



April 4, 2011

Improving Regulations Docket  
Environmental Protection Agency  
EPA Docket Center, Mailcode 2822T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Docket No. EPA-HQ-OA-2011-0165 ("Improving Regulations: Least Burden/Flexible Approaches")  
Docket No. EPA-HQ-OA-2011-0158 ("Improving Regulations: Benefits and Costs")  
Docket No. EPA-HQ-OA-2011-0155 ("Improving Regulations: Air")  
Docket No. EPA-HQ-OA-2011-0154 ("Improving Regulations: Water")  
Docket No. EPA-HQ-OA-2011-0160 ("Improving Regulations: Waste")  
Docket No. EPA-HQ-OA-2011-0156 ("Improving Regulations: General")  
Docket No. EPA-HQ-OA-2011-0162 ("Improving Regulations: Science/Obsolete/Technology Outdated")

Dear Sir or Madam,

The American Forest & Paper Association (AF&PA) appreciates the opportunity to respond to your request for comment on federal rules that may be excessively burdensome and in need of improvement and on improving the regulatory review process.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. The industry is among the top 10 manufacturing sector employers in 48 states. The forest products industry is also a leader in sustainability and a foundation for green jobs. Our industry employs about 900,000 workers in family-wage jobs, leads the way on recycling and renewable energy, and sustainably uses renewable resources.

Unfortunately, these important contributions are challenged by a wave of new regulatory proposals that cumulatively could cause severe economic impacts just when our industry and the national economy are struggling to recover from the recession. The U.S. forest products industry must operate in a fiercely competitive global marketplace, and we are deeply concerned that the cumulative regulatory burden is placing the competitiveness of our industry at risk.

AF&PA has identified a number of federal regulations that could negatively affect economic recovery and jobs in our industry and others. We submit that EPA and the

Administration should set priorities based on the opportunity to provide the greatest reduction in unnecessary regulatory burden with the existing resources. We strongly believe in the importance of carefully developing specific rules, but we also believe that much greater attention should be given to the cumulative regulatory burden and its impact on the competitiveness of our industry and U.S. manufacturing in general.

We note that many of the rules of greatest concern to our industry and others are those currently in the regulatory pipeline or on the horizon. There is great opportunity to reduce the potential burden and other adverse impacts of these rules in a cost-effective manner through a careful and disciplined regulatory review process that closely follows the principles of the Executive Orders 13563 and 12866. In many cases, an effective regulatory review process for pending and upcoming rules could provide greater reductions in unnecessary regulatory burden with existing resources than reviewing old regulations that have been on the books for years and for which capital costs and other investments already have been made and cannot be recovered. In particular, we urge EPA and the Administration, as E.O. 13563 directs, to “tailor its regulations to impose the least burden on society... taking into account . . . the costs of cumulative regulations.”

Given the state of the economy and the widespread concern about jobs, we encourage EPA and the Administration to carefully consider the employment effects of the cumulative regulatory burden. It is our understanding that the longstanding guidance for regulatory analysis, OMB Circular A-4, does not specifically ask agencies to examine job loss from regulatory policies. While Executive Order 12866 does mention the adverse impact on jobs as part of the definition of an economically significant rule, and in the required analysis for them, we are not aware that the destruction of jobs and human capital has ever been directly addressed to the point where it really made a difference in the outcome of a rule or program being developed. Accordingly, EPA and the Administration may want to consider the impacts of the cumulative and incremental regulatory burden on the loss of human capital, such as when worker’s skills are no longer marketable, because, for example, manufacturing jobs are lost in the U.S. This could include real costs such as lost wages and the cost of new job training, and they could be added to compliance costs in the analysis.

We look forward to working with EPA, the Administration, Congress and other stakeholders to address these regulatory challenges in ways that encourage a sustainable future for the forest products industry and the nation.

### CLEAN AIR ACT REGULATIONS

As indicated in the attached chart, EPA is working on more than twenty air rules that could collectively impose on the order of \$17 billion in new capital expenditures on the forest products industry alone. The most significant rules on EPA’s 2011 work plan include:

- **Boiler MACT**: The Clean Air Act requires that EPA regulate hazardous air pollutants from emission sources, including boilers, using maximum achievable control

technology (“MACT”). Although most boilers already are well controlled for key pollutants, the 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 -- and as our experts delve deeper, their concerns about achievability and cost have grown. We anticipate that the capital cost for all manufacturing from the Boiler MACT rule could be over \$11 billion, plus billions more in annual operating costs. A wide range of manufacturers and the jobs they sustain would be adversely impacted if the final rule is not significantly modified.

The final rule begins to account for the tremendous variability among boilers by establishing additional subcategories and using new emissions data to set more realistic limits. However, EPA continues to ignore what real-world, best performing boilers can achieve over the range of normal operating conditions. For example, the carbon monoxide limits for stoker fired biomass boilers actually became more stringent. And the new boiler limits are so stringent that the only viable boiler will be those using natural gas. As EPA continues to make the rule more affordable during the reconsideration process, it should ensure that limits are technically achievable for biomass and new boilers to encourage the use of a broad range of fuels and foster new investment in state-of-the-art boilers.

While Congress gave EPA the ability to target controls for certain emissions where exposures are low, EPA has failed to use the authority in section 112(d)(4) despite repeated requests by members of Congress, Governors, and many stakeholders. Any reservations about setting health-based emission limits have been addressed in public comments. We 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. We also challenge EPA’s perspective that any risk assessments must look beyond the boilers covered in this MACT when by definition MACT is limited to the source category. 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 reduced significantly while still protecting public health.

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, back-up boilers and during start-ups/shutdowns, providing an affordable way to reduce emissions. However, EPA should have set flexible work practices for dioxin as well since it is very hard and expensive to measure, and its formation and control is poorly understood. Alternatively, EPA should treat dioxin like other organic emissions and rely on carbon monoxide as the surrogate for all organics.

EPA seems to recognize the shortcomings of the final rule given the shortened timeframe required by the court to produce a final rule. 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 all of the key outstanding

issues. While this process unfolds, the rule should be stayed to prevent hundreds of millions of dollars being wasted on the wrong investments. Over 260 elected officials have spoken – Members of Congress, and Governors, Democrats and Republicans, labor unions and trade associations -- for a Boiler MACT rule that protects jobs and public health.

- 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.
- Pulp and Paper Residual Risk Standards: Eight years after a Maximum Achievable Control Technology (MACT) rule for the pulp and paper industry is promulgated, EPA must decide whether the health risks that remain (“residual risks”) from hazardous air pollutants (HAPs) are significant enough to warrant further regulation. EPA is under a court ordered schedule to propose its residual risk determination for pulp and paper mills by June 15, 2011. Based on precedents in recent proposals, we are concerned that EPA will set unwarranted, stringent limits for several HAPs from various process equipment at pulp and paper mills. AF&PA and its members have provided significant information to EPA in the last three years showing there is an “ample margin of safety” with paper mill emissions. EPA should find further regulation is unnecessary since the remaining risks are very small.
- Ozone NAAQS: EPA is considering significantly tightening the already tougher 2008 ozone standard two years ahead of schedule. Once EPA issues a new ozone standard, states will identify non-attainment areas and then develop implementation plans to reduce emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) – the precursors to ozone. The cost to the forest products industry could approach \$3 billion in new capital expenditures and lead to additional national rules that control cross-boundary transport of air emissions (so called “Transport Rule II”). According to an API/NAM study, the costs could approach \$1 trillion over 10 years to meet a 60 ppb ozone standard. EPA should defer action and wait for the normal five year review cycle and look at all the new scientific information since the last revision in 2008.
- NAAQS implementation: Last year, EPA finalized two new short term NAAQS for SO<sub>2</sub> and NOx along with implementation policies that are leading to permitting gridlock. EPA has announced that states should conduct air quality modeling to determine which areas should be designated attainment and nonattainment, which is contrary to longstanding practice of relying on monitored air quality. EPA also is requiring for the first time SO<sub>2</sub> SIPs for areas designated attainment or unclassifiable using modeled compliance demonstrations. Other policies that are making NAAQS implementation more challenging are treatment of “policy relevant background,” immediate applicability of PSD permitting requirements with each new NAAQS revision, and the inability to address new implementation policies centrally. To avoid

companies shying away from new investments and equipment upgrades, EPA needs to focus on the perverse impacts of this set of emerging policy concerns to avoid permitting uncertainty and gridlock.

- 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.
- New Source Review program continues to discourage investments in modern equipment and upgrades by subjecting projects to lengthy, expensive and uncertain permitting scrutiny. Especially problematic is having to go through the NSR process for pollutant control projects required in new regulations – these should be exempted. Despite efforts to reform the NSR program in the past, many permitting bottlenecks and delays continue to occur that prevent a predictable system that would foster investment in our mills. Instead, companies lose out to foreign competitors that do not have to navigate a failed permitting system in their countries when they modernize or bring new products to market. The U.S. system is broken and creates the wrong incentives for investment when we would be encouraging dollars staying in the U.S. creating U.S. jobs.

EPA has the opportunity to improve portions of the NSR program in pending rulemakings by excluding fugitives from wood product facilities when making emission estimates and allowing a reasonable aggregation policy that does not discourage investment.

## GREENHOUSE GASES

- 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 CO<sub>2</sub> 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 CO<sub>2</sub> – 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.

## WATER

- 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. 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.
- 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 found in the environment. 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 unless it also issues 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.
- Cooling Water Intake Structures (CWIS) Rulemaking: Last week, 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 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 proposal 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.

## WASTE

- Non-Hazardous Secondary Materials: In February, as part of the Boiler MACT rules, EPA promulgated definitions for non-hazardous secondary materials 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 incinerators in permitting reviews, 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 is 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.

- 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.

## 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.” It is critical that scientific integrity be the backbone of assessments in EPA’s IRIS. IRIS 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 therefore deserve rigorous, objective and unbiased development and review.

In most cases identified above, the significant capital investment required to meet regulations would otherwise go to growth in manufacturing capacity and the attendant production of jobs. The suite of potential Clean Air Act regulations alone could prevent new expansion or upgrade of existing forest products industry facilities in the U.S.

Thank you for the chance to provide input on regulations impacting the U.S. forest products industry. We are happy to provide additional information that would be useful, and we look forward to working with you.

Sincerely,

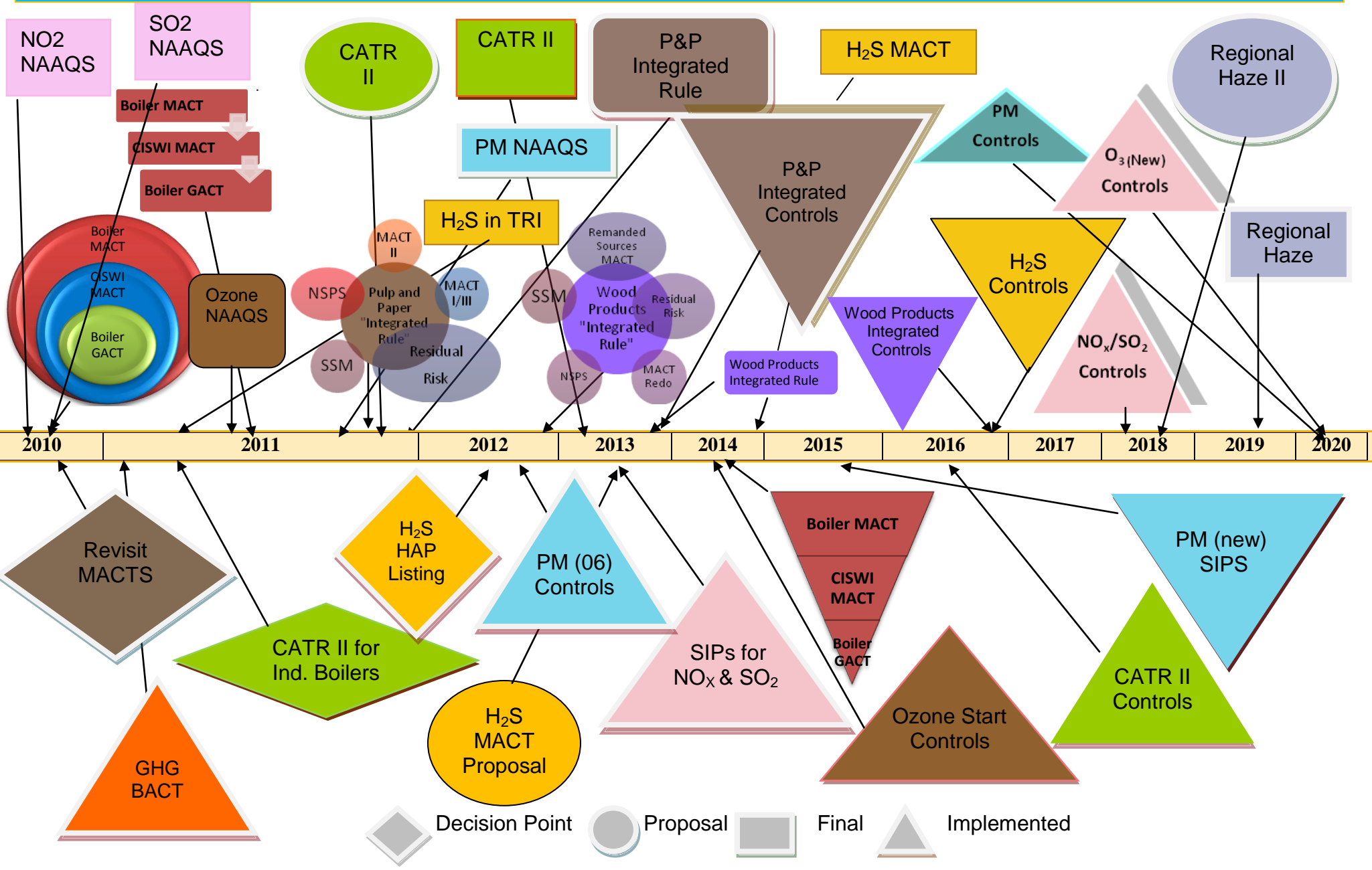
A handwritten signature in blue ink, appearing to read "Paul Noe". The signature is fluid and cursive, with the first name "Paul" and last name "Noe" clearly distinguishable.

Paul R. Noe  
Vice President, Public Policy

Attachment

Cc: The Honorable Cass Sunstein, Administrator  
Office of Information and Regulatory Affairs, OMB

# Potential Air Regulations Affecting Forest Products (2010-2020)



Boiler MACT	CATR	P&P Integrated	WP Integrated	NSR	H <sub>2</sub> S	PM	Ozone	NO <sub>x</sub>	SO <sub>2</sub>	Haze II
-------------	------	----------------	---------------	-----	------------------	----	-------	-----------------	-----------------	---------