

Statement of Dirk J. Krouskop
Vice President, Safety, Health and Environment, MeadWestvaco
House Subcommittee on Energy and Power
Hearing on Recent EPA Rulemakings Relating to Boilers,
Cement Manufacturing Plants, and Utilities.
April 15, 2011

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, my name is Dirk Krouskop and I am the Vice President of Safety, Health and Environment with MeadWestvaco. Thank you for the opportunity to testify on this very important issue to MeadWestvaco, the manufacturing sector in general and its employees.

MeadWestvaco is a global leader in the packaging industry, with annual revenues of \$6 billion, producing high quality paperboard and plastic packaging for consumer products used by many major brands worldwide. We also are the leader in school and office supplies. Finally, we operate a specialty chemical business which utilizes forest byproducts to produce materials used in auto emission controls and road paving.

Approximately half of our 17,500 employees are based in the United States where we have facilities in 25 states. We also operate in 30 countries and market our products to customers in more than 100 nations worldwide. Across all of our businesses we work hard to be leaders in sustainability. At MeadWestvaco, we are very proud of our record which includes recognition as the Dow Jones Sustainability Index global leader in the containers and packaging segment for the past 6 years. MeadWestvaco was also named to the Carbon Performance Leadership Index in 2010, the first year of its existence, by the Carbon Disclosure Project. We were one of only fourteen S&P 500 companies who have demonstrated commitment to strategy, governance, stakeholder communications and carbon emissions reduction. We are proud of our accomplishments ---from our forests to plants and offices to the communities in which we live and operate. This is a core value that we embrace in all we do.

MeadWestvaco is also affiliated with several organizations whose member companies have significant interest in the topic of today's hearing, including the American Forest and Paper Association (AF&PA), the Industrial Energy Consumers of American (IECA), the National Association of Manufacturers (NAM) and the Council of Industrial Boiler Owners (CIBO). Today I am here to testify on behalf of MeadWestvaco, focusing on the Boiler MACT rules and the associated regulatory burden and costs to manufacturing companies, especially those who operate biomass and coal fired boilers such as those prevalent in the forest products industry. I am also here to share the concerns of the National Association of Manufacturers regarding the Boiler MACT rules. The NAM reports that the EPA's final Boiler regulation would apply to nearly all sectors of the association's membership, including the chemical, auto, metalworking and petroleum refining sectors. These new standards for industrial boilers would have an immediate negative impact on these manufactures' global competitive position and impede the ability of these companies to create jobs at this critical juncture of recovery for the American economy.

We applaud this subcommittee and others for taking seriously the role of oversight of the Agency's implementation of the laws that Congress has enacted. Although environmental legislation has produced significant improvements in air and water quality, many of these laws were enacted decades ago. Over the many years since enactment, business in our sector has become increasingly global in nature and now much of our competition comes from overseas.

A key issue for this committee's consideration is the cumulative effect of the many new regulations which confront manufacturers nearly simultaneously. Under the Clean Air Act alone, the forest products sector is currently facing over twenty new regulations, including Boiler MACT, which will have a dramatic impact on the cost structure and thus the long term viability of many facilities within our industry. It also needs to be noted that as we look ahead it can be reasonably predicted that complying with one rule could be contradictory to what will be required to comply with another subsequent rule. For example, taking the necessary steps to comply with the Carbon Monoxide standard recently issued under Boiler MACT could put in jeopardy compliance with NOx emission limits in effect today and those more stringent standards contemplated in the future. This example is simply about compliance with emission standards. Needless to say the costs, both operating and in potential capital that could ultimately become stranded, are significant.

Attached to this testimony is a diagram of Clean Air Act regulations in EPA's pipeline that will affect forest products industry manufacturing facilities. Other manufacturing sectors would produce a similar diagram. I should note that the Appendix to this statement also includes many other areas of concern, including EPA regulations on waste, greenhouse gases, and water.

In most cases identified below, significant capital investment will be required for equipment needed to meet the regulation. This diverts scarce capital that might otherwise go to growth in manufacturing capacity and the attendant production of jobs. The suite of potential clean air regulations could well discourage the expansion or upgrade of existing forest products industry facilities in the U.S.

State of the Industry

The U.S. forest products industry – both paper and wood products-- has struggled with trying economic times for more than a decade. Since 2006, the forest products industry has lost 31 percent of its workforce-- nearly 400,000 high-paying jobs which are located primarily in small rural communities that can least afford the employment losses.

U.S. production of paper and paperboard declined 10% between 2007 and 2010. While we experienced some rebound in market demand in 2010, the decline reflects the still-weak economy, competition from overseas, and cost pressures, including government regulations.

As a result, the paper industry has earned its cost of capital in only two of the past ten years, and has been forced to restructure to meet global competitive pressures. Paper and allied products industry employment has declined by 58,000 positions, equal to 13

percent of the industry's workforce as 52 paper mills have permanently closed their doors just since 2007.

According to a research paper by the Economic Policy Institute, for every 100 paper industry jobs, an additional 325 jobs are sustained in other industries resulting from the purchase of supplies and the re-spending of worker incomes.¹ Hence, the 58,000 jobs lost in the paper industry suggest total job losses inside and outside the industry of over 250,000.

The wood products side of the industry is also facing huge economic challenges due to the collapse of homebuilding, the leading end-use market for wood building products. Employment in the wood products manufacturing sector has declined by 31 percent (152,000 jobs) since the end of 2007, and by 45 percent (280,000 jobs) since the end of 1999. It will likely take years for wood product markets to fully recover.

Since many wood and paper mills are located in rural areas where these high-paying jobs cannot be replaced, the effect of these job losses on local rural communities can be especially devastating. The closure of a mill in a small town has an enormous ripple effect when that mill is the largest employer and a major contributor to local taxes and community civic programs.

The job losses that have occurred in the forest products industry represent only a portion of the total loss of manufacturing jobs in the United States over the past decade. In the period 2000 through 2010, there was a loss of 5.7 million manufacturing jobs. In other words, the Nation has one-third fewer manufacturing jobs today than existed in 2000. Using a simple three to one ratio of non-manufacturing jobs created for every one manufacturing job, nearly 23 million jobs were lost to the American economy over the past decade. A chart which shows the historical trend in manufacturing job losses in the United States over the past ten years is attached to this testimony.

Government regulations that are not cost-effective exacerbate what is already a bad situation. For instance, a recent study conducted for AF&PA by Fisher International concluded that several upcoming Clean Air rules other than Boiler MACT would cause 62 additional mills to close and 26,778 paper industry jobs to be lost. If supplier jobs and jobs associated with the re-spending of worker incomes are included, total job losses could reach nearly 114,000. Moreover, the recently announced "final" boiler MACT rules would likely cause thousands of additional job losses in the forest product industry and its related supply chain.

Job losses due to regulations can have long-term impacts on workers' lives as well as on the U.S. economy. Economist Jacob Kirkegaard of the Peterson Institute for International Economics observed that workers' skills atrophy as a result of unemployment because they are less able to keep up with developments in their field.

¹ Economic Policy Institute, "Updated Employment Multipliers for the US Economy" (2003).

And if the worker shifts to a new field, the human capital associated with the former occupation may wind up being of little or no use.²

The Boiler MACT Rules

The “Boiler MACT” is a regulation issued under the Clean Air Act Amendments of 1990. The statute requires that EPA regulate hazardous air pollutants from emission sources, including industrial boilers, using maximum achievable control technology (“MACT”). Boilers use various fuels at industrial, commercial and institutional facilities to generate steam, heat, and/or electricity to power essential manufacturing processes.

On March 21, EPA published in the Federal Register the final Boiler MACT rule and three related rules.³ The new Boiler MACT regulation is a replacement for an earlier regulation that was vacated in 2007 when a court determined that elements of the rule were flawed. EPA then entered into a consent decree with Sierra Club which put in motion the complete rewrite of the rule. In June 2010, EPA issued a proposed version of the regulations that more than 260 elected officials publicly called on EPA to change significantly to make the rule achievable and affordable for facilities that support family-wage jobs across the country.

Although there were some improvements from the proposed rules, the final rules are still a long way from being achievable or affordable for our industry. Although most boilers already are well controlled for key pollutants, EPA’s Boiler MACT rule will require more than 90% of boilers to make significant changes. For the forest products industry, our initial capital cost estimate of the final rule is well over \$3 billion. By comparison, forest product industry pre-tax profits averaged \$3.6 billion from 2008-2010. Unfortunately, as technical experts delve deeper, their concerns about achievability and affordability have only grown. For example, while the limits for mercury and hydrochloric acid became more reasonable for biomass boilers since the proposed rule, the carbon monoxide limits for stoker fired biomass boilers actually became more stringent. When burning wet biomass, it will be very challenging, even with the combustion improvements EPA assumes necessary, to meet the more stringent limits.

The final rule still inadequately accounts for the tremendous variability among boilers. EPA continues to ignore what real-world, best performing boilers can achieve over the range of normal operating conditions. For example, the new boiler limits are so stringent that the only viable fuel from the perspective of being able to guarantee compliance with emissions limits will be natural gas. The rule should ensure that limits

² (See ‘Economists Suggest Long-Term Unemployment Holds Hidden Dangers,’ 11/19/2010) www.job.com/career-advice/employment-news/economists-suggest-long-term-unemployment-holds-hidden-dangers.html

³ In addition to Boiler MACT, EPA is finalizing three related rules: the Commercial and Industrial Solid Waste Incinerator (CISWI) rule (setting limits for non-hazardous solid waste incinerators); the definition of Non-Hazardous Secondary Materials (a Resource Conservation Recovery Act rule determining which materials are wastes and thus covered under the CISWI rule when burned); and Boiler GACT (Generally Achievable Control Technology for boilers at smaller sites).

are technically achievable, that new boilers are encouraged to use a broad range of fuels and that new investment in state-of-the-art boilers is not inhibited.

We think EPA made the right choice in relying on cost-effective work practices for more boilers in the final rule, such as gas units, biomass boilers at small mills and back-up boilers, providing an affordable way to reduce emissions. However, the rule should have set flexible work practices for certain organic compounds as well. Several of these compounds are very hard and expensive to measure, their formation highly variable, and methods for control are poorly understood. The industry is not certain that it can even measure dioxin at the extremely low limits being imposed, let alone control for it.

Congress gave EPA the authority in section 112(d)(4) of the Clean Air Act to set alternative standards for pollutants with health thresholds in cases where the regular MACT limits may be “far more stringent than necessary to protect public health...”. Boiler MACT is exactly the type of situation Congress had in mind when giving EPA this authority. This rule covers boilers used in numerous industries and in a wide variety of applications and settings. The economics of each setting vary significantly and impact a broad cross section of the economy. Although Congress provided EPA with the statutory authority to target and adjust controls for certain emissions where risks are low, EPA has failed to use this authority despite repeated requests by hundreds of members of Congress, Governors and stakeholders.

Any reservations about setting health based emission limits have been addressed in public comments. AF&PA provided toxicological verification that several of the pollutants have health effect thresholds and suggested a way to account for any additive effects among these pollutants. The Association also challenged EPA’s perspective that any risk assessments must look beyond the boilers covered in this regulation. Smaller, older biomass boilers in economically distressed sectors can’t afford unnecessary state-of-the-art controls without putting continued operations and thus jobs at risk. If EPA provides a health based emission limitation for threshold pollutants such as manganese and hydrogen chloride that is set for each qualifying facility, then costs could be significantly reduced while still protecting public health. Alternatively, separate subcategories could be adopted with reasonable limits to avoid putting facilities at risk of closure.

Moreover, as more fully described below, in its final Non-Hazardous Secondary Materials rule, EPA has created a confusing and inappropriate definition for secondary materials that are solid wastes (rather than fuels) when burned, shifting many boilers under the more onerous Incinerator MACT, known as the CISWI rule. This also will cause various renewable biomass residuals to be classified as “solid waste,” resulting in them being landfilled rather than being beneficially used as alternative fuels, as they traditionally have been, which is essential to the economic sustainability of some operations.

The only new boilers that may remain viable are those that burn natural gas. After many concerns were expressed about the proposed natural gas standards, EPA eventually adopted much more flexible work practices. However, the net effect may be

to curtail energy options for new boilers. This not only puts all our eggs in one energy basket, but also raises serious practical problems. Many boilers simply do not have access to natural gas because the infrastructure is not there. Moreover, the economics of some manufacturers (including forest products) depend on the ability to use diverse energy sources. Our future will be jeopardized if we cannot use a diversity of fuels in our boilers because regulatory requirements effectively preclude this from being allowed.

The three years provided in the rule to comply is insufficient given the complexities of the rules. In addition, other air regulations, such as Utility MACT, implementation of the many National Ambient Air Quality Standards changes and the upcoming Transport Rule will draw upon the same engineering expertise and emissions control vendors driving up costs more than currently estimated. Facilities should be given several more years to comply to account for capital planning cycles and allow a smooth implementation of the new Boiler MACT requirements.

EPA seems to recognize the shortcomings of the final rule given the tight timeframe allowed by the Court. By acknowledging the need to reconsider parts of the rule, EPA is admitting that more work needs to be done. We agree -- EPA should make amendments to address the key outstanding issues. While this process unfolds, the rules must be stayed to prevent hundreds of millions of dollars being wasted on the wrong investments.

The date that defines a new boiler must also be reset to the date when EPA publishes the new reconsideration proposal. Under the current rulemaking, the date that defines what is a new boiler is retroactively set to June 2010. This puts those that have already made the decision to invest in new boilers in the somewhat ludicrous and certainly unenviable position of having already invested many tens of millions of dollars and are now faced with investing many millions of dollars more to meet the recently proposed rule. Although EPA has recognized the need for reconsideration of significant sections of the rule, for those now considering investing in new boilers the uncertainty associated with the current regulatory situation makes committing to the kind of investment decisions required extremely difficult at best.

We believe Congress needs to act. The rules have been strongly influenced by judicial decisions; including the short deadline EPA was given by the court to produce the March final rules. Congress needs to stay the final rules until EPA gets it right, reset the date for defining new sources, allow facilities more time to comply, clarify that renewable and recyclable materials are traditional fuels, and make sure the rules are achievable and less burdensome. EPA has the statutory discretion to answer the call from over 260 elected officials to produce rules that are achievable and affordable while both protecting jobs and public health.

Non-Hazardous Secondary Materials Rule

As part of the Boiler MACT rules, EPA promulgated definitions for non-hazardous secondary materials for the first time, which determines the materials that are considered fuels under Boiler MACT and those that are considered solid wastes, and

thus, regulated under the Commercial and Industrial Solid Waste Incinerators (CISWI) rules. Because the CISWI rules are more onerous, and mills want to avoid the stigma of having their boilers reclassified as waste incinerators, many mills will stop burning solid wastes. In the forest products industry, most of these secondary materials are biomass residuals that are carbon neutral, renewable, and have been used safely for decades as fuels. In fact, they are critical to the sustainability of some mill operations. However, because the NHSM arbitrarily requires these materials to be comparable in terms of their constituents (called contaminants) to “traditional fuels” under the rule’s “legitimacy criteria,” they will get branded wastes. Yet, organic “contaminants” are completely combusted in boilers while other “contaminants” will be effectively controlled under Boiler MACT. In other programs, EPA and other agencies are trying to encourage the use of alternative fuels with the positive attributes of these biomass residuals to replace fossil fuels. EPA should modify its approach for classifying biomass residuals, such as resinated wood, paper process residuals, wastewater treatment residuals, and processed construction debris, as solid wastes by dropping the contaminant comparability test so more materials can be safely used as fuels and not truly wasted by being landfilled.

EPA Jobs Study on Boiler MACT

Much has been reported about the dueling jobs studies on the Boiler MACT regulations. The EPA recently released a Regulatory Impact Analysis, which indicated that the final Boiler MACT rule would range from destroying 4,100 jobs to creating 8,500 jobs. The midpoint of the range was 2,200 jobs created. EPA’s jobs analysis was based on a 2002 paper by Morgenstern, Pizer and Shih published in the *Journal of Environmental Economics and Management*.

In using the Morgenstern study, the agency relied on a model that was predicated on data from the 1979-1991 period. While the Morgenstern findings may have indeed been relevant for the 1980s when people had to use paper and foreign competition was not nearly as keen, it needs to be rethought and updated to reflect today’s reality. With increased foreign competition, electronic competition, and a weak economy, the paper industry is in a far different place today than it was in the 1980s. The EPA’s approach fails to recognize that reality. We believe an updated methodology should be used for assessing job losses or gains reflecting today’s global competitive factors.

As explained earlier, the U.S. forest products industry has already lost a large percentage of its workforce. If more mills are forced to close their doors permanently we will lose additional high paying, tax generating jobs. Exports will drop and imports will increase since no other country is contemplating requirements this extreme.

Other Near-Term Clean Air Act Regulations

- **Pulp and Paper MACT and Residual Risk:**

EPA is considering redoing the Pulp and Paper MACTs issued a decade ago, even though MACT is supposed to be a one-time program. Given the stringency and unachievability of the Boiler MACT, we are very concerned that a similar approach will

lead to a rule with over \$4 billion in additional capital costs. EPA's obligations are to look at the health risks that remain after MACT, not a total MACT do-over. We believe that the original MACTs reduced emissions significantly (and at great expense) to the point where remaining risks are dramatically reduced and now quite low based on the extensive information the industry has provided EPA. In addition, any plans to regulate hydrogen sulfide (which could cost close to \$3 billion) should be abandoned, since emissions are below levels of concern. Given the accelerated consent decree schedule EPA agreed to for issuing a rule, EPA should focus its resources on making a "Residual Risk" determination using reasonable risk assessment methods, data and assumptions, taking costs into account as Congress required in the Clean Air Act.

- National Ambient Air Quality Standards (NAAQS):

The National Ambient Air Quality Standard (NAAQS) program has greatly reduced emissions of criteria pollutants. Air quality has improved dramatically for all six NAAQS pollutants at significant cost to industry bringing many areas into attainment – and more reductions are on the way under existing programs. The forest products industry has been part of these reductions, reducing sulfur dioxide and nitrogen oxides by between 25 and 35 percent in the last fifteen years alone, as well as cutting emissions of hundreds of thousand of tons of particulate matter (PM) and volatile organic compounds (VOCs).

Yet, further tightening of the NAAQS is underway, with the short-term NO_x and SO₂ NAAQSs finalized last year and the ozone and PM NAAQS scheduled for this year. Collectively, these NAAQS revisions could cost the forest products industry over \$8 billion in capital costs. Of equal concern is the permitting gridlock caused when mills cannot satisfy modeling criteria for plant improvements (even ones that reduce emissions), preventing mill modernization and damaging competitiveness. EPA's standards are so close to background levels for some pollutants that even the dust from roads around a mill are enough to exceed modeling parameters and potentially stop permit revisions.

Under the Clean Air Act, Congress directed EPA to consider, every five years, whether any changes are needed to the NAAQS. In March 2008, EPA replaced the 1997 ozone standard with a new, more stringent standard. Even before that standard will be fully implemented, EPA is considering tightening it further -- two years ahead of the usual statutory schedule. Last month, 38 newly elected Congressmen wrote to Administrator Jackson citing concerns about the impact on jobs and the economy and asking that she withdraw the proposed ozone rule and instead conduct a full science review under the usual five year schedule. A similar bipartisan letter signed by 51 House Members was sent to the Administrator last November. Given the significant economic burden imposed by the ozone NAAQS on the forest products industry and the still fragile economy, we agree that deferral is warranted.

- Cluster MACT Reopening:

EPA finalized Maximum Achievable Control Technology (MACT) rules for paper mills in 1998 and 2001 but has been petitioned by environmental groups (ENGOS) to make them more stringent. The Clean Air Act created MACT as a one-time program, and EPA has met its obligation for paper mills. EPA should focus on programs that are required under the Act and not put additional burdens on the paper industry by reopening the Cluster MACTs.

- Wood MACT:

In 2004, EPA promulgated the Plywood and Composite Wood Product MACT (so called Wood MACT) which required 90% reductions in certain hazardous air pollutant (HAP) emissions. In 2007, the D.C. Circuit Court of Appeals rejected a risk-based option that could have allowed wood product mills to avoid controls where risks were demonstrated to be safe. That same court concluded that emission standards should be set for all process equipment at wood product mills. Unfortunately, gas-fired control devices (incinerators) have been widely installed to meet Wood MACT and other Clean Air Act programs such as New Source Review. These incinerators not only consume \$100Ks of fuel each year and cost millions to install, but also emit greenhouse gases and NOx largely in “NOx limited” areas. A life cycle inventory documented the negative nature of these systems, concluding that they do more harm than good. To make matters worse, more incinerator controls may be required in the future for the remanded units covered by Wood MACT. EPA should explore alternative policies that eliminate the need for existing and additional gas fired controls, such as use of work practices and limits that can be met using biological control systems.

Numerous other EPA rules on greenhouse gases, solid waste, and water are attached to the appendix to this testimony.

The TRAIN Act

We applaud the subcommittee’s effort to shine light on the impacts of EPA regulations and we encourage passage of the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011”. The threat of continued erosion of global economic competitiveness of the United States in the face of an unprecedented onslaught of new regulations over the next decade cannot be dismissed. This would be true in an economy that is healthy and robust. It is even more essential in an economy that still struggles to recover and retain existing jobs; much less create new jobs.

The completion of the analysis contemplated in the TRAIN Act is particularly critical to companies whose operations are both energy intensive and trade sensitive. As has been pointed out elsewhere in this testimony, faced with ever increasing requirements for capital investment in pollution controls, the operating costs associated with these controls, and the uncertainty created by the current EPA regulatory agenda, many companies who cannot successfully compete in global markets will either be faced with shutting down facilities and going out of business or moving production offshore. In

either case, high paying jobs will be lost and a ripple effect will be created throughout the supply chain and surrounding communities. When these jobs cannot be replaced, many communities, especially the rural towns where many Forest Product industry facilities are located, will inevitably reach a tragic economic “tipping point”.

We believe that completion of this analysis, followed by careful consideration of the results and ultimately implementing actions by policymakers is critical to the future health of companies like MeadWestvaco and United States manufacturing in general. We encourage the subcommittee to move to swift passage of the TRAIN Act while legislatively staying significant rulemakings, such as Boiler MACT, until such time as the full economic impact of the cumulative regulatory burden facing the regulated community is understood and appropriate policy is established to protect the global competitiveness of the United States.

Conclusion

We know that the current wave of regulations is unsustainable. Living with such an uncertain regulatory environment not only costs current jobs, but also prevents new jobs from being created.

Companies frequently find themselves tangled in a web of rules that result in the decision to simply not make an investment because of the uncertainty of the regulatory process – or they decide to invest overseas. Others roll the dice, hoping that the rule they are making decisions under today will still be in place when their project is completed. When regulations such as the Boiler MACT rules and changes in the National Ambient Air Quality Standards create such uncertainty and are not affordable or achievable, investing in an energy efficiency project, modernization programs, or a new biomass boiler can be very risky, preventing job creation in rural communities that desperately need it.

Unfortunately, it is easier to see the jobs that are lost after the fact. But the greatest damage may be unknowable -- the projects never built, the products never made, the jobs never created, or the entrepreneurial ideas drowned in the sea of red tape.

All these concerns about the future global competitiveness of the United States, the need to not only create but also to keep existing jobs, and the risks to economic recovery must be considered against the backdrop where environmental quality in the United States is the best it has been in decades – and continues to improve. This is due in part to existing regulatory programs that are in full force today and still creating gains in environmental quality without further regulatory actions. This is also due in no small part to the fact many companies including MWV recognize that being a responsible global citizen, that satisfying our customers, and caring for the communities in which we operate is simply good business. It is about creating a business that is sustainable.

In summary, we would encourage the subcommittee to advance legislation to accomplish the following:

1. Require an analysis of the economic impact of the cumulative burden of rules that either EPA has proposed to modify and/or that EPA has a statutory obligation to consider over the coming decade.
2. Legislatively stay the Boiler MACT and the three related rulemakings (effectively stopping the compliance clock which is now ticking) and give EPA the time they themselves said was necessary to properly develop the rules. In no case should EPA promulgate final Boiler MACT rules until such time as the above economic analysis is completed, fully considered and appropriate policy is developed.
3. At such time as the Boiler MACT rules are finalized, direct EPA to extend the time to comply with the complex requirements of the rules so affected boiler operators can adequately plan the significant capital investments that may be required.
4. At such time as the Boiler MACT rules are finalized, provide direction to EPA that these rules should use specific approaches that add flexibility, encourage use of a wide variety of fuels and make the rules achievable through mechanisms available in the Clean Air Act as was the intent of Congress when the Act was passed. Items covered should include:
 - a. Define various biomass residuals, tire derived fuel, and on-spec used oil as traditional fuels (not solid wastes) under the Non-Hazardous Secondary Material rule and exclude gases in pipelines, ducts or vents from being regulated as solid wastes
 - b. Provide for utilization of work practices for certain organic compounds
 - c. Establish emission limits for existing sources (not by pollutant) for each subcategory considering various variability factors of best performing boilers
 - d. Establish emission limits for new sources that are achievable for state of the art boilers for each subcategory considering various variability factors
 - e. Adopt Health Based standards without unnecessarily complicated procedures for HCl and manganese (in conjunction with a total select metals limit) that does not jeopardize the existing Particulate Matter and HCl surrogate limits

Thank you for taking the time to listen to some of the many regulatory challenges facing companies like MWV and for your consideration of taking strong action to maintain the global competitiveness of United States manufacturers.

APPENDIX
ADDITIONAL EPA REGULATORY ACTIONS SIGNIFICANTLY AFFECTING THE
FOREST PRODUCTS INDUSTRY

Greenhouse Gas Regulations

- EPA Greenhouse Gas (GHG) Regulation Under the Clean Air Act:

Effective January 2, 2011, EPA's regulation of GHGs from stationary sources under the Prevention of Significant Deterioration (PSD) and Title V programs broke with longstanding precedent for biomass carbon neutrality, treating the combustion of biomass identically to the combustion of fossil fuels. EPA chose to treat biogenic emissions the same as emissions from fossil fuel in the Tailoring Rule. Two-thirds of the energy needs of forest products mills are met through wood biomass residuals. Counter to Administration objectives, EPA's treatment of biogenic emissions ignores the renewability of the resource and stymies investment in renewable energy. EPA subsequently postponed regulation of biogenic CO₂ emissions for three years while it conducts a study of the science and technical issues associated with these emissions. EPA plans to develop its own GHG accounting framework for biogenic emissions, differentiating different types of feed stocks based on their net emissions to the atmosphere over business as usual levels, specific time frames and geographic regions. This accounting framework will, in effect, regulate and significantly limit the use of forests and other biomass for renewable energy. There is currently a significant scientific foundation and policy precedent to support the carbon neutral status of biomass combustion. U.S. EPA and Forest Service data unequivocally show that land in the U.S. is a significant net sink for CO₂ – not a source that should be regulated. Furthermore, Congress, not EPA, should determine renewable energy policy for the country. EPA should uphold the principle of carbon neutrality and leave renewable energy policy to Congress.

- EPA Greenhouse Gas Mandatory Reporting Rule:

Facilities must report their 2010 GHG emissions beginning September 30, 2011. Unlike other regulations, EPA has not allowed facilities to propose alternative methods for calculating emissions or allowed *de minimis* emissions levels under which reporting is unnecessary. This inflexibility makes the rule more expensive to implement than is necessary. EPA has also proposed to make public individual facility inputs to GHG emissions calculations and production data which are traditionally considered confidential business information. Making such energy and production data available to the public will enhance the ability of foreign and domestic competitors to gain insight into production costs and will potentially impact pricing decisions in the marketplace.

Waste Regulations:

- **Coal Combustion Residuals:**

EPA has proposed to regulate coal combustion residuals from the electric utility industry as either hazardous or non-hazardous solid waste. Although the forest products industry would be exempt under the current proposal, states have indicated they would not differentiate between utility and non-utility residuals. EPA could regulate these materials under the non-hazardous waste provisions and modify the proposal to make those requirements consistent with the degree of harm posed by such residuals. Further, strict regulation under the hazardous waste regulations is not necessary to address the risks posed by coal combustion residuals. The forest products industry and other industries will pay increased electricity costs passed on by utilities if EPA chooses the hazardous waste option.

Water Regulations

- **Florida Nutrient Standards:**

Despite the fact that the State of Florida was making significant progress establishing its own nutrient standards, EPA promulgated extremely stringent numeric nutrient criteria for nutrients (nitrogen and phosphorous) for certain Florida waters based on a methodology that is not scientifically defensible. Stakeholders have estimated compliance with the rule will cost billions of dollars and will require expenditures for cleaning up waters that are not impaired. EPA states that it does not intend to take over other state nutrient programs and promulgate federal numeric nutrient criteria in those states. Nonetheless, EPA has indicated that the Florida methodology should be viewed as a national precedent, and EPA is forcing other states to adopt numeric criteria, while also limiting implementation options. EPA should revise the methodology to better account for the lack of a stressor/response relationship in its data for certain waters and should allow states more flexibility in implementing the criteria.

- **Cooling Water Intake Structures (CWIS) Rulemaking:**

On March 28, 2011, EPA issued a 413 page proposed CWIS rule applicable to certain utilities and manufacturers, including the pulp and paper industry. We are still analyzing the proposal to determine its impacts, but one thing is certain—many more industry facilities will face CWIS requirements in their water permits than would have been the case under the rule applicable to these facilities issued in 2006 (EPA is revising the rules in light of litigation, including a Supreme Court ruling). At that time, EPA determined that the costs of national categorical standards applicable to a more limited number of facilities would be “wholly disproportionate to the benefits.” Yet in this proposed rule, EPA would regulate the CWIS of much smaller facilities, capturing a much larger segment of the industry within the scope of the rule.

- “Waters of the U.S.” Guidance:

For nearly a decade beginning in 2002, legislation has been introduced in the House and Senate that would fundamentally alter the scope of the Clean Water Act and expand federal agency Clean Water Act jurisdiction. None of the bills ever came to a vote in either Chamber, and while one committee did consider a proposal, the measure died and was never brought to the floor. The Administration is now developing guidance that addresses similar issues raised in the bills; press reports providing a draft of the guidance strongly suggest that the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers intend to significantly expand their regulatory control over many waters, including waters now considered entirely under state jurisdiction. The Administration should not legislate by guidance. At a minimum, this issue should be addressed in rulemaking, as opposed to guidance.

- Analytical Method for Polychlorinated Biphenyls (PCBs):

Polychlorinated biphenyls (PCBs) are a “legacy” pollutant; production was banned by Congress and EPA decades ago. However, PCBs in extremely low levels are ubiquitous in the environment. EPA has proposed an analytical test method that purports to measure in the very low range of parts per quadrillion, which is below the national EPA standard. Once the method is final and dischargers must use it for compliance, many municipal and industrial dischargers will find PCBs in their effluents at levels above the national standard. This will ultimately lead to permit limits with which compliance will be either impossible to achieve or unreasonably expensive. EPA should not issue the method until it adequately responds to the scientific questions raised in comments on the proposal. EPA also should issue flexible permit implementation procedures that acknowledge and address the ubiquitous nature of PCBs.

- Chesapeake Bay Total Maximum Daily Load (TMDL):

At the end of 2010, EPA issued the final TMDL for the Chesapeake Bay. A TMDL is a calculation of the maximum amount of a pollutant that a water body can assimilate and still maintain water quality standards. As part of the TMDL process, EPA usurps the states’ traditional role of TMDL implementation by threatening heavy-handed measures if certain clean up milestones are not met. EPA should withdraw the measures and allow states the flexibility to implement the TMDLs, as contemplated by the Clean Water Act.

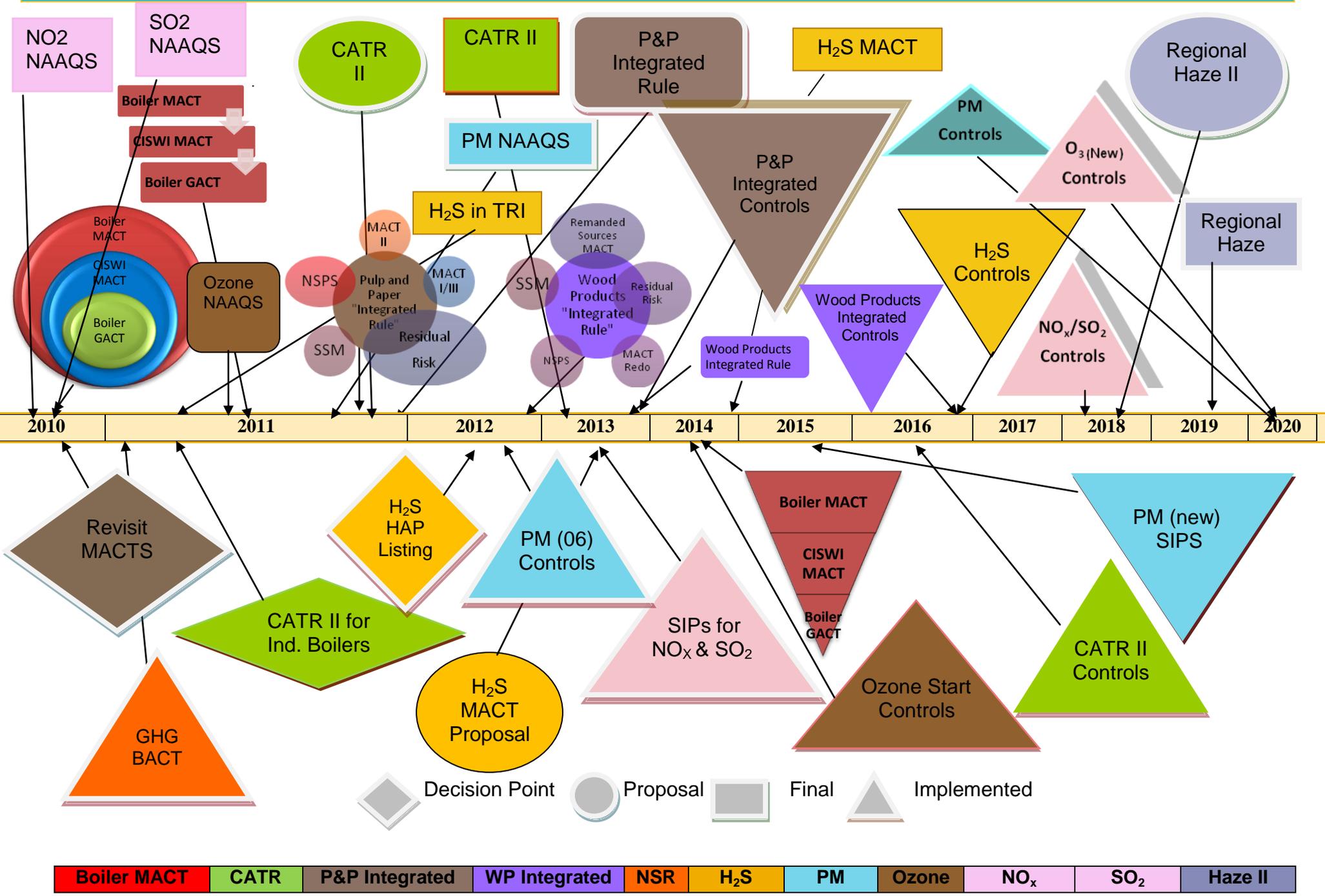
Sound Science

- Integrated Risk Information System (IRIS) Assessments:

As the Administration has recognized, sound science is the foundation of an effective regulatory system. In Executive Order 13563, President Obama directed that “each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency’s regulatory actions.” Accordingly, scientific

integrity must be the backbone of EPA's IRIS assessments. Assessments for chemicals such as methanol, formaldehyde, dioxin, hydrogen sulfide, acrolein and acetaldehyde have a major impact on regulatory costs for many sectors of the economy and deserve objective and unbiased development and review.

Potential Air Regulations Affecting Forest Products (2010-2020)



U.S. Total: 5.7 Million Manufacturing Jobs (33%) Lost

