

April 27, 2010

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

As the Environmental Protection Agency (EPA) moves forward to re-promulgate Clean Air Act regulations for industrial, commercial and institutional boilers vacated by the U.S. Court of Appeals for the DC Circuit in 2007 (the "Boiler MACT"), I ask you to use the Agency's flexibility to adopt different standards for different types of boilers rather than a one-size-fits-all approach. If the EPA does not utilize its flexibility in this area, I am concerned about the potential impact such regulations could have on boilers utilized by thousands of small and mid-size businesses already hard hit by the recession. I am especially concerned with the impact on the wood products industry which has been dramatically affected by the downturn in the housing and construction markets.

Under the Clean Air Act, EPA is charged with setting emissions standards for hazardous air pollutants based on the best performing, lowest emitting technology available and in use. In vacating the Boiler MACT regulations, the court indicated that its principal concern lay with EPA's errors in defining solid and industrial waste and the implications of that definition on determining which emissions sources would be regulated under the Boiler MACT and which sources would be regulated under EPA's related rulemaking on incinerators (CISWI rule). I hope that you reaffirm that the wide variety of biomass residuals used by the forest products industry, such as bark and wood panel trim, remain classified as fuels when you define non-hazardous solid wastes for the first time.

Under the court's order, EPA continues to have latitude in how it establishes regulations for boilers including the ability to adopt categories and subcategories of boilers that mirror actual use and practice in the wood products industry and others. For example, EPA could distinguish between wet and dry biomass given their different combustion characteristics or salt laden wood common to Oregon coastal areas. As you know, EPA's ability to use of subcategories in setting maximum achievable control technology (MACT) requirements was highlighted in a related case involving the brick and ceramic industries (the Brick MACT). In his concurring opinion in that case, Senior Court Judge Williams specifically noted the ability of the EPA to develop MACT requirements for categories and subcategories of sources.

I have been and continue to be a strong advocate for the Clean Air Act and the other core environmental statutes that your agency is charged with implementing. I urge you to carefully consider the agency's regulatory options within the structure of the Act and take into account the unique circumstances of boilers used in the wood products industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Wyden', with a long, sweeping flourish extending to the right.

Ron Wyden  
United States Senator

cc: Gina McCarthy, Environmental Protection Agency