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January 25, 2011

The Honorable Max Baucus  
United States Senator  
511 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Baucus:

The Montana Petroleum Association (MPA) appreciates the past dialogue we have shared regarding federal issues that affect the oil and gas industry in Montana. Over the last several months we have all seen articles and opinion pieces in nationally recognized publications including the *New York Times* regarding the consequences the U.S. Environmental Protection Agency's (EPA) regulatory actions could have on our nation. The purpose of this letter is to list many of those actions that severely impact or could impact our industry in Montana.

EPA's proposed new rules and expanded regulatory requirements will affect the natural resources industry with particular force, and pose a particular threat for oil and gas and related energy infrastructure development. The following is a partial listing of rules or requirements being pressed by EPA that are of concern to such Montana businesses.

A report compiled by the Republican staff of the U.S. House Committee on Energy and Commerce last fall, with respect to EPA proposed new or expanded requirements under the Federal Clean Air Act ("CAA") lists not fewer than 69 separate rules. Nearly all will impose additional costs and paperwork on businesses or activities in Montana. Those of most concern to members of the petroleum industry include:

- The EPA's pressing Montana to implement the agency's green house gas (GHG) "tailoring" rules without congressional mandate, under what is in the best light, is a legally disputed framework without meaningful guidance for actual permitting requirements. Nearly every facility in Montana holding a PSD permit or (more numerous) Title V operating permits will need to comply with new, economically unwarranted requirements no later than mid-2011 under EPA's schedule. Moreover, after that date, many additional sources will for the first time be obliged to obtain Title V permits that address GHG. Although EPA claims that only "large" sources will be initially covered, it has made clear that it will ultimately seek to apply these requirements to much smaller sources of CO<sub>2</sub>, methane or other GHG gas emissions. If EPA is not restrained, it is likely that Montana will either be trapped into a premature stab at compliance that ultimately will need re-doing or into joining more than a dozen other states (so far) in surrendering delegated authority back to EPA administration of GHG

rules. Just the GHG reporting rule authorized by congress has cost Montana refineries significantly. The smallest of our refineries spent around \$250,000 just to be able to report emissions as required using EPA's standards.

- Earlier last year, EPA adopted more stringent NO<sub>2</sub> and SO<sub>2</sub> standards, particularly including a new 1-hour SO<sub>2</sub> standard. Unfortunately, EPA is threatening to determine compliance by applying modeling methods that threaten existing SIPs, consent orders and permitted compliance by refineries, oil and gas production and other sources in Montana. For example, this could mean the difference between compliance and a "non-attainment" status for SO<sub>2</sub> in the Billings/Laurel air shed with significant, but yet unquantifiable, economic implications for many sources, in addition to refineries.
- Reconsideration of the 2008 Ozone National Ambient Air Standards, will negatively impact all economic activities and potentially severely impacting refinery operations in Montana, as well as oil and gas production and infrastructure operations in eastern Montana. The proposed 2010 ozone standards are predicted to cost between \$19 to \$90 billion to implement nationwide and will have a significant effect on compliance and operating costs for business and industries, particularly major sources. The current EPA proposal would put many parts of the United States in an ozone "nonattainment area" for the first time. MPA raised this issue to you in May of 2010 and pointed out that if EPA adopts the 60 ppb threshold, industrial development in many parts of Montana could be prevented. Keep in mind that the ambient ozone levels in Glacier Park are at 59.
- New national emission (MACT) standards for emissions from Industrial, Commercial & Institutional Boilers and Process Heaters will impact boilers of any significant size in Montana, whether fired by coal, biomass or oil and gas at universities, hospitals, businesses or major industrial facilities. A U.S. Department of Commerce analysis projected job losses of 40,000 to 60,000 per year and found a decline in the international competitiveness of U.S. goods, even using what was described as EPA's "low ball" cost estimates.
- EPA promulgated a rule on August 21, 2006 to fill the gap for permitting minor sources on Native American lands. Essentially this rule would create a Federal Implementation Plan (FIP) for minor source air emitters. EPA intends to promulgate the final rule by February 2011 with an effective date 60 days thereafter. MPA is concerned that this rule will negatively impact oil and gas operations that are ongoing on several Montana reservations. The program currently lacks the permitting infrastructure (application forms, instructions, oil and gas specific provisions) that is needed to provide reasonable efficiency for operator applications and agency review. Furthermore, the program lacks a general permit, something most surrounding states use to efficiently process the large number of applications for production sites.
- Ironically, at the same time that EPA is pressing Montana to rush ahead with GHG and other rules, EPA Region 8 is literally years overdue in acting on elements of Montana's current SIP, including the critical "de minimus" rule adopted by the state more than a decade ago (and recently further tightened in an effort to obtain EPA action).
- On January 6<sup>th</sup>, 2011 the EPA published its intent in the Federal Register to disapprove Montana's registration program for minor sources, specifically oil wells. MPA has not had time to evaluate in detail the impact of the EPA decision, but we are frustrated that a program developed in partnership with the Montana Department of Environmental Quality is having such problems with our federal government. MPA will keep your office apprised of developments on this issue which is significant to Montana's oil production industry.

- A new GHG mandatory reporting rule for petroleum and natural gas systems went into effect on January 1, 2011. The rule requires producers who emit more than 25,000 tons per year of GHG emissions from all equipment in a basin to gather emissions data, with the first reports due in March 2012. However, the rule was just finalized in early November, leaving very little time for producers to procure the expensive equipment and consulting services necessary to start collecting data, and the calculation methods required are cumbersome and not well thought out by EPA. The Gas Processors Association calculates that EPA underestimated the implementation costs by ten times.

EPA also is pressing Montana to move forward on a variety of water quality issues that, while of legitimate concern in many regions, are not taking into account Montana's different circumstances. For example, the problems of serious nutrient overloading in some places in the country, such as Florida and Maryland coastal waters or estuaries, are very different from fresh waters in Montana, and different programs are appropriate.

Montana has effective narrative standards to protect state waters from man-made nutrient overloading. It has been examining the reasonableness of using numeric standards for determining compliance with dictates of the TMDL process and more generally as a tool to protect beneficial uses. However, if unduly stringent numeric standards are prematurely adopted under pressure from EPA, municipalities, industry and agricultural sources will be almost uniformly thrown into a posture of non-compliance. It is acknowledged by Montana DEQ and almost all stakeholders who have been working on the issues that adoption of standards preferred by EPA would essentially not be achievable, even at extraordinary cost, for much municipal, business and agricultural resources given commercially available technologies. The undisputed result would be either extended periods of non-compliance, or multiple and extended variances for nearly all Montana sources, with high costs but nearly indiscernible benefits to Montana's waters. Neither Montana's businesses nor its communities can afford to divert critical resources from many other priorities to a new regime of requirements for trivial benefits.

In short, EPA generally, and Region 8 in particular, are rushing a broad agenda of rules, many of uncertain legality, for which costs are high, benefits doubtful, implementation guidance incoherent, and for which implementing resources are unavailable to Montana. The result will not only set back economic regeneration and job development, but will drain resources from existing, core environmental programs in Montana. This is contributing to a pervasive atmosphere of regulatory uncertainty that is freezing up economic activity in Montana, even before being formally implemented in many cases. It is time for Congress and responsible parties to insist that EPA step back, and proceed with more deliberation and care, before economic damage is done that will take many years to undo.

Sincerely:



David A. Galt  
Executive Director  
Montana Petroleum Association

cc: U.S. Senator Jon Tester  
Congressman Denny Rehberg  
MPA Board of Directors