



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Headquarters

1200 New Jersey Avenue S.E.  
Washington DC 20590

DEC 18 2015

Phillip A. Washington  
Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012-2952

Peter Urquhart  
President/CEO  
Rocla Concrete Tie, Inc.  
1819 Denver West Drive  
Lakewood, CO 80401

Re: *Buy America Compliance of Concrete Railroad Ties for Use on Crenshaw/LAX Project*

Dear Messrs. Washington and Urquhart:

This letter responds to the request of Rocla Concrete Tie, Inc. (Rocla), dated September 10, 2015, for reconsideration of my August 14, 2015, letter to the Los Angeles County Metropolitan Transportation Authority (LACMTA) regarding the Buy America compliance of concrete ties Rocla provided for the LACMTA's Crenshaw/LAX Project. In that letter I concluded that shoulders embedded into concrete ties manufactured by Rocla are components of the concrete tie, and therefore, must be manufactured in the United States in compliance with Federal Transit Administration (FTA) Buy America requirements.

Appendix A to Section 661.3 of FTA's Buy America regulation (49 CFR Part 661) lists railroad ties as a "manufactured end product." This classification is based on the manufacturing processes on conventional wooden railroad cross-ties and their manner of procurement. Typically, wooden ties are manufactured at a facility separate from the rail site and delivered to the site as complete and intact products that need no further alteration in form or function prior to their installation. In addition, transit agencies routinely procured wooden ties independently from the metal spikes and tie plates that hold the rails in place. Accordingly, FTA regards wooden ties as a manufactured end product.

FTA is aware of more modern and complex rail fastening methods in which a clip, shoulder, pad, and insulator are considered "components" of a rail fastening system. As I discussed in my August 14 letter, FTA typically treats such ties and rail fastening devices as separate

manufactured end products where each is produced by a different manufacturer, each comes with a separate warranty, and each is procured independently from one another.

As Rocla further explained in its request for reconsideration, however, the shoulder it used for the LACMTA project was not provided to Rocla by the fastener system manufacturer. Instead, Rocla was required to acquire specific shoulders that were compatible with the fastener system selected by LACMTA and pre-install them in the concrete ties at Rocla's manufacturing facility, making them a permanent part of the tie itself, rather than a component of the fastener system.

Because of the interaction between the tie, shoulder and the designated fastener system, I agree with Rocla's request to treat the concrete tie not as a stand-alone manufactured end product, but rather, a component of a much larger concrete tie-based fastening system. A "system," as defined in 49 CFR § 661.3, is:

[A] machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warranted); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts).

Based on my review of the request for reconsideration and the additional information provided by Rocla, including the diagrams Rocla provided showing how the concrete tie interconnects with the fastener system, I agree with your assertion that the concrete tie is a component of a concrete tie-based fastening system in which the tie-mounted shoulder works in conjunction with the loose clips, mounts, and insulating pads to secure the rails to the tie. Because the shoulders have been permanently incorporated into the ties during the manufacturing process, they are not separate components; rather, they are subcomponents of the concrete ties and are not required to be sourced domestically. 49 CFR 661.5(d).

This interpretation is consistent with the position taken by FTA's sister mode, the Federal Railroad Administration (FRA), in its June 6, 2013, letter to the Illinois Department of Transportation regarding the concrete tie system used by the Union Pacific railroad in the Chicago-St. Louis High-Speed Rail Improvement Program, in which FRA determined that components of the concrete tie system consisted of the concrete tie, two proprietary pad assemblies, and the integrated clips. The four metal shoulders embedded in the tie, in turn, were considered subcomponents of the concrete tie.

Thank you for taking the time to explain Rocla's position. Please feel free to contact Assistant Chief Counsel for General Law, Cecelia Comito, at 202-366-2217 or [Cecelia.comito@dot.gov](mailto:Cecelia.comito@dot.gov) if you have further questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Dana C. Nifosi', written in a cursive style.

Dana C. Nifosi  
Deputy Chief Counsel

cc: Samuel Mayman Executive Officer, Engineering, Crenshaw/LAX Project  
Ray Tellis, FTA Los Angeles Metropolitan Office