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March 12, 2010

Senator Max Baucus
511 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Baucus:

MPA is writing to express our appreciation for your letter of February 19, 2010 to the Environmental Protection Agency (EPA) objecting to EPA's intent to regulate green house gas (GHG) without authorizing legislation from the Congress. The impact of such regulation is indisputably profound; we are firm in our belief that Congress that must act to prevent ill-founded regulatory nightmare. MPA shares your fears that regulating green house gas under the Clean Air Act (CAA) will have serious economic and energy security consequences. The response from EPA Administrator Lisa P. Jackson falls far short of allaying our fears. Clearly, the CAA is not the appropriate method for regulating green house gas.

As we have stated before, the U.S. Supreme Court *did not* require that the EPA regulate GHG. The Supreme Court found *only* that CO₂, methane and certain other gases are *potentially* subject to regulation under the broad definition of air pollution, *if* the EPA makes a further finding "endangerment.". EPA's hasty endangerment finding that "public health" is at risk has put the Agency and the economy on a disastrous collision-course that, absent Congressional intervention, may result in the worst of scenarios.

MPA has carefully reviewed Administrator Jackson's letter of February 22, 2010 in response to your inquiry. In her response, the Administrator lists a series of questions and partial answers. We believe that your questions have prompted EPA to an increased appreciation of the seriousness of the issues. Unfortunately, MPA believes that the Administrator's response is neither comprehensive nor adequate in addressing many critical concerns. We appreciate the opportunity to offer the following specific comments for your consideration:

1. Administrator Jackson stated that she is confident that the EPA "tailoring" rule would withstand legal challenge. It is fair to say that this is not a widely-shared opinion in the legal community. EPA has been unable to point to any statutory authority for its position. This has been pointed out by numerous states, as well as many other parties in their comments on the proposed tailoring rule.
2. The Administrator further stated that no environmental groups are threatening a suit over the 25,000 TPY threshold, only industry groups. We find that statement disingenuous, at best, since there have been numerous articles in environmental trade news services expressing objections to EPA's proposed arbitrary thresholds for application. Any

of these groups or even individuals could bring such legal challenges, not only to the proposed rule, but to EPA's or *any State's* failure to regulate exempted sources or to limitations in permits issued to those who are required to obtain permits under such a rule. If any challenge succeeds, then the exemptions will be suspended, and many thousands of small as well as large sources will be put at regulatory risk. It is by no means sufficient to suggest that an informal promise by some high-profile environmental groups that they don't presently plan to file legal challenges provides adequate protection against such suits or the consequences.

3. Estimates about impacts on the regulatory agencies, and the number of sources that will be impacted have been grossly underestimated by nearly all accounts, including detailed comments by multiple states, including Montana (that were included in my last letter). Frankly, we have serious doubts that EPA or most states can give an accurate number of GHG emission sources regardless of the emission threshold. This point does not include the extreme financial hardship on business and consumers.
4. Administrator Jackson states that EPA likely will set the threshold "substantially higher" than 25,000 TPY *in the initial phases of the program*. MPA still has serious concern about the legality of choosing an arbitrary threshold. However, even if EPA is able to sustain such initial exemptions legally and implement them practically, Administrator Jackson's letter makes clear that more stringent limitations will follow for other, smaller sources. Again, absent Congressional correction, this threat to apply ill-suited CAA provisions to CO2 will chill many business activities of sizes much smaller than whatever "initial" threshold that EPA may promulgate.
5. MPA is not aware of an existing Best Available Control Technology (BACT) for CO2 emissions sources. Administrator Jackson stated that the EPA is looking at different possible BACT criteria and has a "goal to identify practical, achievable and cost effective strategies for minimizing emissions." MPA thinks it would be more prudent to have BACT standards discussed with the stakeholders and finalized before EPA seeks to regulate GHG emissions under CAA programs that require BACT. To impose a permitting requirement with no legal standard or even definite guidance for compliance would be irresponsible.

One important point, Administrator Jackson continues to indicate that EPA will adopt the proposed "light vehicle rule" this month. EPA presumes that this will automatically result in all purported GHG gases becoming regulated pollutants, such that multiple Clean Air Act rules will apply. If EPA takes such an action, it is undisputed that MPA members in Montana, and thousands of businesses throughout the state and nation, will see a huge increase in costs, across sectors, from upstream constraints on refining. *Such increased costs will make our members less competitive and we will see jobs move overseas, where environmental controls are lacking or even non-existent.* In Montana, the petroleum industry provides 12,000 jobs and \$9 billion in economic benefit. Letting EPA continue to move toward regulating GHG is wrong and must be stopped. While a two year delay suggested by Senator Rockefeller would be helpful, it does not solve the problem that the Clean Air Act is not the right vehicle to regulate GHG. This is an issue of monumental importance to our Nation, and it is essential that it be addressed through well-considered Congressional legislation and not by ill-fitted regulatory fiat..

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Montana Petroleum Association

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Senator Baucus, you have expressed your concerns about EPA regulations, yet Administrator Jackson indicates that EPA intends to proceed on its current course undeterred by the critical concerns that you and we have identified. Although we appreciate that it may not be your first choice, it appears to the MPA that the only viable mechanism on the table at this time is the disapproval resolution introduced by Senator Murkowski and supported by many of your colleagues. We again urge you to support Senator Murkowski's measure or take other urgent action that will prevent the economic chaos that will be caused by EPA regulatory action under the Clean Air Act.

Best Regards:

A handwritten signature in black ink, appearing to read "David A. Galt", written in a cursive style.

David A. Galt
Executive Director
Montana Petroleum Association

cc: Governor Brian Schweitzer
U.S. Rep. Denny Rehberg

enclosure