Energy and Telecommunications Interim Committee
Statements by the Montana Petroleum Association on the Effects of Climate Change Legislation
November 9, 2009

Good Afternoon Madam Chair, and members of the committee. For the record my name is Dave Galt and I am pleased to serve the members of the Montana Petroleum Association as their Executive Director.

MPA appreciates the opportunity to appear here today and share with you our views as well as our concerns about the climate change legislation pending in Washington. I will also add a few comments about proposed EPA regulation. While EPA regulations are not statute they have the force and effect of law in the absence of statute. The impact these regulations will have on our industry is devastating, and all of this is work by federal employees not policy makers.

By way of background, the MPA has spent a considerable amount of time reviewing climate change proposals and offering comments, beginning with the recommendations that came from Governor's Schweitzer's Climate Change Advisory Committee. MPA has developed a set of guidelines for use in climate change policy discussions. Our principles are very simple: recommendations that are based on conservation, MPA supports. Recommendations that increase costs to us or our customers, we do not support. That policy is the position we took with the council's recommendations, again with Legislation in the 2009 session, and now with legislation currently before Congress and the US Senate.

There are two climate bills that are presently receiving particular attention, the first is the House American Clean Energy and Security Act of 2009 (H.R. 2454), more commonly referred to as the Waxman-Markey Bill, which passed the House on a close vote in June. The other is the Senate Clean Energy, Jobs and American Power Act (S.1733), commonly called the Kerry-Boxer bill. Kerry-Boxer passed the Environment and Public Works (EPW) committee last week and will continue to work its way through the Senate. The bills are similar in that they create a national cap and trade program for CO2 emissions. For reasons I will outline today, MPA can not support either bill. MPA has sent letters to our congressional delegation expressing our opposition as well as suggestions that would lessen the bills' harsh impact on the oil and gas industry, and therefore Montana's economy. We are most appreciative of the attention that Senator Baucus has given our suggestions and his work to incorporate them in the EPW committee bill. Unfortunately no amendments were added to the bill due to a procedural move but we remain hopeful that they will be considered when the Senate takes action. We also appreciate Senator Baucus's "no" vote before the EPW committee last week.

One of the key components in both bills is the distribution of free allowances. The Senate's version of the bill significantly reduces the allowances available to all regulated entities. In Kerry-Boxer emission levels for CO_2 will be capped beginning in 2012 at 97% of 2005 emissions. In 2012 facilities that emit more than 25,000 tons of CO_2 per year will have to reduce emissions or purchase allowances. The downstream (refining) sector of the oil and gas industry receives 2.25% of the available allowances, although presumed responsible for roughly 44% of the emissions. Under both bills refineries are held responsible for all the emissions from the production in the field to the exhaust on our vehicles. Since no technology exists at this time to remove the CO_2 emissions from our facilities, all four refineries in Montana would be required to purchase an increasing number of allowances starting in 2012 in order to continue to operate. Is that fair, particularly in a State with 4 of the smallest refineries in the nation? This expenditure will increase the cost of transportation fuels and refined products. As the "cap" for CO_2 emissions is tightened to 80% of 2005 emissions in 2020, transportation fuels prices will continue to rise. The first casualties in Montana will be the small business refineries, especially those that do not have their own production. Consider that the refinery in Great Falls is the smallest in the country and Montana's three other refineries in Yellowstone County are small by national standards. Cost increases caused by cap and trade requirements and the associated capital requirements will put all these refineries at risk, and potentially see the closure of two facilities by 2015. Keep in mind that these four refineries employ nearly 1,000 Montanans who receive an average wage over $90,000 per year.

Claims that cap and trade bills will reduce our dependence on foreign oil simply are not true. Between cap and trade and proposed tax changes, domestic oil will be less competitive, as will domestic refining. From the upstream producer perspective increased costs caused by these climate change bills will impact our member's ability to find, and develop new supplies. Oil and gas developers fund new development through cash flow from production. As expenses go up the funds available for new opportunities is reduced, resulting in fewer jobs in the field, lower supplies of domestic oil and natural gas, greater dependence on foreign sources and less tax revenue for state and local government. We are already seeing increased importation of refined product into the US and as our industry's operating expenses rise, we become less competitive. I offer the following article for your review. This is the testimony of Bill Klesse, CEO, President and Chairman of Valero Energy Corporation before the Senate EPW committee on October 29, 2009. Valero is America's largest independent refiner and producer of petroleum products. Mr. Klesse's testimony gives an excellent view of the impacts to the refining sector and asks some very important questions. (Valero handout)

The Waxman–Markey and Kerry-Boxer bills have language that offers protections to industries they label as "energy intensive, trade exposed." This provision covers industries such as the steel providers, but has a gaping exception…you guessed it…petroleum refiners. I question how these bills can enhance America's energy security when in fact America will be more dependent on foreign refined products.

The citizens of Montana will suffer increased costs at higher rates than others in this country simply because of our rural nature and the importance of truck transportation to our economic livelihood. With all the conflicting reports that have been issued, the cost issue is beyond confused. Recently the EPA offered a study projecting the cost of cap and trade to Americans would be $100 per year. Let's take a close look at this. Both of Montana's large utilities have said that power bills will increase. They suggest ranges from $161 to $500 per year for residential customers and much higher for commercial use. The US Energy Information Administration in a August 4, 2009 report suggests gas and diesel prices will be pushed to over $5.00 a gallon. What are the costs to Montana's families? Consider that a person driving 12,000 miles a year in a vehicle getting 20 miles to the gallon will see their gasoline bill increase $1,500 per year.

MPA is also concerned about conflicting EPA regulation and other state and regional programs. It makes no sense to us that we could have multiple, redundant programs across the country and in Montana. Neither bill provides for comprehensive preemption or critical consistency for emissions reporting, standards, permitting or controls required. If Federal legislation is enacted it must preempt redundant and conflicting EPA regulation and state and regional programs such as the Western Climate Initiative. Since 2005 we have see an activist Board of Environmental Review implement rule making in several areas even after the Legislature said no. If Federal legislation is enacted it MUST give us one rule book to follow.

If you listen to the Secretary of Transportation, that department's focus is on mass transit and livable communities to help reduce green house gases. There is nothing wrong with that approach if you live in an area with high population density. But does that work for Montana? Consider the average population density in America is 80 people per square mile, in Montana it is 6 people per square mile. Does that fit with our lifestyle? I can tell you from past experience that shifting funding from highways to mass transit at the federal level has huge impacts for Montana's construction program.

While most of the media attention is focused on what Congress and the Senate are doing we must also pay attention to recent actions by the Environmental Protection Agency. A few recent rule proposals merit mention to this committee.

EPA has issued proposed rules stating that CO_2 is a threat to public health. This endangerment finding has yet to be approved by the EPA. If EPA makes such a finding, there will be significant impacts to every business in America. Treating CO_2 as a public health threat not only requires EPA to heavily regulate it under the Clean Air Act; but it also opens the door to citizen lawsuits against any businesses that emit CO_2. There are already lawsuits in process. Recently, the 2nd Circuit Court of Appeals reversed a local court that refused to hear a case regarding alleged global impacts of CO_2 from local utilities. This action is being watched across the country and will be a serious impact to any business with CO_2 emissions.

The threat of EPA regulation under the Clean Air Act is very complicated. If EPA makes a finding that CO_2 (and other gases such as methane) are pollutants that threaten public health, then the EPA must apply the full regulatory requirements of the federal Clean Air Act, including permitting standards of the Title V, PSD and NSR programs affecting thousands of sources. Currently the EPA has proposed a light duty truck rule in which CO_2 becomes a regulated pollutant. Under current regulations, once CO_2 is regulated, which it would be under the light duty truck rule, then CO_2 will need to be regulated for emitters down to 250 tons per year. This will bring a large number of new facilities under regulation, including schools, retail businesses, government buildings, hospitals, nursing homes etc. The implications of these rules are not understood at this time, but when Congressman John Dingle said months back that regulating CO_2 under the Clean Air Act would be a huge mess...he wasn't kidding. EPA has admitted that this would be impossible at present, and made a low estimate of an additional $54 billion in cost to implement such regulation. Accordingly, it has sought to mitigate this damage by (temporarily) exempting CO_2 sources under 25,000 tons. Unfortunately, even EPA seems to acknowledge that such a distinction is not currently authorized under the Clean Air Act, and probably wouldn't withstand legal scrutiny, unless later legislation specifically enacted such an exemption---with all its own set of problems.

These EPA regulations and others will impact much of the upstream oil and gas operations across the country and in Montana. EPA continues to advance regulations that will have a negative impact on our operations. They offer a huge disincentive to drilling new wells. If the proposed federal legislation and regulations are enacted, the consequences for Montana and our industry will be of an unprecedented magnitude.

Madam Chair: MPA has spent considerable time on climate change issues and we take them seriously. MPA members work hard to control emissions, we have supported EPA's Gas Star Program, we have one of the only Gas Star approved refineries in the country, we take our responsibility to the People of Montana very seriously. MPA will be proactive on climate change legislation at the state and federal levels since it is critically important to Montana. At the end of the day, Montana's oil and gas producers, our transporters, our refiners and the citizens of Montana will all see significant cost increases. We are concerned that if these bills pass, our industry and others will be crippled beyond repair...and for questionable gain.