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February 4, 2010

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

Dear Senator Baucus:

As you know the Environmental Protection Agency (EPA) is proposing to impose green house gas (GHG) regulation on Montana and other states unilaterally under the federal Clean Air Act (CAA) without further Congressional action. The Montana Petroleum Association (MPA) asks that you support the disapproval resolution introduced by Senator Murkowski to prevent this devastating blow to Montana's and the nation's economy.

Greenhouse gas regulation is the most far reaching environmental policy action that will be considered in my lifetime. The CAA was written by Congress to regulate criteria pollutants, not GHG. EPA has repeatedly acknowledged that the CAA is not well-suited for GHG regulation. Many states and local environmental agencies, including Montana's Department of Environmental Quality (DEQ), have objected in detail to EPA's present course. A copy of critical comments to EPA by Montana and other states is attached.

The Montana DEQ has testified before Montana's Environmental Quality Council that based upon EPA's recent finding that CO₂ is a danger to public health, EPA adoption of either the EPA light vehicle rule or the EPA tailoring will automatically require Montana's air quality program to regulate CO₂ source down to 25 tons per year (TPY), or essentially a household furnace. EPA has admitted using the current prevention of significant deterioration standard of 250/100 TPY will create an "absurd result and unmanageable administrative burden. With so much at stake Congress has the responsibility to prevent the Clean Air Act to be used in such a manner.

EPA itself recognizes the problems caused by attempting to regulate GHG under the Clean Air Act. In an attempt to make its action more palatable, EPA has arbitrarily proposed a rule (the so-called "tailoring" rule) to limit the *first round* of requirements to sources over 25,000 tons. However, there is nearly a legal consensus that there is no authority in the CAA for such an arbitrary distinction, and that it will not survive legal challenge. It has become evident (see the Montana DEQ letter attached) that even the 25,000 TPY threshold that EPA is trying to set grossly underestimates the impact to States. Multi-state comments to the EPA submitted by air quality program managers, including Montana's DEQ, include the following points:

- EPA has seriously underestimated the number of facilities that will be affected, the economic impacts, and the resources required of both sources and regulators of its actions.
- Many of the sources that will be subject to EPA's proposed rules either have never been required to obtain an air permit before, or have previously only been subject to minor source permitting. For many of these sources EPA is creating a need to issue a permit for which there are no identifiable controls.

- PSD reviews will be required to be conducted at significant expense to the affected facility and the regulatory agency, yet they will result in very little additional environmental benefit.
- EPA's estimate of 60 hours to process a new major source is ridiculously low. Experience shows that a major source permit requires 1000 hours or more.

Magnify this problem by the by the broad acknowledgment that EPA's arbitrary threshold of 25,000 TPY surely will not stand up to legal challenge, and the consequences of EPA rulemaking for green house gas are staggering. Hundreds, perhaps thousands, of facilities will be subject to much greater regulations, including hotels, schools, hospitals, apartment and office buildings.

MPA testified on state green house gas rules before the Montana Environmental Quality Council. Some of the questions and statements from members of the committee were interesting, including mention that the Supreme Court is mandating EPA to regulate GHG. That statement in fact is not true, and represents a serious misunderstanding of the Court's decision. EPA's original position (under President Bush) was that CO2 could NOT be regulated under federal CAA, as it was not a pollutant. States contested the proposition that EPA could not regulate CO2 as an air pollutant (not whether it should). *Mass. v EPA* did not require regulation. Rather, the decision determined that CO2 could be deemed an air pollutant under broad definition of federal CAA, and therefore is potentially subject to regulation by EPA; however, the Court referred back to EPA for determination of whether or how to regulate. The necessary predicate for EPA to actually regulate under CAA then became a legal determination of "endangerment" of public health from CO2 and other named GHG gas. If EPA had concluded "no" on endangerment of public health, it would not have had to proceed with current regulation, and could have waited Congressional direction.

This "so-called" endangerment finding has numerous scientific flaws. In fact the finding is presently being challenged in federal court by several groups, including the National Cattleman's Beef Association. EPA's continued full-speed-ahead approach is an unnecessary and reckless game of "chicken" with Congress and the American economy over GHG regulation, and puts Montana's and the nations economy in extreme peril if EPA is allowed to proceed. Our national economy is experiencing a fragile recovery and promulgation of further GHG rules by EPA could send our economy spiraling downward again.

The list of comments submitted to the EPA on their "tailoring" rule closed December 28th, 2009. the list of comments from states was extensive. Over 41, either individually or in groups, submitted comments expressing concern. Everyone recognizes the problems with regulating GHG under the Clean Air Act without further Congressional direction and a comprehensive policy framework. MPA would appreciate your leadership and support for the Murkowski amendment.

As we have in the last 9 months, MPA intends to stay engaged with the debate and activity regarding climate change legislation and regulation and we will continue to share our opinion with our Congressional Delegation. Thank you for considering our comments.

Best Regards:



David A. Galt
Executive Director
Montana Petroleum Association

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

enclosure