in the United States.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, and as vague, ambiguous and unspecified in time and frame of reference with respect to the term "increased the number". McWane further objects to this Request as seeking information equally available to Complaint Counsel as to McWane, and as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

8. Respondent competed for sales of Domestic Relevant Product for use in ARRA Waterworks Projects after February 2010.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to what is meant by the terms “competed for sales” and “for use in”. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, as McWane has sold the vast majority of its domestic fittings to distributors rather than end users. Subject to and without waiving its objections, and to the extent McWane understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

9. Respondent continues to compete for sales of Domestic Relevant Product for use in ARRA Waterworks Projects today.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to what is meant by the terms “continues to compete for sales” and “for use in”. McWane also objects to this Request as seeking information outside of McWane’s custody and control, and as being more properly directed to third parties. After reasonable inquiry, McWane lacks sufficient information to admit or deny whether it continues to compete for sales of Domestic Relevant Product for use in ARRA Waterworks Projects today and, thus, denies this Request.

10. The only Persons that currently Manufacture a Full-Line of Domestic Relevant Product that is 24” in diameter or smaller are Respondent and Star.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacture", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane also objects to Complaint Counsel's definition of "Full-Line" as vague, ambiguous and overbroad. McWane further objects to this Request as seeking information outside of McWane's custody and control, and as being more properly directed to third parties. Subject to and without waiving its objections, and based on information and belief, [REDACTED]

[REDACTED]

[REDACTED]

11. Respondent is unaware of any Person that has Plans to begin Manufacturing Domestic Relevant Product that is 24" in diameter or smaller within the next two years.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as calling for rank speculation, and to the extent it seeks information beyond McWane's custody or control. Subject to and without waiving its objections, and after

reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

12. Prior to Star's entry in 2009 when it began Manufacturing Domestic Relevant Product, Respondent was the only Manufacturer of Full-Line of Domestic Relevant Product that was 24" in diameter or smaller.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as unspecified in time scope. Subject to and without waiving its objections,

[REDACTED]

13. At least 90% of all Relevant Products sold in the United States, as measured by revenue, are 24" in diameter or smaller.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, not reasonably limited in time scope, seeking information outside of McWane's custody and control, and unanswerable as written. Subject to and without waiving its objections, and after reasonable inquiry, McWane lacks sufficient knowledge to admit or deny this Request and, thus, denies this Request.

14. Any Relevant Product that meets AWWA standards and a particular specification is functionally interchangeable with any other Relevant Product that meets the same standards and specifications.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as not reasonably limited in time or geographic scope, and as vague, ambiguous and unanswerable as written as to the undefined terms "particular specification" and "functionally interchangeable". McWane further objects to this request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

15. Imported Relevant Products are not a substitute for Domestic Relevant Products when the specification for a Waterworks Project has a Buy American requirement.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request to the extent it seeks information beyond McWane's custody and control, and is more properly directed to third parties. McWane also objects to this Request to the extent it calls for speculation, is not reasonably limited in time scope, seeks a legal conclusion and prematurely and improperly seeks expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and based on its current understanding and interpretation of Buy American requirements [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Certain municipalities, counties, and states in the United States have regulations, codes or statutes that require publicly funded Waterworks Projects to be built or repaired with Domestic Relevant Products.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as unspecified in time scope, seeking information equally available to Complaint Counsel as to McWane, seeking information beyond McWane's custody and control, seeking legal conclusions, and as being more properly directed to third parties. Subject to and without

waiving these objections, and based on its existing understanding, information and belief,

[REDACTED]

[REDACTED]

[REDACTED]

17. When a regulation, code or statute requires Domestic Relevant Products be used for publicly funded Waterworks Projects, Imported Relevant Products generally cannot be used for those projects.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as more properly directed to third parties, seeking information equally available to Complaint Counsel as to McWane, seeking a legal conclusion, and prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to determine when and where Imported Relevant Products sold by third parties are "generally" used and, thus, denies this Request.

18. Respondent has historically offered less Job Pricing on its Domestic Relevant Product than its Imported Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as vague and ambiguous with respect to the undefined term “historically”, and as not reasonably limited in time scope. McWane also objects to Complaint Counsel’s use of “less Job Pricing” as vague and ambiguous, as it is unclear whether it is referring to a percentage of total jobs or the amount of discount on each job. McWane further objects to this Request as argumentative, misleading and assuming facts not in evidence, to the extent it implies that Job Pricing is the only type of discount available for McWane’s domestic or non-domestic fittings. In fact, such implication is factually incorrect. Subject to and without waiving its objections, to the extent it understands this Request, and after reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

19. Respondent has lowered its price on sales of Domestic Relevant Product in response to competition from Star’s Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as argumentative, misleading, assuming facts not in evidence, unspecified in time and geographic scope, and vague and ambiguous as to the term “price”. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as written. [REDACTED]

[REDACTED]

[REDACTED]

20. Respondent's share of sales of Domestic Relevant Products has been greater than 80% since at least 2007.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as calling for speculation, seeking information beyond McWane's custody and control, and as vague, ambiguous, and unanswerable as written as to the undefined term "share of sales". After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

21. Demand for the Relevant Product is Inelastic.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. McWane also objects to this Request to the extent it seeks information outside of McWane's custody and control.

22. The Relevant Product represents five percent (5%) or less of the cost of a typical Waterworks Project.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as vague and ambiguous as to what is meant by the term “typical”, and as unspecified in time and geographic scope. McWane further objects to this Request as prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. McWane also objects to this Request to the extent it seeks information outside of McWane’s custody and control. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]. [REDACTED]. Thus, after reasonable inquiry, McWane lacks sufficient information to admit or deny this Request as stated.

23. Respondent does not consider the price of any other type of fittings when it sets the price of the Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as vague and ambiguous as to the terms “price” and “any other type of fittings”. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as stated.

24. No other product constrains the price of the Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further also objects to the undefined terms “product” “price” and “constrains” as vague and ambiguous. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request as stated.

25. Respondent sells all, or nearly all, of its Relevant Product to distributors.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections [REDACTED]

[REDACTED]

26. Distributors are critical to the success of Respondent.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as vague and ambiguous as to the undefined terms “critical” and “success” and as calling for speculation, given that McWane has not attempted to sell fittings other than through distribution and thus does not know if such an attempt would be “success[ful]” (as McWane understands the meaning of that term). Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. Distributors sell Relevant Products in local geographic markets.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request because it seeks information beyond McWane's custody or control, and is more properly directed to third parties (namely, distributors). McWane further objects to this request as vague and ambiguous as to the undefined term "local geographic markets". Subject to and without waiving its objections, McWane denies this Request. On information and belief, national distributors such as HD Supply and Ferguson sell fittings across the entire United States.

28. Distributors typically sell to end users all of the products needed for a specific Waterworks Project (*e.g.*, pipe, hydrants, valves, fittings, etc.).

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request because it seeks information beyond McWane's custody or control, and is more properly directed to third parties (namely, distributors). McWane further objects to this request as vague and ambiguous as to the undefined term "typically". Subject to and without waiving its objections, McWane denies this Request. On information and belief, distributors "typically" (as

McWane understands the meaning of that term) sell to contractors, rather than end users.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. To begin selling Relevant Product in the United States, a new entrant must secure Manufacturing through one or more foundries.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). Subject to and without waiving its objections, [REDACTED]

[REDACTED]

30. To begin selling Relevant Product in the United States, a new entrant must develop, purchase or otherwise obtain forms for casting numerous fittings in different shapes and sizes.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this Request as calling for speculation, and as vague and ambiguous as to the undefined term “numerous fittings in different shapes and sizes” - which fails to identify the specific SKUs to which that term is referring. Subject to and without waiving its objections, and to the extent it understands this Request, [REDACTED]

[REDACTED]

[REDACTED]

31. To sell Relevant Product Successfully in the United States, a new entrant must develop a distribution network with a sufficient number of distributors that allows the entrant to sell a minimum amount of Relevant Product to be efficient.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel’s definition of “Successfully” as argumentative, arbitrary and capricious. McWane further objects to this Request as calling for rank speculation, and as vague and ambiguous as to what is meant by the undefined terms “minimum amount” and “efficient”. McWane further objects to this Request as improperly and prematurely seeking expert opinion. Discovery of expert opinion in this case is governed by the Court’s Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

32. To sell Relevant Product Successfully in the United States, a new entrant must develop a reputation for quality and service with distributors and end users.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel's definition of "Successfully" as argumentative, arbitrary and capricious. McWane further objects to this Request as calling for rank speculation, and as improperly and prematurely seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts.

33. Distributors need access to a Full-Line of Domestic Relevant Product that can be delivered in a timely fashion, *i.e.* generally less than 12 weeks.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as misleading, argumentative, assuming facts not in evidence, and vague and ambiguous with regard to the undefined term "need". McWane further objects to this Request on the basis that Complaint Counsel has defined "Full Line of Domestic Relevant Product" to limit the definition to "A" items only. McWane also objects to this Request as unspecified in time and geographic scope. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request.

34. In 2009, Respondent perceived that Sigma had an incentive to begin Manufacturing Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). McWane further objects to this Request as vague, ambiguous, speculative, argumentative and assuming facts not in evidence with respect to the undefined terms "perceived" and "incentive." Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

35. One factor that Respondent considered when deciding to enter into the Master Distribution Agreement ("MDA") with Sigma was the likelihood of Sigma Manufacturing its own Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to the Complaint Counsel's definition of "Manufacturing", which incorrectly lumps together use of one's own foundry to produce fittings (manufacturing) with contracting with a third-party foundry to produce fittings (more accurately described as "Sourcing"). Subject to and without

waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] By way of further response, [REDACTED]

[REDACTED]

[REDACTED]

36. On or about November 23, 2009, Respondent put all Hajoca orders for Domestic Relevant Product on hold.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to this request as not reasonably limited in time or subject matter scope, and as vague and ambiguous as to the term "on hold". Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. Respondent does not assert a free-riding justification for its Exclusive Dealing Arrangements.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects to Complaint Counsel's definition of Exclusive Dealing Arrangement and denies that it had any exclusive agreements. McWane also objects to Complaint Counsel's use of "free-riding" as vague and ambiguous. McWane further objects to this Request as seeking a legal conclusion, rather than an admission of fact or the application of law to fact. McWane also objects to this Request to the extent it improperly and prematurely calls for expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, and to the extent it understands this Request, McWane denies this Request.

38. The MDA between Respondent and Sigma did not lower the price of Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, McWane lacks sufficient information to admit or deny this Request and, thus, denies this Request. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. The MDA between Respondent and Sigma did not increase the output of Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. Subject to and without waiving its objections, McWane denies this Request.

40. Sigma, Star and Respondent together account for 90% or more of the sales in Imported Relevant Product in the United States.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objects to this Request as unspecified in time frame. Subject to and without waiving its objections,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. By way of further response,
[REDACTED]
[REDACTED]
[REDACTED]

41. In the first half of 2008, the costs of the raw materials used to Manufacture Imported Relevant Product were increasing faster than the costs of the raw materials used to Manufacture Domestic Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane further objections to this Request prematurely and improperly seeking expert opinion. Discovery of expert opinion in this case is governed by the Court's Scheduling Order, which provides for the exchange of expert reports and depositions of experts. After reasonable inquiry, McWane lacks sufficient information to admit or deny this Request as stated.

42. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical list prices.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request to the extent it seeks information beyond McWane's custody and control, and is more properly directed to third parties. McWane further objects to this Request as misleading,

argumentative, vague and ambiguous, because it does not identify a specific list price, does not define “nearly identical”, and does not account for all of the methods of discounting available to and employed by all of the competitors in the market.

43. In 2008, Respondent, Sigma and Star sold Imported Relevant Product pursuant to nearly identical multiplier maps.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request to the extent it seeks information beyond McWane’s custody and control, and is more properly directed to third parties. McWane further objects to this Request as misleading, argumentative, vague and ambiguous, because it does not identify a specific multiplier map, does not define “nearly identical”, and does not account for all of the methods of discounting available to and employed by all of the competitors in the market.

44. In January 2008, Respondent announced its intention to reduce or eliminate the Job Pricing it offered to customers.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, McWane denies this Request.

45. Job Pricing is a form of competition among or between Sigma, Star and Respondent.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. Job Pricing reduces the stability of pricing of Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as vague and ambiguous as to the undefined term “stability”, which has been used in different ways by different witnesses in this proceeding. Subject to and without waiving its objections, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. Job Pricing reduces the transparency of pricing of Relevant Product.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane also objects to this Request as vague and ambiguous as to the undefined term “transparency of pricing”. McWane further objects to this Request as vague and ambiguous in that it does not identify to whom the “transparency of pricing” is allegedly “reduce[d].” [REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a matter of common sense, selling at any price that is not published is less transparent to others than selling at a price that is published.

48. Respondent did not use data obtained from the DIFRA Information Exchange to manage its inventory.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel’s

characterization of DIFRA as an “Information Exchange.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections, McWane denies this Request.

49. Respondent did not use data obtained from the DIFRA Information Exchange to manage its production schedules.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel’s characterization of DIFRA as an “Information Exchange.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections, McWane denies this Request.

50. Respondent did not use data obtained from the DIFRA Information Exchange to reduce its costs.

RESPONSE/OBJECTIONS:

McWane incorporates by reference its General Objections. McWane objects, as misleading, argumentative, and assuming facts not in evidence, to Complaint Counsel's characterization of DIFRA as an "Information Exchange." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving its objections, McWane denies this Request.

/s. Joseph A. Ostoyich
Joseph A. Ostoyich
One of the Attorneys for McWane, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2012, I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward Hassi, Esq.
Geoffrey M. Green, Esq.
Linda Holleran, Esq.
Thomas H. Brock, Esq.
Michael L. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.

By: /s/ William C. Lavery
One of the Attorneys for McWane

CONFIDENTIAL EXHIBIT

REDACTED IN ENTIRETY

Exhibit C

Exhibit D

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
McWANE, INC.,)	DOCKET NO. 9351
a corporation, and)	
)	
STAR PIPE PRODUCTS, LTD.,)	
a limited partnership.)	
_____)	

**COMPLAINT COUNSEL’S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO RESPONDENT
McWANE, INC. (NUMBERS 1-23)**

REQUESTS FOR PRODUCTION

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §3.37, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that Respondent McWane, Inc. produce within 30 days all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests.

1. All financial statements, budgets, and other financial reports regularly prepared by or for the Respondent as a whole or any part thereof, including but not limited to, operating statements, balance sheets, income statements, profit and loss statements, cost center reports, statements of earnings, operating performance objectives, and productivity reports that Relate to any Relevant Product.
2. All Documents Relating to the Respondent’s or any other Person’s pricing Plans, pricing policies, pricing forecasts, pricing strategies, or any other pricing decisions Relating to any Relevant Product.
3. All Documents Relating to the price catalogues, list prices, multipliers, discounts, allowances, rebates, bids, or output of Respondent or of any Competitor that Relate to the sale of any Relevant Product, including but not limited to, any request for special pricing, project pricing, or job pricing.
4. All Documents Relating to the Respondent’s or any other Person’s Plans Relating to the sale or marketing of any Relevant Product, including but not limited to, business Plans, short term and long range strategies and objectives; budgets and financial projections; expansion

or retrenchment Plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors.

5. All Documents Relating to any Communications between Respondent and any other Competitor, or between and among any Competitors, Related to any Relevant Product, including but not limited to, letters, texts, e-mails, drafts, notes, diaries, calendars, appointment books, trip or travel logs, expense reports, receives, telephone logs, phone records, phone bills, and similar materials.

6. All Documents Relating to any Communications between Respondent and any other Competitor, or between and among any Competitor, Related to DIFRA, including but not limited to, e-mails, drafts, notes, diaries, calendars, appointment books, trip or travel logs, expense reports, receives, telephone logs, phone records, phone bills, and similar materials.

7. All Documents Sufficient to Show the title or position, last known home and work address, email address(es), and cellular and landline telephone number(s) for each current or former employee of Respondent. This request does not seek Documents or information Related to e-mail addresses or phone numbers that are solely for the personal use of the employee.

8. All Documents Relating to DIFRA, including but not limited to, the DIFRA Information Exchange.

9. All Documents since January 1, 2003, that Relate to any actual, potential, contemplated or proposed acquisition, joint venture, merger, or alliance by or among any Competitor.

10. All Documents that Relate to any actual, potential, contemplated or proposed sale or distribution Agreement of any Domestic Relevant Product by Respondent to any Competitor.

11. All Documents Relating to any actual, potential, contemplated, or proposed capital expenditures exceeding \$5,000 that Relate to the development, Manufacture, or distribution of any Relevant Product, and all Documents Relating to actual, potential, contemplated, or proposed expenditures for patterns, molds, and Related equipment, irrespective of cost.

12. All Documents that Relate to any compilation or publication by the United States Bureau of Labor Statistics ("BLS") or by any other third party of data pertaining, in whole or in part, to any Relevant Product, including all submissions of any data Relating to any Relevant Product to BLS for or on behalf of Respondent.

13. All Documents Relating to any Exclusive Dealing Arrangement, including but not limited to, Communication between Respondent and any other Competitor, or between Respondent and any distributor or customer.

14. All Documents that Relate to any form of competition in the Manufacture, importation, distribution or sale of any Relevant Product.

15. All Documents Relating to the actual, potential, contemplated or proposed Plan of Respondent or of any Competitor to begin, resume, expand, reduce, or discontinue the Manufacture, importation, sale or resale of any Relevant Product.

16. All Documents Relating to the ability of any Consumer to substitute any other product for any Relevant Product, including but not limited to, the impact that such substitution had or might have on any Competitor's decisions regarding price and output for any Relevant Product.

17. All Documents that Relate to the ability of any Consumer to substitute any Imported Relevant Product for any Domestic Relevant Product, including but not limited to, any waivers of any "Buy American" provisions, and any impact that such substitution had or might have on any Competitor's decisions regarding price and output for any Relevant Product.

18. All Documents that Relate to the Effect of any "Buy American" provision on Respondent's or on any Competitor's pricing, sale, output, profit, marketing, or cost of any Relevant Product.

19. All Documents Relating to the distribution of any Relevant Product, including but not limited to, Documents Relating to:

- a. the methods, channels, strategies, means, or policies of distributing any Relevant Product to wholesale distributors, contractors, or end users;
- b. the utility, efficiencies, cost savings, advantages or disadvantages in selling any Relevant Product through wholesale distributors;
- c. the ability, availability, or likelihood of any wholesale distributor to sell or distribute any Relevant Product to other wholesale distributors;
- d. the feasibility, utility, efficiencies, cost savings, advantages or disadvantages in any Competitor selling any Relevant Product directly to contractors or end users;
- e. any alternative channels of distribution for any Relevant Product actually or potentially available to any Competitor; and
- f. any wholesale distributor that does not distribute the Company's Relevant Products.

20. All Documents Sufficient to Show the name and address of all distributors to whom the Company sells any Relevant Product, and the amount (in tons and in dollars) of Domestic Relevant Product and Imported Relevant Product sold to each distributor.

21. All Documents that Relate to Respondent's estimated and actual costs, at the production facility (plant) level, of producing or manufacturing each Relevant Product, including all fixed and variable cost inputs such as the quantity and unit cost of materials, direct labor

inputs, direct energy inputs, and any other cost of manufacturing incurred to produce a unit of any Relevant Product. For any allocated or shared costs, produce all Documents detailing the allocation and itemization of the costs so allocated or shared.

22. All Documents that Relate to any allegation, investigation, lawsuit, or settlement Relating to any claim that any Competitor violated the Federal Trade Commission Act, or any federal, state, or foreign antitrust law, in connection with the Manufacture, sale, marketing, or provision of any Relevant Product.

23. All Documents identified by the Company in its responses to Interrogatories in this litigation.

DEFINITIONS

1. The terms “McWane,” “Company” or “Respondent” mean Respondent McWane, Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
2. The terms “Agreement” or “Contract” mean any oral, written, or implied contract, arrangement, understanding, or Plan, whether formal or informal, between two or more Persons, together with all modifications or amendments thereto.
3. The terms “and” and “or” have both conjunctive and disjunctive meanings.
4. The term “Communication” means any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
5. The term “Competitor” means each and every Person actually or potentially engaged in the Manufacture or importation of any Relevant Product for sale or resale within the United States, including without limitation, McWane, Star, Sigma, and Serampore Industries Private, Ltd.
6. The term “Computer Files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Respondent should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Respondent believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission’s need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission

representatives identified on the last page of this request. The Commission representative will consider modifying this instruction to:

- a. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Respondent;
 - b. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or
 - c. include other proposals consistent with Commission policy and the facts of the case.
7. The term “Containing” means containing, describing, or interpreting in whole or in part.
 8. The term “DIFRA” means the Ductile Iron Fittings Research Association, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives.
 9. The term “DIFRA Information Exchange” means the submission, aggregation, transmittal and receipt of sales information Relating to any Relevant Products through DIFRA.
 10. The terms “Discuss” or “Discussing” mean in whole or in part constituting, Containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that “Discusses” another document includes the other document itself.
 11. The term “Documents” means all Computer Files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Respondent. The term “Documents” includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or Relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that Person’s files; and copies of documents the originals of which are not in the possession, custody, or control of the Respondent.

Unless otherwise specified, the term “Documents” excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural Plans and engineering blueprints; and (c) documents solely Relating to environmental, tax, human resources, OSHA, or ERISA issues.

12. The term “Documents Sufficient to Show” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
13. The term “Domestic Relevant Product” means any ductile iron pipe fitting, of any size, shape or configuration, as well as accompanying accessories, lining and coating, that was Manufactured or otherwise produced within the United States.
14. The terms “each,” “any,” and “all” mean “each and every.”
15. The term “Effect” means the actual, intended, forecast, desired, predicted, or contemplated consequence or result of an action or Plan.
16. The term “Exclusive Dealing Arrangement” includes any proposed or actual Agreement, arrangement, policy, program, or practice of McWane or Sigma (i) that requires any customer to refrain from purchasing or to limit its purchases of any Relevant Products of any Competitor, (ii) that conditions the provision of any benefit to any customer on refraining from or limiting its purchases of any Relevant Products of any Competitor, (iii) that threatens the imposition of any adverse consequences for any customer that purchases or does not limit its purchases of any Relevant Products from any Competitor, or (iv) that extends a benefit to a customer for purchasing a certain dollar amount, quantity, or percentage of any Relevant Product from McWane or Sigma.
17. The term “Imported Relevant Product” means any ductile iron pipe fitting, of any size, shape or configuration, as well as accompanying accessories, lining and coating, that was Manufactured or otherwise produced outside of the United States.
18. The terms “Manufacture” or “Manufacturer” includes a Person’s use of their own productive assets as well as the productive assets of any other Person, including contracting for the use of those assets.
19. The term “Person” includes the Company, and means any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.
20. The terms “Plan” or “Plans” mean tentative and preliminary proposals, strategies, recommendations, analyses, reports, or considerations, whether or not precisely formulated, finalized, authorized, or adopted.
21. The terms “Relate” or “Relating to” mean in whole or in part Discussing, constituting, commenting, Containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to. The term “Relevant Product” means both Domestic Relevant Products and Imported Relevant Products, and either of these individually. In response to a Specification calling for the production of Documents concerning the Relevant Products,

produce Documents that contain the specified information for either or both of the Relevant Products, stated separately as applicable.

22. The term “Sigma” means Sigma Corporation, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
23. The term “Star” means Star Pipe Products, Ltd., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.

INSTRUCTIONS

1. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from **January 1, 2007, to the present**. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve month period covered, and provide the Company’s best estimate of calendar year data.
2. Respondent need not produce responsive documents that Respondent has previously produced to the Commission in relation to the prior investigation, FTC No. 101-0080. **Respondent must produce all other responsive documents, including any otherwise responsive documents that may have been produced by Respondent to the Commission in relation to any other investigation conducted by the Commission.**
3. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by the Respondents up to forty-five (45) calendar days prior to the date of the Company’s full compliance with this request.
4. Forms of Production: the Respondent shall submit documents as instructed below absent written consent signed by Complaint Counsel.
 - (1) Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:

- (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
 - (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and
 - (c) Submit all hard copy documents in image format accompanied by OCR.
- (2) For each document submitted in electronic format, include the following metadata fields and information:
- (a) For loose documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;
 - (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
 - (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and
 - (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
- (3) If the Respondent intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this request, or if the Company's computer systems contain or utilize such software, the Respondent must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Respondent may use such software or services when producing materials in response to this request.
- (4) Submit electronic files and images as follows:

- (a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
 - (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and
 - (c) All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this request.
- (5) All documents responsive to this request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and
 - ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
 - (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Respondent must submit the original document, a like-colored photocopy, or a JPEG format image);
 - (d) Shall be marked on each page with corporate identification and consecutive document control numbers;

- (e) Shall be accompanied by an affidavit of an officer of the Respondent stating that the copies are true, correct and complete copies of the original documents; and
 - (f) Shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that Person's documents, and if submitted in paper form, the box number Containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.
- 5. If any documents are withheld from production based on a claim of privilege, the Respondent shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
- 6. If the Respondent is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Respondent to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Respondent to make an estimate, provide an explanation.
- 7. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but the Respondent has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 8. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Thomas H. Brock at (202) 326-2813. The response to the request shall be addressed to the attention of Thomas H. Brock, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

February 21, 2012

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CERTIFICATE OF SERVICE

This is to certify that on February 21, 2012, I served via electronic mail delivery a copy of the foregoing document to:

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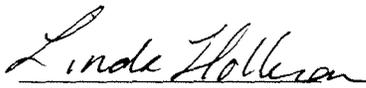
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