

Comments of Wisconsin Industry
on the
Midwestern Greenhouse Gas Reduction Accord
Preliminary Recommendations of the Advisory Committee
(November 17, 2008)
and the Proposed Renewable Portfolio Standard
January 5, 2009

The following comments are submitted on behalf of the Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, Wisconsin Cast Metals Association, Midwest Food Processors Association, Wisconsin Industrial Energy Group, and the Wisconsin Petroleum Council.

These comments provide some background on our industries, provide general policy views and legal observations, then offer specific comments on the November 17, 2008, draft advisory committee recommendations. We also take this opportunity to comment on the renewable portfolio standard included in the MGA platform.

Wisconsin employers and employees will be uniquely impacted by climate change regulation because of the characteristics that distinguish us from other states. For example, Wisconsin has the second-most manufacturing intensive economy in the United States, and roughly 70% of our electricity is generated from coal. Both of these factors will significantly amplify the economic impact of carbon regulation in Wisconsin as compared to other states.

We speak for the majority of our members, as all trade associations do. Individual companies may take a different view of things, for a variety of reasons. Because there are divergent views in the industrial community does not make these comments any less valid.

We do not envy the job of those tasked to deliver the policy recommendations that will make up the Accord. However, in making recommendations, we call on the participating jurisdictions to fairly and accurately represent the vast uncertainty involved in this undertaking and the legitimate concerns that logically flow from this uncertainty.

Industry Background

General Manufacturing

Manufacturing remains a critical component of our state's overall economy. Wisconsin's roughly 500,000 manufacturing jobs are among the highest-paying in the state, with an average wage of nearly \$46,000 per year. Manufacturing

accounts for about \$23 billion in annual personal income, and a \$47.2 billion share of our overall economy. It is hard to imagine a healthy state economy without a healthy manufacturing economy.

Wisconsin's status as a leading manufacturing state, and the corresponding concentration of energy-intensive industries, presents a unique challenge as it relates to remaining competitive in the context of higher costs for energy. Much of the manufacturing production in Wisconsin can be easily moved to other states or countries if electricity is not affordable here or if production costs rise to uncompetitive levels for other reasons. For this reason, policymakers must take a deliberative and careful approach to climate change regulation to prevent a crippling blow to our state economy. Great care must be taken to ensure that Wisconsin businesses, consumers and electric ratepayers are not economically disadvantaged by global warming legislation.

Pulp and Paper

Wisconsin is the nation's leading papermaking state. The industry employs approximately 35,000 men and women. Wages are among the highest in the manufacturing sector and total in excess of \$2 billion annually. The industry supports more than 60 converters, over 1,100 printers, plus machine manufacturers and numerous suppliers and contractors.

During the past ten years the industry has gone through very difficult economic times, due to both fundamental supply and demand issues, as well as fierce global competition, primarily from South America and Asia. In 2000, Wisconsin pulp and paper mills employed 52,000 people, some 17,000 more than today. Future economic and competitive challenges will be just as difficult.

Paper is essentially a commodity. It is made in large volumes with small profit margins. Consequently, mills have limited pricing power. Profit margins for 27 paper companies averaged 2.8% for the second quarter of 2008. This is not sufficient to properly maintain primary assets, like paper machines, much less make significant investments in secondary assets, like boilers, due to regulatory requirements.

Demand for some grades of paper is declining, putting pressure on companies to shut down machines and mills in an effort to keep overall supply and demand in balance. At least some of this demand decline appears to be part of a long-term trend away from certain paper grades, like newsprint and printing/writing paper, and toward electronic media.

Costs for energy, fiber, transportation, chemicals, and other raw materials increased dramatically earlier in 2008, but have subsided somewhat. We expect cost pressures to continue into the future under virtually any economic scenario. Mills are struggling to absorb these and other cost increases and remain

competitive. A recent quarterly earnings report for a Wisconsin-based company showed a loss in excess of \$25 million, largely because cost increases for energy, transportation, and raw materials overshadowed efficiency improvements, higher shipments, and improved pricing. Within this economic and competitive environment, controlling costs is critically important to the long-term survival of the Wisconsin pulp and paper industry.

Papermaking is very energy intensive. The pulp and paper industry is the largest industrial energy user in Wisconsin. Energy can account for 10-25% of the cost of manufacturing a ton of paper. Much of the energy needed by the industry is self-generated, mostly from coal. Since carbon dioxide (CO₂), the main greenhouse gas, is the result of combustion (for energy generation), the industry is also a large emitter of CO₂. However, CO₂ emissions in the paper industry, and other industries, are a small part of overall statewide, regional, and national emissions and have remained flat or have declined for the past ten years. Due to combustion of biomass, about 30% of pulp and paper mill CO₂ emissions in Wisconsin are currently carbon neutral.

CO₂ emissions in the paper industry are directly related to production – energy is used to generate steam and electricity for the manufacturing process. While energy efficiency improvements can reduce CO₂ emissions per ton of production, efforts to significantly reduce absolute levels of CO₂ emissions will likely require fundamental and very expensive changes to boiler systems, including fuel supply. The only other alternative is to cut back production levels by shutting down machines.

The ability to address greenhouse gas emissions varies by company. Integrated pulp and paper mills may have a better ability to reduce CO₂ emissions through increased use of renewable, carbon neutral biomass as a fuel because these facilities typically have some existing biomass combustion capacity. In fact, one mill in Wisconsin is well on its way to becoming the first mill in the country to use no fossil fuels in the production process. However, only about one-third of Wisconsin mills are integrated. Two-thirds of the mills do not have pulping operations and rely on purchased pulp or wastepaper for papermaking. So, while some mills may be in a position to shift to increased use of biomass fuels, others have a more difficult challenge.

All mills have been aggressively pursuing energy efficiency options that can mitigate the high cost of energy and reduce CO₂ emissions. Nationally, the energy needed to produce a ton of paper has dropped 56% since 1972 – 9% between 2004-2006. In addition, companies are involved in other voluntary efforts, such as the Chicago Climate Exchange.

Although most Wisconsin paper companies no longer own timber resources, managed forests are a source of renewable energy and a means to store carbon. Also, paper products store carbon, preventing release to the atmosphere while

the products are in use. Even then, recycling can prevent the release of carbon – and Wisconsin's paper industry is a leader in recycling.

Metal Casting

Wisconsin is a leading state in the production of metal castings. A \$3 billion industry, there are 129 metal casting firms, employing more than 17,000 workers. Eighty percent of these facilities employ fewer than 100 employees. The average annual wage is over \$45,000 - 26% higher than the statewide average wage for all workers, with a total annual industry payroll of \$778 million. Ninety percent of all manufactured goods and capital equipment contain castings. Metal casting is, quite simply, the foundation for most other manufacturing operations. Customers of Wisconsin metal casters include companies serving agriculture, automotive, construction, mining, railroad, aerospace, communications, health care, defense and national security needs.

For the last decade American metal casters have operated in an extremely competitive global marketplace. Countries such as China, India, and Brazil are formidable competitors, in some cases enjoying government subsidies and favorable currency rates, with a minimum of environmental, safety, and health regulation.

In recent years the cost of commodities and raw materials, especially scrap metal, have escalated, putting further pressure on prices and profit margins for US metal casters. Due to the intense offshore competition, the domestic casting industry in many cases has been unable to pass-through the full value of these production cost increases.

Metal casting is an energy-intensive manufacturing process, by some estimates accounting for 8% of total energy usage in Wisconsin. While US metal casters have long worked actively with the US Department of Energy to maximize internal energy efficiency and “best practices” and employ new energy-efficient technologies where appropriate, we will remain a heavy user of energy. The process of melting metal to pour castings alone consumes almost 55% of the total energy used by metal casters. Between the years 2000 and 2007, industrial electric rates in Wisconsin increased by over 50%, and electricity represents an average of 67% of total metal casting energy usage.

Melting metal is fundamental to the casting process and metal casters recycle scrap metal and turn it into new products and parts as finished castings. The metal casting industry is one of the largest recyclers in North America; approximately 85% of all materials used in foundries are recycled materials. Specifically, 10 million tons of scrap metal that otherwise would be dumped in landfills is remade into useful castings. In addition, foundries internally recycle process sand used to make molds and cores many times before it is discarded, saving energy by eliminating the need to mine additional virgin sand. Sand that

can no longer be used in the casting process is often beneficially reused in applications such as highway construction and structural fill.)

Food Processing

Wisconsin has a large food processing industry that is the second most energy intensive industry in the state. Weather, natural resources, location and infrastructure help Wisconsin lead the nation in dairy processing and fruit and vegetable processing. The state is ranked number one in the nation for the production and processing of milk and cheese, and is ranked number one, two, or three for the production and processing of sweet corn, green beans, potatoes, and green peas. Agriculture and the related food processing industry have an estimated \$50 billion economic impact on the state and employ tens of thousands of workers.

Natural gas and electricity play key roles in food processing. Because food safety takes precedence, sanitation and safe food preparation are the focus. Energy is needed to insure machinery, raw product, and infrastructure are clean and free of foreign matter and bacteria. Once the raw product begins to be processed, energy is used to heat, freeze, dry, or package the product. After the product is processed the sanitation process begins again, often several times a day.

Water is an essential ingredient to any food processor. Moving, heating, cooling, and cleaning water are all necessary and essential activities that insure safe food products. All are energy intensive and as such add to the cost of food products. Energy is now one of the top two or three costs associated with food processing. Therefore it is necessary to control those costs so that Wisconsin food products can compete with foreign food processors that have access to affordable energy and that do not have to comply with strict labor, environmental and regulatory standards.

Wisconsin Industrial Energy Group

WIEG is a non-profit association of 30 large energy consumers that advocates for policies supporting affordable and reliable energy. Since the early 1970s, WIEG has been the premiere voice of Wisconsin ratepayers and an engine for business retention and expansion. Our member companies spend over \$200 million annually on electricity, and collectively employ more than 50,000 Wisconsin residents, who are themselves state taxpayers and utility ratepayers. WIEG members represent most major Wisconsin manufacturing industries, including paper, food processing, metal casting and fabricating.

Industrial customers are very concerned about the reliability of electricity at affordable rates. WIEG members often spend one million dollars or more on their monthly electric bill. Rates have been rising in Wisconsin and elsewhere,

but industrial rates rose faster since 2000 than in any other state in the Midwest. Wisconsin's industrial customers have seen 7% annual increases over the last decade with even greater increases expected in the near future.

General Policy Observations

Relating to the Preliminary Recommendations of the Advisory Committee

Geographic Scope – If we are, in fact, dealing with a global problem, then there must be a global solution. If the concern is for the environment, then everyone impacting the environment must be part of the solution. This will level the economic playing field. As the scope of regulation becomes more narrow – national, regional, state, local – environmental benefits diminish and economic costs increase (in the form of global competitiveness and relocation of economic resources to unregulated areas).

While we understand the MGA's desire to pursue regional regulation was borne in large part by a lack of Congressional action, a regional approach appears to not be needed, is unlikely to work, cannot replace and could conflict with a national approach. The political dynamics in Washington, D.C. have changed considerably since the Accord was signed in 2007. With the recent Presidential election and the commitments of President-Elect Obama, federal action on climate change is imminent, and there is no longer the need for regional action. That being the case, the Midwest's efforts should shift focus from an independent regional regulatory program, and instead focus on shaping Congressional action to protect regional jobs and the affordability of energy.

The Midwest in general, and Wisconsin in particular, is not like other areas that have contemplated regional greenhouse gas policies. The Midwest is home to a much higher concentration of the types of manufacturing industries who would be subject to regulation under cap-and-trade than Regional Greenhouse Gas Initiative (RGGI) or Western Climate Initiative (WCI) states. We are also much more reliant on coal in the Midwest than are many RGGI or WCI states. Compare the percentage of generation from coal for Midwest states like Wisconsin (70%), Indiana (96%) and Ohio (86%) with WCI states like California (1%), Washington (8%) or Oregon (7%). Adopting policies that penalize coal-fired generation will significantly harm Midwest states and their industrial economies in a manner not seen in other states.

Greenhouse gas emissions do not know geopolitical boundaries, and regional reductions cannot and will not make a meaningful reduction in global emissions. Regional regulations, therefore, cannot replace a national or international regulatory scheme. Looking at the Midwest region as an example, roughly one-half of all emissions in the region would not be subject to regulation because states like Ohio, Indiana and Missouri have not signed the accord. A cap-and-trade market will not function properly without a robust number of buyers and sellers of emission allowances. With one-half of the regional emissions "off the

table” in the Midwest market, the regional regulatory framework is very unlikely to work.

General Regulatory Approach – The dominant regulatory paradigm seems to be the grand solution – massive reduction targets set far into the future, typically through a cap and trade program. In reality, we simply do not have the knowledge and information necessary to construct such a program. The technology necessary to achieve the goals is not currently available and no one knows when it will be commercially available at an affordable cost. For most economic sectors we do not even know what greenhouse gas emissions are with a level of certainty necessary to make an enforceable cap and trade system fair and workable. We think an incremental approach is better, one that can be re-evaluated and adjusted periodically as technology advances and our understanding of global warming science and consequences matures. If a cap and trade program is to be developed, it must include "safety valves" that allow emission reduction targets to be adjusted or suspended based on scientific, technological, or economic reasons.

Carbon Tax – While potentially more broadly applicable and efficient than some other policy options, this approach would disproportionately hit energy intensive industries. Since there is currently no commercially available and cost-effective control technology for CO₂, a carbon tax would simply be a penalty, not an incentive, at least in the short term. The recommendation of the Wisconsin Governor's Global Warming Task Force to impose a flat \$2 per ton fee on emission allocations is a carbon tax in reality.

Renewable Energy/Portfolio Standards – While Wisconsin industries have long been a leader in the use of renewable fuels, the mandated use of renewable fuels in the energy sector has the potential to increase the price of key renewable resources that serve as the main raw material for important industries – wood – by significantly increasing demand. If utilities cannot meet government mandates for the use of renewable fuels through wind, solar, or other means, the use of wood biomass would be a logical choice. The ability of regulated utilities to recover fuel costs through rates, plus a profit margin, puts them in a position to outbid wood-using industries that are constrained by competitive markets.

Low Carbon Fuel Standard - Adoption of a Low Carbon Fuel Standard (LCFS) could significantly increase the cost of motor fuel for Midwest states. In all likelihood, the policy would dramatically shrink the Midwest's supply of motor fuel. In either case, the LCFS will hit consumers with higher prices at a time when they can least afford it, given our economic conditions.

It is important for policymakers to understand that the LCFS is a bias against the use of Canadian crude oil. The LCFS seeks to examine the total “life cycle” carbon emissions resulting from the extraction, processing and refining of oil as it is distilled into motor fuel. The low carbon fuel “standard” would be set such that

certain fuel types would be disqualified, or rendered cost-prohibitive based upon carbon offset penalties.

The ability to accurately assess these “life cycle” carbon emissions under a LCFS is questionable, but the underlying policy is designed to exclude fuels that require a higher degree of processing throughout the extraction and production process. Because many Canadian crude deposits require more intensive processing during extraction, a LCFS could either prohibit or add significant cost to their use in Wisconsin.

According to the Energy Information Agency and the Canadian National Energy Board, crude oil from Canadian oil sands represented about 1/3 of all Midwest (PADD2) imports in 2007 and expected to increase in 2008 beyond. Billions of dollars are committed to refinery investments in order to process this new secure crude oil resource.

The vast majority of the motor fuel piped into Wisconsin is derived from Canadian crude, and Wisconsin’s only oil refinery processes petroleum from this source as well. As such, a LCFS threatens the availability of a significant portion of motor fuel that enters the Wisconsin market. It is unrealistic to expect that the severe supply disruptions created by enactment of a LCFS would not substantially increase the cost of gasoline.

From a broader perspective, it’s worth noting that the Alberta Oil Sands have a proven reserve of 174 billion barrels of oil, with an estimated reserve life that exceeds that of Saudi Arabia. Canadian crude is a safe and secure source of oil located on our continent from one of our closest allies. Wisconsin employers and many in-state jobs are tied directly to its extraction and production. We shouldn't adopt a policy that could disqualify the use of this fuel in our region.

Cap and Trade – While cap and trade programs have worked in some areas, success is dependent on participants having a choice – either reduce emissions or buy excess reductions from someone else. The problem with CO₂ is that there is no commercially available and cost-effective control technology, in the traditional sense of the term. Participants have very few options – increase efficiency (which can result in modest reductions), switch fuels (at potentially great expense and logistical difficulty), reduce combustion (which typically means reduce production), or purchase offsets (at potentially great expense).

Cap and trade programs have a number of policy options and the following addresses some of the more significant ones.

- *Scope.* Which economic sectors should be included? It is difficult to determine if industry would be better off included or excluded. The answer depends on a host of unknown variables. Manufacturers should be dealt with in whichever way minimizes costs and increases global competitiveness.

- *Allowances.* Should the ability to emit CO₂ be allocated to facilities free of charge, auctioned, or some combination? Assuming that industry would be included in a cap and trade program, the free allocation of allowances based on historical emissions would be the least cost option. Maintaining the allocation at historical levels until commercially viable and cost-effective control technologies are available would protect the industry into the future. Keep in mind that overall industrial CO₂ emissions have been declining for years, not increasing.

Allocating allowances based on some type of benchmark introduces unnecessary complexity and would likely fail to fairly account for operational differences between facilities.

Consideration should be given to allocating allowances to sources for indirect emissions in recognition of any allowance-related costs that utilities pass through to customers.

Auctioning allowances would likely be economically devastating due to potentially high costs and because private companies could easily be outbid by speculators or by regulated utilities that can recover costs without regard for competitive consequences. Auctioning allowances simply penalizes facilities that have few reduction options in the first place.

- *Target Setting.* What should the target level of reduction be? We simply do not have the knowledge or information to set reduction targets that would be environmentally meaningful and economically feasible. If massive, long-term reduction targets are set, "safety valves" based on scientific, technological, and economic feasibility must be included.
- *Offsets.* What options should be available for companies to offset emissions, in lieu of direct reduction? Given the current technology shortcomings, every option should be available. This should include carbon sequestration in managed forests and in products themselves, as well as credit for recycling. The use of offsets should not be limited.
- *Incentives For Cogeneration.* Incentives should be provided for cogeneration or combined heat and power projects. Cogeneration is a much more efficient way to generate energy. Some Wisconsin industries, like pulp and paper, are large cogenerators of steam and power. Incentives could take the form of financial inducements or policy directives relating to new or existing energy generation. Conversely, other elements of a cap and trade program should not inadvertently create disincentives to cogeneration.
- *Credit For Early Action.* Should credit be given for early actions to reduce emissions or sequester carbon? We strongly support credit for early action.

Failure to do so would penalize those companies that have done the right thing.

General Legal Observations **Relating to a Regional Cap and Trade Program**

Regional cap and trade programs raise potential legal issues that the participating jurisdictions should be aware of and consider. We raise these issues here for that purpose.

The Dormant Commerce Clause - A regional cap-and-trade accord has the potential to discriminate against, and/or unduly burden, interstate commerce in violation of the dormant commerce clause of the Constitution. Among other things, a MGA cap and trade program could improperly: impose requirements on facilities outside the MGA region not placed upon facilities inside the MGA region; result in states discriminating against businesses operating outside the MGA region; create *de facto* state taxation schemes on interstate commerce; affect travel amongst states; affect interstate pipeline utilization; create *de facto* rationing programs for goods (particularly fuels); and result in states regulating activities outside of their respective jurisdictions.

Dormant Foreign Powers Clause and Compact Clause Concerns - A regional accord that includes agreements amongst the states, and/or with other countries, may also implicate the Constitution's dormant Foreign Relations Powers Clause or Compact Clause. Article I, Section 10 of the Constitution states that "No State shall, without the consent of Congress, ... enter into any Agreement or Compact with another State or with a Foreign Power." Any agreements entered amongst or between MGA participating states, or states in other regional trading programs, could be challenged as violating this Compact Clause. Likewise, any agreement which MGA states make with Canadian provinces, with the European Union Emissions Trading System to trade allowances, or with other countries to recognize greenhouse gas reductions projects for offset credits, could be challenged as violating the Foreign Relations Powers Clause.

Supremacy Clause Concerns - A state or regional scheme that conflicts with federal authority to regulate air pollution under the Clean Air Act may be preempted by federal regulation or legislation.

Taking Without Just Compensation - The Fifth Amendment of the Constitution prohibits the taking of private real property for public use by the government without due process of law and just compensation. As the MGA Accord will affect the ability of many businesses, particularly manufacturing facilities, to operate or otherwise achieve investment backed expectations associated with their property, these owners may have a legitimate argument that the restrictions of the Accord result in a taking.

Specific Comments on Preliminary Recommendations (November 17, 2008)

1.1 Reduction Targets.

- What is the legal status of the "targets" that would be set? Are they general goals that participants will strive to attain or are they legally enforceable standards that must be attained. If the latter, how would this be enforced?
- Targets are stated in terms of reductions from 2005 levels? Will 2005 emission levels serve as the baseline for the cap and trade program? If so, on what basis will emissions be estimated? Provisions should be included to allow the use of alternate baselines in case the baseline year is not representative or normal operations. See related comments dealing with budgets and reporting.
- Section 1.1.3 states that the targets will be revisited and adjusted from time to time based on future scientific findings, technology developments, and program results. We think this type of adjustment mechanism is critical. Regulators are, to a very large extent, flying blind from a technology, science, and cost standpoint and some mechanism to adjust as experience is gained – safety valves – must be included. We strongly urge that cost or economic impacts be added as a basis for future adjustments.

2.4 Thresholds for Coverage.

- The threshold for coverage will be determined on a sector-by-sector basis. What constitutes a "sector" must be clearly defined. Sectors should not be defined overly broadly in a way that covers widely diverse industries (e.g., manufacturing). A more appropriate scope might be, for example, pulp and paper. Care should also be taken if sectors are grouped together. One study grouped paper with printing. This may not be a proper grouping because of the significant difference in energy/carbon intensity between papermaking and printing.
- There is no lower limit or floor for a sector-specific threshold. We believe a floor should be added. Without a floor, capturing 85-95% of emissions in a sector could extend the program down to very small sources.

3.1 State and Provincial Allowance Budgets.

- If emission budgets are to be set that have enforceable regulatory consequences for affected sources, those budgets must be accurate. There must be some base level of emission data quality before allowance budgets can accurately be set and apportioned. The reality is that only the utility sector is likely to have GHG emission estimates sufficiently accurate to serve as a base for regulation. Other sectors may have no information at all. Although some states, like Wisconsin, require the reporting of CO₂, there is no regulatory consequence to the reported number, so a verification of emissions accuracy would be needed. Generating and verifying accurate data will take time. This argues for phasing in economic sectors as accurate data becomes available.
- We strongly believe that mandatory continuous emissions monitoring is not necessary for industrial sources, either to develop accurate allowance budgets or for compliance. There must be consistency between the way the budget is set and the way that it is enforced. This could be sector- or site-specific emission factors, monitoring (for utilities), or some other method, as long as there is consistency between establishment and enforcement.
- It is recommended that allowance budgets be based primarily on absolute emissions allowed in each state or province. We understand "absolute" to mean "actual". If that is correct, we support this approach. However, we are unsure what "allowed" emissions would be since GHG emissions are not currently regulated. Is the concept that the initial allowance budget be based on actual emissions and that subsequent budgets are based on what is allowed under a declining cap?
- Language should be added that allows targets/budgets/caps to be set based on energy intensity, rather than actual emissions, for energy/carbon intensive industries. This appears to be the direction in which the European Union is heading. It also appears that such an approach may require that energy/carbon intensive industries be dealt with outside the framework of a cap and trade program. Because of the EU interest in such an approach, it is important that this concept be included as an option.

3.2 Reduction Path

- It is recommended that allowance apportionment should decline in line with the target trajectory over time. Normally, we would interpret "in line with" to mean something other than exactly the same as.

However, in this context it looks like the intent is to be exactly the same. This should be clarified. Also, to be clear, if there is an intent to revisit and adjust the targets, it seems that the allowance budgets should reflect any adjustments to the targets.

- It would be very helpful if an example model could be constructed to show how budgets would be set and flow through from the regional level to the state and affected source levels, including allocation of the various allowance "value" categories that are proposed.

3.3 Allowance Distribution Purposes.

- This is the first appearance of the word "mitigate". Mitigation is a very important concept and there needs to be a common understanding of what it means. Dictionary definitions of mitigate tend toward making something less harsh or less severe. We think that it is very important that mitigation be meaningful or effective. If mitigation is not meaningful or effective it will do little or no good. If a company is facing the possibility of closing due to carbon costs, providing mitigation that is insufficient to keep the company operating does little or no good. It is very important that the concept of effectiveness be reflected in the design and funding of mitigation programs.
- Section 3.3 refers to "allowances", while the design principles and other language beginning at 3.3.1 refers to "allowance value". We are not sure what allowance value means. Is it the monetary value of an allowance? In some situations it appears to mean a monetary benefit, while in others it could be interpreted to mean avoided cost. Within the context of an auction system this would seem to be relatively straightforward. What does the term mean within the context of free allocations?
- Section 3.3.1.2 specifies the use of allowance value for the retooling, conversion, and/or re-use of existing industrial and manufacturing infrastructure. We support this purpose. However, does anyone have any idea how much "allowance value" this will take, where it will come from, or on what basis – criteria – it will be distributed? It is likely to be extremely expensive to do this in any meaningful way. There must be an up-front understanding of how this process will work.
- Section 3.3.2.1.1 calls for allowance value to be distributed to mitigate cap-and-trade program cost impacts to consumers, particularly low-income consumers. To whom would this allowance value be distributed and on what basis (criteria)? How much would it cost to provide meaningful or effective mitigation to consumers?

- Section 3.3.2.2.1 calls for allowance value to be distributed to mitigate cap-and-trade program cost impacts to industrial entities that are GHG-intensive and have a limited ability to pass costs on to consumers. We support this proposal. However, how much would it cost to provide meaningful or effective mitigation to industry? We understand this is dependent on need. How would need be determined? We oppose the use of modeling as the basis for determining need. We are extremely concerned about the reliability of modeling to accurately predict economic impacts and mitigation needs. Modeling is only as good as the assumptions that go into the model. Economic impacts should be estimated on a much more micro scale and by means other than modeling, to the extent possible.
- Where would the allowance value to mitigate industrial costs come from? It seems counterproductive to tax industrial sources in order to fund mitigation of the impacts of the tax.
- There should be some type of objective process for determining which industries are GHG-intensive and which have limited ability to pass costs on to consumers. The European Union has developed a formula that we are assessing. This process should be defined up-front, so industrial sources understand if they will be eligible for mitigation assistance or not.
- The list of potentially eligible industrial sources includes paper and printing. As we indicated previously, this may not be a proper grouping because of the significant difference in GHG-intensity between papermaking and printing.
- Section 3.3.2.2.3 calls for allowance value to be distributed to minimize leakage of emissions, jobs, and industry. While we support the concept, the practical application of this concept is unclear. What would be the basis (criteria) for determining that production is at risk of being shifted out of the region due to carbon costs versus some other reason? How would a company demonstrate that leakage was likely and that the awarding of mitigation allowances would prevent the leakage? Would this be done at a sector or facility level?
- Section 3.3.4 calls for addressing the adverse impacts of climate change on communities, human health, and natural resources. There is no mention of using allowance value for this purpose. As such, is there a reason to include this section in a cap and trade program or should it be address somewhere else?

3.4 Allowance Distribution Methodology

- A hybrid approach to allowance distribution is proposed that includes some auctioning, some free allocation, and some allocation at a fixed fee. Would a state need to distribute some allowances in each way or would a state be able to choose to put all of its allowance eggs in one basket (e.g., 50-25-25 v. 100-0-0)?
- A transition period is mentioned and options provided of either a fixed time period (e.g., ten years) or based on the availability of new technologies. We strongly support the latter approach. It is consistent with the revisit and adjust concept included in the target section and reflects the reality that, to a very large extent, there is no commercially available and cost-effective technology for making dramatic GHG emission reductions.
- Section 3.4.1 talks about safeguarding allowance value. This discussion seems to be aimed at preventing states or provinces from diverting allowance value to other purposes, such as general government operation, deficit reduction, or other purposes. However, there is another, perhaps less visible, security issue that must be addressed and that is the security of the trading system itself. We see at least two risks. One is the potential for huge amounts of money to be siphoned off for administrative purposes or by speculators, making the entire system much more expensive than it might otherwise be. The other is the transparency of the system and the ability of regulators to understand and track transactions. With the credit markets debacle fresh in mind, this should be a high priority.
- Section 3.4.1.1 discusses safeguarding allowance value as it relates to utilities and is where we get a bit confused about allowance value. Direct allocation of at least some allowances is recommended for local distribution companies and load-serving entities. Direct allocation is contingent on energy efficiency and conservation efforts that benefit end users. Allowance value must flow directly to end users. In the case of direct allocation, there is an avoided cost. What is it that must flow through to end users? If the market value of a GHG allowance is \$25, must the utility spend \$25 multiplied by total GHG emissions on investments that lower GHG emissions and compliance costs?
- Section 3.4.1.2 calls for some share of total allowance value to be allocated freely to energy-intensive or other vulnerable industries to mitigate adverse economic impacts. We strongly support this proposal. As mentioned previously, there should be some type of objective measure of energy-intensity that is understood up-front, such as the EU model (we use this as an example only; we are not

advocating it). We are aware of some studies that characterize papermaking as being much less energy-intensive than it really is. A survey of Wisconsin mills reveals that energy amounts to between 10-25% of production costs, a level that would easily pass the EU test. It is our understanding that this is also in the same range determined for our industry in the EU.

- Distribution of these free allowances is contingent on the implementation of what appears to be industrial cost mitigation measures (the cross-reference appears to be incorrect and appears that it should be 3.3.2.2, not 1.3.2.2). We're not sure what this contingency involves, since it seems to be a repeat – mitigating adverse economic impacts. What is the intent of this contingency?
- Section 3.4.1.2.1 indicates that the mitigation allowances would be provided as transitional assistance. As we stated previously, the length of any transition period should be tied to the availability of technology, more precisely, the availability of affordable, commercially available technology. A sentence is included in this section that refers to the evaluation of industrial profitability as a basis for determining how many free allowances are provided. Putting government regulators in the position of being judge and jury over private sector profitability is an extremely dangerous concept. We are strongly opposed to this concept.

3.6 Compliance Period.

- Is the three year compliance period a discrete three-year period or a rolling three-year period? If it is the former, would a covered facility add up emissions over the three-year period and compare that number to allowed emissions, with this process taking place once every three years? If it is the latter, we assume there would be an annual true-up.

3.7 Banking.

- Can banked allowances and offsets be sold?

3.9 Early Action Credit.

- We support early action credits, but we oppose the definition of "early" implied in this section (the time between the release of the final model rule and the program commencement date). In reality, this is a very late date that would penalize true early actions. The window for early actions should extend back to 2000, subject to verification of actions and emission reductions.

4.2 Offsets.

- We strongly support the maximum use of offsets in order to minimize costs. One often mentioned offset mechanism is forest carbon sequestration. However, we're not sure that forest carbon sequestration would meet the real, additional, verifiable, permanent and enforceable criteria. For example, for existing forests, how would "additional" be met? This is one of many issues being debated nationally in an effort to come up with practical, workable procedures for dealing with forest carbon sequestration. Sufficient flexibility should be allowed for agree-upon alternatives to strict adherence to RAVPE criteria.

4.5 Limitation on Use of Offsets.

- The limitation is stated in terms a percent of the total reduction under the overall regional program. How would this translate to a state or facility? From a practical standpoint, if offsets can meet reasonable RAVPE requirements or alternative agreed-upon procedures, we don't see why there should be any limitation on use.

4.6 Geographical Location of Offsets.

- We would simply note that Wisconsin Governor Doyle and others recently signed a memorandum of understanding relating to international offsets that would be in conflict with this provision.

5.1 Start Date for Emissions Reporting.

- One of our initial comments related to the need for good quality data relating to emissions. This section calls for reporting to start one year prior to the program starting. Aside from the utility industry, much more time is needed to gather accurate GHG emissions. Starting reporting this close to the onset of the regulatory program seems to imply that allowance budgets would be set without the benefit of reporting data that has been properly quality assured. If this is the case, we are opposed to this approach. It virtually guarantees that allowance budgets will be out of sync with actual emissions. One way to deal with this situation is to phase in sectors of the economy that don't initially have emissions data of sufficient quality. For example, utilities could start in 2012, industry could start in 2015, and so on. This would also provide a more manageable ramp-up period for regulators.

5.2 Thresholds for Reporting.

- What facilities would be affected by a 10,000 TPY emission threshold? We doubt that anyone knows. The scope of any reporting system (or any cap and trade system) must be known prior to enactment of the requirements. A 10,000 TPY threshold could capture many small sources and significantly increase regulatory and compliance costs, without significant environmental benefit.
- Section 5.2.1.2 requires the reporting of biomass emissions, even if these emissions are not counted under the cap. It does not appear that the cap and trade language specifically states that biomass and other carbon-neutral emissions are not subject to the cap and trade program. An explicit statement to this effect should be added.

5.4 Verification

- This section requires third-party verification of reported emissions. This would be cumbersome, expensive, and unnecessary, at least for traditionally regulated sources like industry and utilities. Current law holds these facilities legally accountable for the accuracy of emissions. If an acceptable reporting protocol were developed, compliance with such a protocol would be all that is necessary.

Renewable Portfolio Standard

Wisconsin's industrial energy users recognize the priority that the state and Midwest has made of renewable energy and its value to the environment. However, we remain gravely concerned that new generation, in the form of renewables, is being constructed to simply meet the RPS requirements and without a real need for the additional capacity it will create at a time when our economy is in crisis.

By our estimate, Wisconsin is currently facing \$18 billion in new utility-related infrastructure costs over the next decade. There will be extreme pressure on electric rates in the next few years. Further large rate increases will seriously harm our competitiveness and could lead to the loss of factories and jobs.

Wisconsin's 10% Renewable Portfolio Standard (RPS) is having a big impact on utility costs (10% of total amount of electricity sold to retail customers or members by the end of 2015). All of the state's utilities are proposing 100 – 200 MW wind farms to comply with the law. At about \$2.5 million per megawatt, each large wind farm costs hundreds of millions of dollars. For example, one utility is proposing a wind farm that would generate around 200 MW at an approximate cost of \$500 million. This project will get the utility less than halfway to the 10%

RPS mandate. Three more similar wind farms would be needed just to meet a 10% requirement. All of this would be on top of a major infrastructure improvement initiative undertaken during the past 10 years. The practical result is that the company will be adding billions in wind development to their ratebase, even though they have excess supply for many years and their customers are already facing extreme rate pressure.

The 10% RPS is on track to be one of the most costly energy infrastructure project in state history. We therefore have serious concerns with the MGA's proposed 30% RPS by 2030.

Based on these concerns, Wisconsin's industrial customers pose the following questions and concerns to the MGA participants:

- What cost/benefit analysis was performed to come up with the proposed 30% by 2030? If a thorough cost/benefit analysis was not completed, then a study should be conducted before enacting and implementing the proposed 30% RPS policy.
- How will the 30% by 2030 be implemented? For example, some states have much better wind regimes than others. Can the 30% be an average across the MGA states or does each individual state need to comply with the 30%?
- Will there be "off-ramps" or "circuit breakers" for the RPS to mitigate costs, especially when conditions might make compliance economically or technically infeasible?
- Will customer groups be able to petition to get a delay/off-ramp in the compliance of the RPS? If yes, what government agency do they petition – their own state Public Service Commission, the FERC or some other agency?

We suggest that the following provisions be included as part of any RPS. Delays must be granted if it is determined that the applicant has demonstrated good faith efforts to comply with the RPS deadline and that any of the following applies:

1. Situations where compliance with the RPS would create undesirable impacts on the reliability of an electric provider's system.
2. Unreasonable electric rate impacts (e.g. causing more than 1% rate annually due to compliance) would be experienced as direct result of RPS compliance. For example, rate increases from the discontinuation of federal tax credits must be included in the RPS language.
3. A provider experiences or will experience delays in facility siting or obtaining environmental permits.
4. Significant transmission constraints interfere with the economic and reliable delivery of renewable energy to the electric provider's system.

Wisconsin manufacturers are competing not just against Midwestern states, but against the entire world. Businesses simply cannot pass along to their customers their rate increases when they are part of the global economy.