

**TESTIMONY OF
CONNECTICUT ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
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Mr. Chairman Senator Lieberman and members of this Committee, I commend your review of the Bush Administration's enforcement of federal environmental laws and appreciate the opportunity to provide a state perspective.

Environmental enforcement is a matter of life and death -- for all of us, but most especially our children. Putting aside the mind numbing statistics and science about global temperatures, wind patterns, and the like, we now know beyond doubt this fact: air and water contamination are killers. They cause death and disease with real financial and human costs. Contaminants such as sulfur dioxide and nitrogen oxide from the Midwestern power plants -- just two of the pollutants emitted by these plants -- cause 300 deaths and 6,000 asthma attacks in Connecticut alone every year.

Facing and fighting these dangers together, the state and federal governments have forged a historic partnership. Under both Republican and Democratic Presidents, we have worked hard -- as a team -- to approve and enforce laws such as the Clean Air Act and the Clean Water Act, reclaiming our air and water from years of disregard and degradation. This proud partnership has produced real environment progress -- through tough negotiation and tougher legal action. Repeated lawsuits have produced milestone court victories. As partners, we have raised the bar and made polluters meet it, strengthened standards and policed them.

More important than the millions of dollars in penalties are the judicial orders cutting pollution. Our lawsuits are complex, resource intensive and time-consuming -- requiring real joint strategies and shared manpower. Many polluters are multi-billion dollar corporations that plow their huge profits -- gained from disobeying the law -- into court tactics aimed at delaying and defeating law enforcement.

Now, the Administration apparently is abandoning our partnership, undermining the environmental laws and undercutting the states. Not only has federal enforcement been swept aside, but states have been shut out and shot down as partners. In fact, we are no longer partners. We have neither input nor power. Our seats at the table have been occupied by energy interests, the Enrons and Ohio Edisons of the nation, now behind closed doors.

In your first hearing you heard from EPA Administrator Christine Whitman, whose commitment to state environmental enforcement was unquestionable as Governor of New Jersey. Even now, her emotional and intellectual engagement in environmental causes -- along with her grace and civility -- make her an effective spokesperson.

Quite appropriately, Mr. Chairman, you urged her to continue her advocacy -- to "keep up the battle" -- within the Administration.

But the battle already may be teetering toward defeat in three critical areas -- diesel exhaust regulations, new source review standards, and air conditioner efficiency requirements. In these three areas, the Administration's abandonment and abrogation of environmental principles and partnership endanger our health and life.

Under the theory that one picture is worth a thousand words, I have included a graphic picture of the importance of enforcement or, its corollary, the tragedy that would befall Americans if the Bush Administration fails to re-invigorate its air pollution enforcement efforts.

These graphs compare the pollution reductions that could be achieved through enforcement of the existing Clean Air Act with two other scenarios -- the Bush Administration's Clean Skies initiative and S. 556 introduced by Senator Jeffords, Senator Lieberman and others. They were prepared by the office of my colleague, Eliot Spitzer, the New York Attorney General who has also been a steadfast leader in fighting for clean air. What these graphs show, very clearly, is that enforcement of the existing law will achieve very profoundly substantial reductions in sulfur dioxide, nitrogen oxides and mercury. Enforcement of the current law would dramatically reduce acid rain, asthma, respiratory disease, smog, and eutrophication of our coastal waters.

EPA and others may argue with these predictions. Forecasts are always uncertain, but the numbers in this chart are actually conservative. There is a Department of Energy report that predicts 60-80 percent reductions simply from enforcement of the New Source Review program, which is consistent with the level of reductions we set forth and expect to obtain in our own NSR enforcement cases. EPA predicted similar reductions in a presentation to the Edison Electric Institute, although EPA is now backing off those numbers. I urge you to recall that NSR is only part of existing law. The current Clean Air Act includes the new fine particulate air quality standard, the interstate ozone requirements, the mercury control technology standard. There is no realistic argument that full enforcement of all these programs will not achieve the 60-80 percent reductions portrayed on this graph. Indeed, I believe that more credible analysts indicate an even greater

reduction than set forth here.

Again, put aside the cascading statistics and specific numbers. The point is that enforcement works. The point is also that, unfortunately, the Bush Administration is retreating from enforcement and is abandoning its partners – the states – in the midst of the battle.

We must restore our historic partnership before it is irretrievably shattered -- sabotaged by an Administration that seeks to weaken those standards and eviscerate enforcement

1. Diesel exhaust regulations

Diesel exhaust fumes are sooty, smelly, and disgusting. They are key ingredients of smog. And, they are deadly.

Medical science now clearly shows that the “fine particulates” in that exhaust cause lung cancer and asthma, among other diseases. Two recent studies, the Abt Associates’ Particulate-Related Health Benefits of Reducing Power Plant Emissions, October, 2000 and a 16 year, 500,000 person study printed in the March 6, 2002 issue of the *Journal of the American Medical Association*, conclude that particulate matter increases mortality from lung cancer and asthma. In order to protect our children from this danger, Connecticut's legislature is currently considering a bill to require that new diesel school buses be fitted with particle traps and use low-sulfur fuel.

Because of all the health concerns associated with diesel emissions, the EPA in 2001 established tough new regulations to reduce the pollution from new diesel engines. When the trucking and oil industries challenged these new rules in court, Connecticut and several other states formally intervened to support EPA. It was a classic example of our partnership.

Now we have discovered that our supposed partner has been secretly negotiating with the industries. When we first learned of the ongoing negotiations, we requested that EPA include us. The EPA, our partner, refused. We have petitioned the court to require EPA to admit us. As incredible as the need for that request may be, even more incredible was EPA's response: it filed objections to our request. The court ultimately declined to intervene, so the states are locked out, as EPA discusses compromises of our air quality with industry.

One key issue in the negotiations is how to calculate emissions from diesel engines in the regulations. There are two testing methods for measuring emissions: the FTP (Federal Test Procedure) Standard, which is a laboratory test for emissions, and the NTE Standard, which tests a broad range of normal driving conditions that are otherwise not subject to emission testing. We believe the discussions involve which of these methods to use. The FTP standard is intended to simulate a typical urban trip, but a wide variety of real world driving conditions are not incorporated in the test. The result is that an engine may meet the FTP standard in the laboratory, but not achieve FTP-based emission reductions in real world driving. The states and the environmental advocates should have some say on this important aspect of the diesel regulations.

We are committed to keep up the battle -- as you told the EPA to do -- even if our federal partner capitulates.

2. New source review standards

A higher profile example of the Administration's betraying our partnership while backpedalling on environmental protection involves New Source Review. To state the law in plain language, New Source Review is a requirement in the Clean Air Act that any power plant that makes significant changes to upgrade or expand, thereby increasing emissions, must also install state of the art pollution controls.

Midwest power plants send the Northeast all their pollution, and none of their power. Their air contamination is a killer. In Connecticut alone, sulfur dioxide from Midwestern power plants contributes significantly to deaths of approximately 300 people, and causes 6,040 asthma attacks every year. My state has the highest death rate from power plant pollution in New England. Connecticut air is so polluted by these power plants hundred of miles away that on some summer days, even if every car and power plant in our state stopped running, our air would still violate federal health quality standards for ozone. A 75% reduction in power plant pollution would save 200 lives in Connecticut every year.

In a series of lawsuits beginning two years ago, the EPA, Connecticut, New York and several other states sued several huge Midwestern power plants under the New Source Review sections of the Clean Air Act. We claimed that the plants spent millions of dollars to upgrade and expand their facilities without installing more air pollution controls, as the Clean Air Act requires. The EPA, the states and environmental advocates successfully negotiated with one of the major power plant owners, Dominion, to reach a settlement in principle that will dramatically cut emissions from its power plants in Virginia and West Virginia without raising electric rates or reducing electricity supply. We achieved a similar settlement principle with Cinergy.

Then, early in 2001, the Bush Administration ordered the EPA and the Department of Justice to review whether

New Source Review was impeding the development of energy sources and power plants. The Administration did not consult or inform its supposed partners, the states. Upon this order, all progress stalled on the pending New Source Review cases, including negotiations with Dominion and Cinergy. Astoundingly, just last week, EPA Administrator Whitman testified before this committee that she thought that it would be unwise for utilities -- the same utilities that she is suing over violations of the Clean Air Act -- to settle with the government before a federal appeals court rules on a case involving the Tennessee Valley Authority and alleged violations of the NSR. Thus, the announcement to review NSR, made without any input from the states or environmental advocates, has succeeded in virtually halting the pending Clean Air Act lawsuits.

In the ongoing policy review itself, the Administration once again has effectively shut out the states. It has barely paid lip service to our views or those of environmental advocates. Energy industry leaders, including former Enron executives, have enjoyed easy access to the Oval Office and the Vice President to discuss weakening environmental laws and encouraging energy production. But the states and environmental groups were relegated to testimony at formal public hearings last August without any information about specific proposals, and a few staff level meetings.

On December 18, 2001, we wrote to Vice President Cheney "to express our deep concern with the secret process by which the Administration is formulating changes to the Clean Air Act New Source Review program." We subsequently asked for a meeting with the Vice President but never received a response. Almost a month later, we received an invitation to meet with EPA Administrator Whitman. Our meeting with her on January 23 was cordial, but she could not provide us with any specific information about the Administration's plans or proposals for NSR. Such specifics, we understand, have been shared with industry -- in fact very likely with the companies that we, along with the federal government, are suing. Thus, polluters are coaching the Administration on how to weaken the NSR, while states and environmental advocates are pursuing enforcement against their ongoing flagrant, blatant violations of existing law.

The benefits of vigorous enforcement of existing standards, shown in the graphs attached, are irrefutable. If we continue our aggressive, joint enforcement of the Clean Air Act and, in particular, the New Source Review provisions, the amount of nitrogen oxides pollution from power plants would be cut 75% from 5 million tons to 1.25 million tons by 2010, and sulfur dioxide would be reduced by 82% from 11 million tons to 2 million tons by 2012.

Connecticut and other Northeastern states are committed to keep up the battle -- ongoing and new legal action against those power plants, and even against the federal government to uphold the Clean Air Act. We are actively preparing to block any federal regulations eviscerating Congress' intent in this landmark law. But a clear signal from Congress itself may be the most effective step.

3. Air conditioner efficiency requirements

The Department of Energy, with input from various state agencies, promulgated in January, 2001, a final regulation requiring improved energy efficiency in new residential central air conditioning units. This measure offered major advantages for consumers and for the environment. The Department estimated that the new standards would avoid the construction of five 400 megawatt coal burning plants and thirty-four 400 megawatt gas-fired plants. By reducing future demand for electricity, it would eliminate the need to build new power plants, reduce our need for more fossil fuel to run those plants, and save money on electrical bills for the purchasers of the new air conditioners. In turn, power plant air pollution would be cut everywhere from Ohio to the Atlantic Ocean. Nitrogen oxides emissions would be diminished by 94,000 metric tons in 14 years. Our dependence on foreign energy supplies would be reduced.

While Connecticut residents would pay slightly higher prices for central air conditioning units, we would save electricity costs and enjoy cleaner air. The higher initial cost would be repaid many times, not counting the public health benefits.

Inexplicably, despite these benefits, some segments of industry opposed it.

Again, the industry provided input to the Department of Energy, and the states and the environmental advocates were virtually shut out. Without consultation with the states that provided critical information during development of the original final regulation, the Department of Energy unilaterally imposed two successive delays in implementing the regulation and ultimately proposed reducing the improvements in efficiency by nearly 1/3. The states and environmental advocates have sued to stop the federal government from weakening this significant environmental rule, after the states were critical partners in its development. Here again, the states are now pleading with our supposed partner to protect consumers and the environment.

Is there a pattern in this picture? Again and again, states and environmental organizations are disregarded and dismissed -- publicly dispatched rather than treated as partners. Industry leaders are invited privately to the table as new partners. In these rooms, filled with industry smoke and mirrors, deals are struck to weaken and even eviscerate our environmental standards.

Senator Lieberman, you recently and accurately observed that America is at an environmental crossroads. Congress must put a stop to this continuing pattern of abuse of public trust. I urge this Committee to act decisively -- to protect our environmental laws and ensure that they are once again vigorously enforced. As partners, we must match words with actions to truly keep up the battle.