STATE OF ARKANSAS
MIKE BEEBE
GOVERNOR

August 19, 2010

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W
Washington, DC 20460

Dear Administrator Jackson:

I am writing to express my concern about the proposed Boiler MACT rule – the Maximum Achievable Control Technology rule for industrial, commercial and institutional boilers and process heaters – that was published on June 4, 2010. As Arkansas strives to recover from the current recession, I am deeply concerned that the potential impact of the EPA's proposed rule could be unsustainable for Arkansas manufacturing, particularly for the forest-products sector and the high-paying jobs it provides. I understand the Boiler MACT rule could impose tens of billions of dollars in capital costs at thousands of facilities across the country. Both small and large businesses are vulnerable to the extremely costly regulatory burdens under the Boiler MACT, as are municipalities, universities, government facilities, and commercial entities.

As our state's unemployment rate has risen, I fear that enacting stringent federal Boiler MACT rules could jeopardize more good-paying jobs across the manufacturing sector. The Arkansas forest products industry alone generates $7.7 billion in revenue and employs more than 29,000 individuals, but the industry continually to thrive in this economy. The flow of capital for new investment and hiring is still seriously restricted, and the estimated costs of the proposed rule to the Arkansas forest products industry (which they feel is significantly underestimated and could be over $390 million) could make or break the viability of continued operations.

While I strongly support efforts to address serious health threats from air emissions, I feel that where no risk to public health is posed, regulations should be crafted in a balanced way that sustains both the environment and jobs. And I believe the federal Clean Air Act provides that flexibility. Section 112(d)(4) of the Clean Air Act allows the EPA to consider health threshold levels with a margin of safety in establishing emission standards for pollutants.

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The EPA's proposal asks for comment on an approach that would allow facilities to demonstrate that emissions of certain pollutants do not pose a public health threat. I appreciate your willingness to consider flexible approaches that appropriately address the diversity of boilers, operations, sectors, and fuels that can prevent severe job losses and billions of dollars in unnecessary regulatory costs. Unfortunately, EPA's proposal concludes that the use of the authority under Section 112(d)(4) of the Clean Air Act is discretionary, and the EPA does not support its use in the Boiler MACT. While it is appropriate for improvements in technology to drive pollution controls to achieve cleaner and healthier air, EPA should not lose sight of the fact that, requiring cleaner emissions that provide no benefit to public health is counter-productive for our economic development, especially in light of the current recession our country is facing. I believe that Section 112(d)(4) reflects Congress's intent to provide flexibility where there is no public health threat, and I believe it makes sense to adopt that approach in the final rule for threshold substances, i.e. pollutants associated with using biomass as an alternative fuel.

We understand that it is often difficult for the EPA to consider and address broad environmental effects when dealing with specific media-related rulemaking. However, I feel that the time is ripe with this rulemaking to do just that. The EPA has promoted the development of alternative energy sources for a number of reasons, including the protection of air quality. Unfortunately, when one looks at EPA's specific rulemaking, the impact has been to discourage that very goal. This proposed rule is an example.

Arkansas has considered the overall impact to the environment of energy production in our State. We have identified and promoted biomass as a legitimate and readily available alternative energy source. Many of the boilers in Arkansas that will be affected by this rule use biomass as a fuel source. Biomass is a readily available "waste" product in Arkansas. Using this "waste" as a fuel source eliminates many environmental issues that would otherwise have a crippling effect on this State and its citizens. The overly stringent requirements for biomass-fueled boilers that do not pose a health risk, as addressed in the proposed rule, could very likely force these facilities to convert from biomass as a fuel to natural gas, due to the costs related to monitoring and compliance demonstrations. The elimination of biomass as an alternative energy source would have a cascading impact on the State and the environment by this material either being abandoned or by forcing the disposal of this heretofore useable commodity in landfills or incinerators. Although the Clean Air Act does not specifically require it, we assert that the overall impact to the environment through cross-media transfer of pollutants from the air to the land and water, resulting from the storage and disposal of biomass, should be properly evaluated and addressed prior to finalization of this Boiler MACT. This is simply sound public policy.

As the EPA turns to developing a final Boiler MACT rule, I hope that you will carefully consider sustainable approaches that protect the environment and public health while fostering economic recovery and jobs within the bounds of the law. We encourage the EPA to utilize the discretion granted by Congress to establish reasonable emission standards based on health thresholds (Clean Air Act, Section 112(d)(4)) or, in the alternative, allow for an optional standard on a site-specific basis if supported by a health-risk assessment. Further, I request that EPA consider more broadly the environmental consequences of this rulemaking. Thank you for consideration of these views.

Sincerely,

Mike Beebe

MB:jb