United States Senate
WASHINGTON, DC 20510

September 24, 2010

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our concern about the EPA's proposed Maximum Achievable Control Technology (MACT) rules, including the so-called Boiler MACT and CISWI MACT, which were published in the Federal Register on June 4, 2010. As our nation struggles to recover from the current recession, we are deeply concerned that the pending Clean Air Act boiler MACT regulations could impose onerous burdens on U.S. manufacturers, leading to the loss of potentially thousands of high-paying jobs this sector provides. As the national unemployment rate hovers around 10 percent, and federal, state, and municipal finances continue to be in dire straits, our country should not jeopardize thousands of manufacturing jobs. The flow of capital for new investment and hiring is still seriously restricted, and the projected cost of compliance could make or break the viability of continued operations. Both small and large businesses are vulnerable to extremely costly regulatory burdens, as well as municipalities, universities and federal facilities.

The EPA's regulatory analysis understates the significant economic impacts of the proposed rule. For example, the impact will be substantial to small businesses, such as sawmills, which have large boilers. In addition, EPA has concluded that no additional large biomass fired boilers will be built in the United States, indicating the cessation of the domestic biomass industry. As a result, we are rightly concerned that the proposed standards appear to create serious obstacles to the development of biomass energy projects, which have the potential to significantly reduce air pollution and production of greenhouse gases. Further, we are concerned that if adopted as currently proposed, the boiler MACT rules would discourage the current use of wood biomass in wood, pulp, and paper facilities, and most likely result in significant job losses in these industries. While we support efforts to address serious health threats from air emissions, we also believe that regulations can be crafted in a balanced way that sustains both the environment and jobs.

In Section 101 of the Clean Air Act, Congress declared that one of the fundamental purposes of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Congress provided EPA with discretion in certain areas to carefully design regulations that protect health and the environment while promoting the productive capacity of the nation. We are writing today to ask that you exercise this discretion in completing the MACT rulemakings. We understand that the Boiler MACT rule alone could impose tens of billions of dollars in capital costs at thousands of facilities across the country. The CISWI rule would have devastating impact on the biomass industry. Thus, we appreciate your willingness, as expressed in your

responses to previous Congressional letters, to consider flexible approaches that appropriately address the diversity of boilers, operations, sectors, and fuels that could prevent severe job losses and billions of dollars in unnecessary regulatory costs.

To help reduce the burden of the rule in a manner that does not compromise public health and safety, we believe EPA should consider exercising the "health threshold" discretion that Congress provided under Section 112(d)(4) of the Act. Under this section of the law, for emissions that are considered safe to human health in concentrations that fall below an established threshold, EPA may use this risk information to set emissions standards. In reaching your final decision, we ask that you carefully consider the extensive record that supported the Agency's determination to include health-based emissions limitations for hydrogen chloride and manganese in the previous Boiler MACT rulemaking that was set aside by the reviewing court on wholly unrelated grounds.

EPA also should use a method to set emissions standards that are based on what real world best performing units actually can achieve. It is our understanding that the EPA emissions database does not truly reflect the practical capabilities of controls or the variability in operations, fuels and testing performance across the many regulated sectors and boilers, especially in light of the proposal's reliance on surrogates, such as carbon monoxide – a pollutant with wide variability in actual boiler operation especially from biomass-fired boilers. In addition, the Clean Air Act also provides EPA with broad discretion to subcategorize within a source category based on size, type and class of source to help ensure that the emission limitations are determined based on what real world best performing units can ultimately achieve in practice. We do not believe that EPA has fully exercised its responsibility to subcategorize the numerous types and combinations of boilers and fuels. In particular, we urge you to carefully consider how the regulations can promote energy recovery from renewable, alternative fuels such as biomass. Finally, we urge you to consider how work practices for all gas-fired units, such as biogas and land fill gas fired boilers, could avoid the increase in emissions (e.g., NOx and CO2) and energy use that would result from the numerous control technologies required with no guarantee of actually achieving the emission limits.

As EPA turns to developing final MACT rules, we hope you will carefully consider these recommendations and comments to protect the environment and public health while fostering economic recovery and jobs.

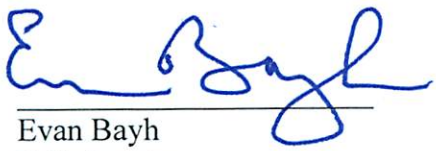
Sincerely,

Mary L. Landrieu
U.S. Senator

Susan M. Collins
U.S. Senator

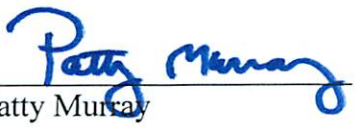
Ron Wyden
U.S. Senator

Lamar Alexander
U.S. Senator

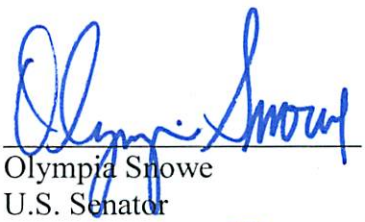


Evan Bayh
U.S. Senator

George V. Voinovich
U.S. Senator

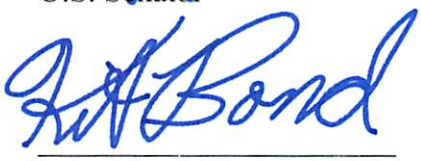


Patty Murray
U.S. Senator



Olympia Snowe
U.S. Senator

Blanche Lincoln
U.S. Senator

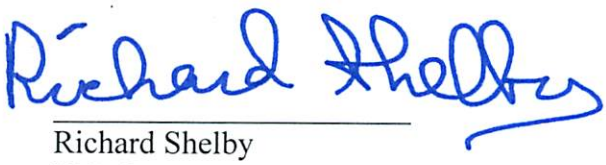


Kit Bond
U.S. Senator

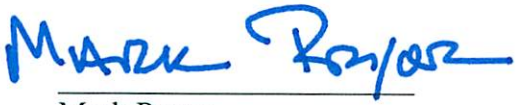
Robert Casey
U.S. Senator

Bob Corker
U.S. Senator

Amy Klobuchar
U.S. Senator



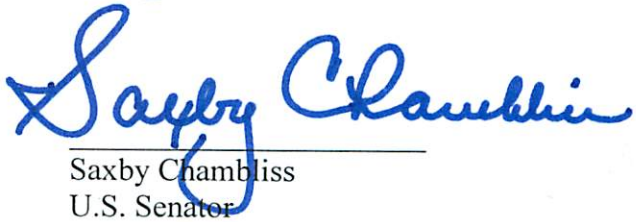
Richard Shelby
U.S. Senator



Mark Pryor
U.S. Senator

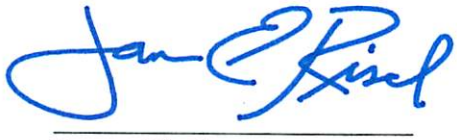
Roger Wicker
U.S. Senator

Mark Begich
U.S. Senator



Saxby Chambliss
U.S. Senator

Claire McCaskill
U.S. Senator



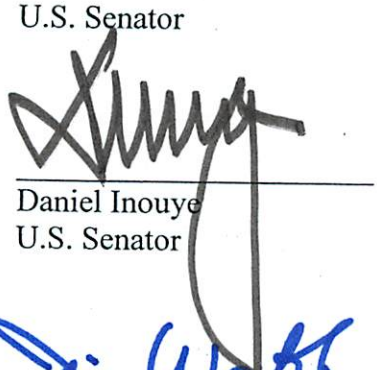
James Risch
U.S. Senator

Mark Warner
U.S. Senator

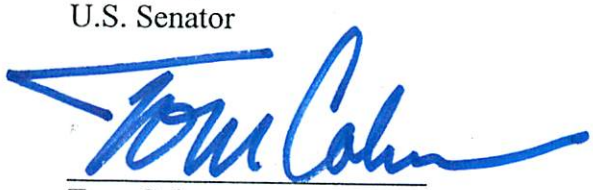
Richard Burr
U.S. Senator

Barbara Mikulski
U.S. Senator

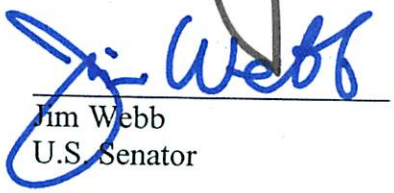
Mike Crapo
U.S. Senator



Daniel Inouye
U.S. Senator

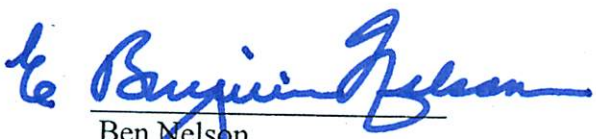


Tom Coburn
U.S. Senator



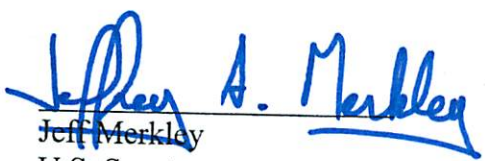
Jim Webb
U.S. Senator

Jeff Sessions
U.S. Senator



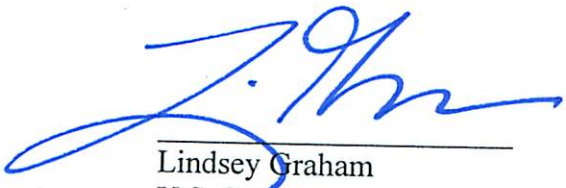
Ben Nelson
U.S. Senator

James Inhofe
U.S. Senator

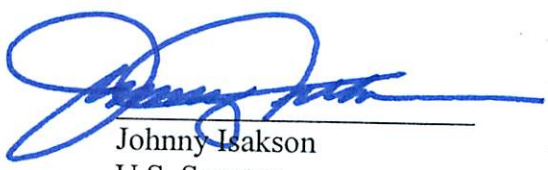


Jeff Merkley
U.S. Senator

Thad Cochran
U.S. Senator

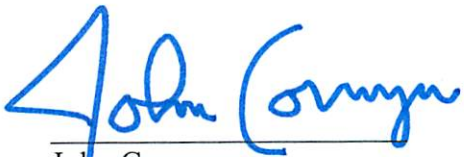


Lindsey Graham
U.S. Senator



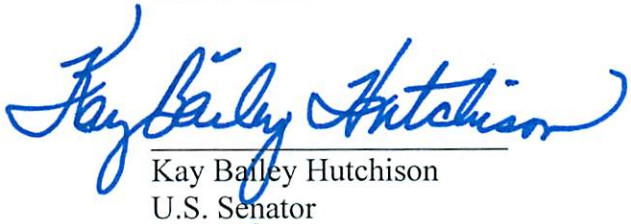
Johnny Isakson
U.S. Senator

Herb Kohl
U.S. Senator

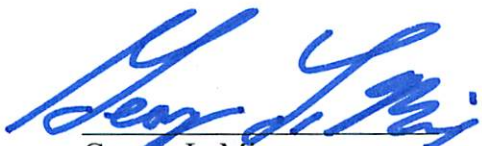


John Cornyn
U.S. Senator

David Vitter
U.S. Senator

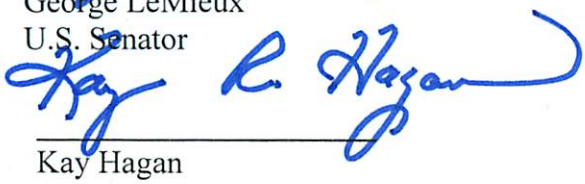


Kay Bailey Hutchison
U.S. Senator



George LeMieux
U.S. Senator

Scott Brown
U.S. Senator



Kay Hagan
U.S. Senator

cc: Regina McCarthy, Environmental Protection Agency
Robert Perciasepe, Environmental Protection Agency
Cass Sunstein, Office of Management and Budget
Thomas Vilsack, Department of Agriculture
Gary Locke, Department of Commerce
Lawrence Summers, National Economic Council
Jeffery Zients, Acting Director, Office of Management and Budget
Ron Bloom, Department of the Treasury
Nicole Lamb-Hale, Department of Commerce
Melody Barnes, Domestic Policy Council
James Messina, Executive Office of the President
Philip Schiliro, Executive Office of the President
Cecilia Munoz, Executive Office of the President