Draft Testimony of Todd Ennenga on behalf of Devon Energy Corporation
HB790 Subcommittee of the Environmental Quality Council
Room 102 State Capitol
1/26/06 9:30 a.m.

Mr. Chairman and members of the Subcommittee: for the record, my name is Todd Ennenga, Government Relations representative for Devon Energy Corporation.

Devon has significant holdings in Montana and is currently one of the largest producers of natural gas in the state. Our operations are based out of our Havre office and include Chouteau, Blaine and Hill counties. We currently operate 850 wells and plan to drill 75 to 100+ wells each year over the next few years.

I think it goes without saying that in order for a drilling program of this nature to be successful, good working relationships with numerous surface owners are a must. We strive to partner with our landowners as we plan our future development, and although there have been some disputes, overall we have good relationships with our landowners. Currently we work with close to 100 different landowners in the three-county area, therefore, the activities being conducted by the Subcommittee are of significant importance to Devon and our current and forecasted development plans.

Since the Subcommittee began its work with the Havre meeting, we have attended all of the meetings and participated in the tours. There are significant differences in drilling techniques in various parts of the state, but they all share the common theme of landowner relations and, in particular, split estates.

Listening to the testimony at the various locales, there has been the common rejoinder by the surface owner who does not own the minerals. The Subcommittee has heard significant testimony regarding the dominant mineral estate over the surface estate.

That law is well established and even those holding no mineral interests below their surface realize, as have the courts, that a grant or reservation of minerals would be worthless if the grantee or reserver could not enter upon the land in order to explore for and extract the minerals granted or reserved.

My testimony today is intended to show that we have a vibrant and competitive oil and gas industry in Montana and that the statute enacted in 1981 has withstood the test of time, booms and downturns in Montana. Since that law was passed 25 years ago only two small changes to the Act have occurred: once in 1983 and again in 1985. To my knowledge there are no reported cases where the Supreme Court has ruled or interpreted the Act.

MANDATED SURFACE AGREEMENTS: Several speakers have suggested that surface agreements should be mandated and this should happen before any activity occurs on the surface. We believe that the current Montana statute provides significant rights and responsibilities to both parties, making a written surface owner agreement an option but not mandatory. By mandating surface agreements and even going further by requiring what should be in those agreements, you would take away any good will between the owners and mineral lessees.

HOW WE DO IT: Let me explain in general the process we use to access our landowners' properties under the current Montana statute.

As soon as we have made the decision to drill a well on a location, we contact the landowner by sending a Notice of Staking letter. This letter provides a legal description and an estimated timetable for the project. This is followed by a call to the landowner to make sure they have received the letter and to discuss any concerns they may have. Next, we propose an access route onto the property. This is followed by another call to the landowner to discuss the proposed route. Once these steps have been completed and the landowner is satisfied, we access the property and begin drilling operations. As soon as the drilling and completion

operations are finished, we provide a signed receipt to the landowner. This receipt documents the payments we have made to the landowner for any damages that may have occurred as a direct result of our operations. Please note, this is a receipt and NOT a release. It holds Devon liable for loss of crops suffered over a period of time due to our activity. Also, if the ground settles or doesn't re-vegetate, we go back and fix the well location or pipeline.

As a normal part our operating procedure, we maintain the access roads to our locations and make an annual "roads and trails" payment for the roads to all of our producing wells. We also make an annual payment for production water evaporation facilities located on a property, be it an earthen pit, containment ring or other containment system. If applicable, we also make an annual payment for a pump jack on location. If the well is located where the landowner is unable to farm around the facility, i.e. the corner of a field, we, at his/her election, plant that area back to grass and they are compensated on an annual basis for that acreage that was taken out of production. There are also a few large scale evaporation pits on private surface that the landowners bill us for on a monthly basis. This is for the production water we haul to that location, which in some cases can mean a few thousand dollars a month in extra income. We also maintain cattle guards, assist the landowners with snow removal in the winter, and notify them of any suspicious activity in the area.

NOTICE: Let's talk about notice; It appears that this part of the statute has generated a number of comments, perhaps because North Dakota and Wyoming have longer notice periods. I would like to explain to you why Devon believes the 10-day notice period is adequate and fair, particularly along the Hi-Line. A significant change to this section of the statute would become very burdensome to oil and gas operators who, for example, were trying to schedule routine well maintenance procedures such as workovers. Because of the high level of oil and gas activity in Montana and the west and the finite number of available rigs, if a workover rig suddenly became available, an extended notice could mean the risk of

losing access to that rig causing costly delays. Also, an operator would constantly have to notify surface owners in writing in advance of daily pumper trips which are impossible to predict. Weather also plays a factor in being able to access the property. For example, a cold snap from a Canadian Chinook that causes the ground to freeze suddenly allows operators to drive over the surface without causing damage by rutting. Many times landowners call and ask us to come out and get our heavy work done while the ground is frozen. An extended notice period means we would not be able to satisfy the wishes of the landowner on a timely basis and could actually result in increased damage to the property. Devon is not saying 10 days is fixed in cement but there are reasons for our position that 10 days is adequate. ~~We believe if changes are adopted by the Subcommittee, that they consider lengthening the first notice from 90 days to 180 days. One~~ further point is if changes are made to the time period, we would suggest the following language be inserted: "... unless waived by the surface owner." This language would enable the operator to enter the property for certain emergencies.

In conclusion, Devon has a big role in the energy industry in Montana and is interested in excellent surface owner and mineral lessee relations. The statute is working and other than a few "tweaks," we propose that the Subcommittee recommend to the full EQC that a brochure be created specifically spelling out the rights of both parties and that it be widely distributed and clearly used by industry when meeting with surface owners.

We appreciate the opportunity to address the Subcommittee and I am prepared to respond to questions.