



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 28 2010

THE ADMINISTRATOR

The Honorable Mary L. Landrieu
United States Senate
Washington, DC 20510

Dear Senator Landrieu:

Thank you for your letter of September 24, 2010 about the proposed standards for controlling hazardous air emissions from industrial, commercial, and institutional boilers and process heaters ("Boiler NESHAP") and about the proposed standards for commercial and industrial solid waste incinerators ("CISWI Rule"). You raise important concerns, and I take them very seriously.

As you know, the rulemakings at issue are not discretionary. In Sections 112 and 129 of the Clean Air Act, Congress directed the Environmental Protection Agency ("EPA") to establish these standards. EPA issued the proposals after many years of delay, and in order to meet a deadline set by the U.S. District Court for the District of Columbia.

Many of the facilities in question are located in very close proximity to neighborhoods where large numbers of people live and large numbers of children go to school. EPA estimates that the new standards will cut the facilities' toxic mercury emissions in half and, in the process, reduce their annual emissions of harmful sulfur dioxide and particulate matter by more than 300,000 tons and more than 30,000 tons respectively.

Each year, those reductions in air pollution will avoid an estimated 2,000 to 5,100 premature deaths, 1,400 cases of chronic bronchitis, 35,000 cases of aggravated asthma, and 1.6 million occurrences of acute respiratory symptoms. EPA estimates that Americans will receive five to twelve dollars in health benefits for every dollar spent to meet the standards.

Section 112 of the Clean Air Act directs EPA to calibrate the standards for each subcategory of facility to the emissions control that the best-performing twelve percent of existing facilities in that subcategory are currently achieving. The same section of the statute identifies the types of information that are necessary to justify the establishment of any separate subcategory. In an effort to establish separate subcategories wherever appropriate, and to calculate accurately the standards for each subcategory, EPA asked the affected companies and institutions for technical data about their facilities long before the court-ordered deadline for publishing a proposal. As is often the case in Section 112 rulemaking efforts, however, EPA did not receive many data. While the agency was not left entirely lacking in relevant information, the limited response from affected businesses and institutions did make it difficult for EPA to delineate subcategories and calculate standards that fully reflected operational reality. The

agency nevertheless was legally required to publish proposed subcategories and standards based on the information it had at the time.

Fortunately, a number of potentially affected businesses and institutions responded to EPA's published proposal by giving the agency relevant data that it had not possessed at the time of the proposal. The agency will make exhaustive use of all of the relevant data received during the period for public comment. EPA is now learning things that it did not know before about the particulars of affected sectors and facilities. The final standards will reflect the agency's new learning, and that is how the rulemaking process is supposed to work. In fact, EPA is so committed to ensuring that the final standards will reflect all of the relevant information received during the public comment period that the agency has just sought and obtained from the District Court a one-month postponement, until January 16, 2011, of the deadline for issuing the final Boiler NESHAP. EPA is taking the necessary time to get the final standards right.

Businesses that burn biomass in their boilers and process heaters are particularly worried that the limited information underlying EPA's proposed subcategories and standards might cause many boilers that currently burn renewable biomass to shut down entirely or to convert to burning non-renewable fossil fuels. Please know that EPA is paying particular attention to the subject of biomass-fired boilers and process heaters as the agency works to develop final standards. In your letter, you reference EPA's projection regarding new major-source boilers that burn biomass. That projection, which comes originally from the Energy Information Administration ("EIA"), is not based on the Boiler NESHAP or the CISWI Rule. Neither EPA nor EIA is projecting that these rules will cause anything like the cessation of the domestic biomass industry.

While many businesses are pleased that EPA solicited comment on using Section 112(d)(4) of the Clean Air Act to set a health-based standard (as opposed to a purely technology-based standard) for certain hazardous air pollutants such as hydrogen chloride, those same businesses believe that EPA should have identified the establishment of a health-based standard as the agency's preferred outcome. The discretionary establishment of a health-based standard would need to be based on an adequate factual record justifying it. EPA did not identify a health-based standard as a preferred outcome in the proposal, because the agency did not possess at the time of the proposal a factual record that could justify it.

The pollution control equipment that limits emissions of hydrogen chloride also happens to limit emissions of other highly toxic air emissions, including acid gases. Thus, while a health-based standard might be justified for hydrogen chloride in isolation, EPA needs to consider the ramifications of such an alternative for the control of other highly toxic pollutants. With that said, EPA has taken note of the public comments on the establishment of a health-based standard. Several stakeholders commented, for example, that most biomass might contains less acid gas than most fossil fuels, potentially making biomass-fired boilers and process heaters better candidates than fossil fuel-fired ones for a health-based standard. EPA will carefully evaluate the substance and relevance of those comments, as well as any additional data submitted during the public comment period, before making a final decision on the establishment of any health-based standard.

In recent weeks, two industry trade associations issued two separate presentations, each claiming that the Boiler NESHAP and CISWI Rule would cost the U.S. economy jobs. The presentations differ significantly from each other when it comes to the number of jobs that allegedly would be lost. Moreover, the associations' methods for reaching their projections are in several respects opaque and in others clearly flawed. For example, they neglect to count the workers who will be needed to operate and maintain pollution control equipment and to implement work practices that reduce emissions.

Perhaps the most important observation to make about the two associations' claims, however, is that they pertain to a proposal, rather than to a final EPA action. For reasons stated earlier in this reply, the final standards will most assuredly differ from the proposed ones. The differences will demonstrate EPA's intent focus on making the regulatory subcategories appropriately reflect industrial variation in the real world, and on aligning the standards in each subcategory with the performance that real-world conditions prove are already achievable. The Clean Air Act does not place our need to increase employment in conflict with our need to protect public health. EPA's final standards will not either.

Again, thank you for your letter. If you have additional questions, please do not hesitate to contact me, or to have your staff contact David McIntosh in EPA's Office of Congressional and Intergovernmental Relations.

Sincerely,



Lisa P. Jackson

Thank you for your thoughtful interest in this important subject.