

Fort Carson has retention goals that it must meet to fulfill its mission. This is true during war as well as during times of peace. Fort Carson has deployed over 12,000 troops to Iraq since last year. That constitutes 80 percent of its troops. Men and women from the 3rd Armored Cavalry Regiment, 3rd Brigade Combat Team, 10th Special Forces Group and 7th Infantry Division have all supported Operation Iraqi Freedom.

Surprisingly, though the 3rd Armored Cavalry is still deployed in Iraq, the unit has not only reached its retention goals, it has greatly exceeded them. In the last quarter of this past year 294 soldiers re-enlisted while the objective was 129. This unit is retaining almost three times its goal for that period and for fiscal year 2003. Over the year, the regiment had 834 soldiers re-enlist though the goal was 554 reenlistments.

It is clear to me that the soldiers who are laying their lives on the line; they are committed to this cause; and we need to follow their lead. Secretary of State Colin Powell, while leading the first gulf war, said that the truly great leaders were also great followers. We in the Congress need to follow the lead of men and women from Fort Carson and commit to this cause. We must not waver when it is politically correct to do so, when the elections are near, or when the costs are high.

The cost of failure is greater than any supplemental bill brought forward to this body. The cost of failure is immense. The cost of failure will be realized not only here but through out the Arab world. Iraq is a unique opportunity to show that freedom and democracy can flourish in the region.

This mission is that important.

Any loss of life is tragic and we must reflect on the ultimate sacrifice we ask of our soldiers, sailors, airmen and marines when we send them into harm's way. We always hope that every person that deploys to a war zone will return home to their parents, wives, children and community. Today we have four families who will be met by the dark green uniforms that they all dread.

We can never bring SP Darius Jennings, SP Brian Penisten, SGT Ernest Bucklew or SSG Daniel Bader back to their families alive. As much as we would want, that is not possible. What Fort Carson is doing is 'continuing the fight' and that is exactly what this Congress and this country needs to do. We need to continue the fight even when that means more money appropriated, even when that means a new round of deployments to Iraq, Afghanistan or other yet to be determined hot spots, even if that means standing up to the world community and demanding they do their share.

The war on terror is not going to be won over night. The terrorists have been honing their skills and will not quit because we ask them to. Surgical strikes to obscure targets will not deter them. United Nations resolutions

with no force deployment will not dissuade them. What will convince these international thugs is a commitment to stand firm in our responsibility and not second guess our actions when things get difficult.

I stand today to honor these four fallen soldiers, each of the injured, and all of the men and women of Fort Carson. Your commitment and sense of duty is a commendable example to all Americans. I salute Fort Carson and everything the soldiers stand for, so let this body recognize SP Darius Jennings, SP Brian Penisten, SGT Ernest Bucklew, SSG Daniel Bader and all of Fort Carson left to carry on the fight and more importantly carry on the peace.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

#### AIR QUALITY AND THE BUSH ADMINISTRATION

Mr. JEFFORDS. Mr. President, I stand here to raise some questions and issues of importance.

There are so many difficult problems that Americans must face every day. These include crowded roads, finding adequate and affordable health care, getting a good education for their children, and improving their economic situation.

I believe our constituents want and should expect the Federal Government to do whatever is possible to minimize these burdens with minimal intrusion.

I also believe that Americans want to trust that the government is working to protect them from involuntary risks or dangers that will affect their lives, like defective products, unfair trade practices, and corporate fraud.

Or, perhaps one of the public's greatest expectations about such risks is that the Federal Government will effectively stop pollution that would shorten lives, put people in the hospital or otherwise harm their quality of life or their earning power. Not to speak of cancer or developmental damage that might occur to their families.

It is my duty, as a Senator from Vermont and as the ranking member of the Environment and Public Works Committee to see that the Federal Government meets the public's expectations. Sadly, it is my duty to say that in this matter the administration has grossly failed those expectations and has betrayed the public's trust.

I am not here to simply be critical. I am here representing those people, those communities, those populations who are suffering because this administration refuses to acknowledge that air pollution causes illness and death.

Actually, maybe they do know this, but they're willing to look the other way at the misguided request of big polluters.

There is a reason we have a Clean Air Act. To protect human health and the environment. I can not imagine any member of Congress or any elected or appointed official that would say that we don't need a Federal Clean Air Act. But this administration is getting close to that point.

I want my colleagues to know that I will be vigilant in pointing out places where this administration is at war with the Clean Air Act. And they are numerous.

I plan to work vigorously to defend the Clean Air Act throughout my tenure in this body. I will not bend on this. I will fight efforts to undermine the act in the energy bill, in appropriations bills, in any venue that members may look for an opportunity.

Mr. President, 32,000 or more people are dying every year due to power plant pollution. This is not a new number. It was first reported in the year 2000 and is based on reliable, peer-reviewed science. That is a crisis by anyone's definition. It is a call to action.

But, instead of taking urgent steps or really any steps at all to control that pollution, this administration has given the dirtiest, oldest power plants a permanent exemption from installing modern controls that would cut millions of tons of pollutants.

Not only will this administration not force these power plants to cut pollution in the future, but they announced earlier this week that they would no longer penalize those power plants and refineries for violating pollution limits in the past.

This reversal is stunning and unprecedented, to my knowledge. Just weeks ago, we were assured that the administration would continue to prosecute polluters who violated Clean Air rules in the past. Now they are saying let's just pretend nothing bad ever happened.

That is like saying, "Let's pretend that the thousands of lives shortened by increased pollution from those illegal activities don't matter."

The combined effect of the change in rules and the evisceration of enforcement cripples the Clean Air Act.

This Bush administration is trying to unilaterally reverse the great progress in air quality that we have made due to the bipartisan agreement in the amendments to the act passed in 1990.

I hope and will be working to stop this reversal through the courts or by other actions.

The so-called "clear skies" proposal that the Administration has advertised with taxpayer dollars is too little and too late.

It puts off real reductions in smog and acid rain causing pollutants from power plants for many years beyond what the public's health demands.

It puts them off beyond what the Clean Air Act could do right now if

only the Administration had the guts to stand up to the polluters' lobbyists and use the act constructively.

At the same time that the President's proposal defers any real and significant reductions in pollution, it immediately suspends or cuts back on the important parts of the Clean Air Act that work right now to protect local air quality from upwind sources and to push emissions control technology forward.

By the agency's own analysis of clear skies in the year 2020, hundreds of coal-fired units representing tens of thousands of megawatts, will still be operating without modern pollution controls.

This means that people downwind of those plants will continue to suffer in communities across the nation, in 20 or more states like Alabama, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, and on.

This just does not make sense. The administration's proposal still leaves many many plants uncontrolled 18 years from now.

It defies the imagination that we won't ask those power plants to use modern controls for a minimum of eighteen years. The technology is available now and it doesn't cost that much.

And yet, this delay in the President's proposal and its suspension of parts of the current Clean Air Act, will result in more than 8,000 people downwind of those plants dying prematurely every year when compared to my bill, the Clean Power Act, or to a vigorous implementation of today's Clean Air Act.

I have been prepared, as I have noted several times over the last 2 years, to work with the administration to work on compromise legislation. My offer has been met with deafening silence.

That is unfortunate for all those whose lives will be shortened, for the additional acid rain that will fall, for the asthmatic children who will suffer, for the increase in global warming, for the smog-blocking scenic vistas, and for the new lakes and fish contaminated by mercury. But that silence is not unusual.

I have come to expect that the administration will not answer straightforward questions or provide simple technical assistance.

And I have come to expect that the administration will not honor the public's or Congress' right to obtain documents and information on vital environmental policy matters.

So it was not a surprise to me that EPA has refused to honor its promise to analyze the impacts of controlling mercury emissions at various levels from powerplants. If they did a decent job, it would show that the Clear Skies proposal is weak and far less effective than today's control technology. Today's control technology—it is even worse than that.

It is also not a surprise to hear rumors that EPA and the utilities are

seeking another delay in the legal deadline to control mercury and other air toxics. As it is, this deadline is already many years later than required by the Clean Air Act.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JEFFORDS. Mr. President, I ask unanimous consent to have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. What is surprising is that anyone who has children would consider such a delay. Mercury, much like lead, can cause significant neurological and developmental damage to fetuses when a mother consumes normal quantities of fish. It can also increase the risk of heart, kidney and liver effects in adults. The National Academy of Sciences has documented these risks well. Let me repeat that. The National Academy of Sciences has documented these risks well.

However, in case the mothers and fathers who are considering extending this deadline or proposing ineffectual rules, I have joined with 12 other Senators in sending a letter to the Office of Management and Budget and the EPA. The letter explains their legal and moral duties, in the event that they have been forgotten. I ask unanimous consent that the letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. JEFFORDS. Mr. President, my inescapable conclusion, unless newly confirmed Administrator Leavitt can change it, is that the Bush administration does not care about the burdens that polluters lay upon the public.

Perhaps the administration does not care about the deathly ill senior citizens suffering from pollution-induced heart or lung disease, or the parents who are struggling to help their learning disabled or physically handicapped child cope with everyday life, or the 150 million Americans who are breathing unhealthy air.

Whatever their reasons, this administration is making it harder to breathe, to see, and to trust.

Mr. President, I yield the floor.

EXHIBIT 1

U.S. SENATE,

Washington, DC, November 6, 2003.

Hon. JOSHUA B. BOLTEN,  
Director, The Office of Management and Budget,  
Washington, DC.

Hon. MICHAEL O. LEAVITT,  
Administrator, U.S. Environmental Protection  
Agency, Washington, DC.

DEAR DIRECTOR BOLTEN AND ADMINISTRATOR LEAVITT: We are writing to urge the Office of Management and Budget and the Environmental Protection Agency to promulgate expeditiously a proposed rule to set maximum achievable control technology (MACT) standards to reduce utility emissions of hazardous air pollutants (HAPs), including mercury, as required by the Clean Air Act. As you may know, this proposed rule must comport with, at a minimum, the requirements of sections 112 and 307 of the Clean Air Act, the Administrative Proce-

dures Act, Executive Order 12866, and all applicable settlement agreements. News accounts suggest that the rule is being written to include an arbitrary reduction requirement and compliance date that are not justifiable given the Clean Air Act's specific language, and in a manner that may not produce a defensible proposal.

The Clean Air Act Amendments of 1990 require EPA to promulgate national technology-based standards for utilities that emit hazardous air pollutants, if deemed appropriate and necessary by the Administrator. After many years of Agency delay on that utility MACT standards rule, a settlement agreement was entered into between EPA and environmental organizations. The settlement agreement required EPA to sign a determination of whether regulation of utility HAP emissions is appropriate and necessary, and to follow a positive determination with a proposed and finalized rule, by dates certain. Pursuant to that settlement agreement, as last modified in November 1998, EPA Administrator Carol Browner finally made a regulatory determination in December 2000 that it was appropriate and necessary to regulate utility HAP emissions through the MACT regulatory process. Under this agreement, EPA must now publish a proposed utility MACT rule by December 15, 2003, and a final rule by December 15, 2004, with the compliance date set for December of 2007.

In general, the Clean Air Act Amendments of 1990 require EPA to set a MACT standard that achieves the maximum degree of reduction in emissions of hazardous air pollutants from all new and existing major and area stationary sources, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. But, section 112 of that Act defines MACT for new facilities as an emission standard no less stringent than what is achieved in practice by the best-performing similar source for which the Administrator has emissions information. Existing sources are required, at a minimum, to meet the average emissions of the best performing 12% of existing units, though EPA can set a more stringent standard. Section 112 (f) also requires EPA to assess the remaining (i.e., "residual") risks posed to human health within eight years after the promulgation of MACT standards, and regulate sources of HAPs to provide an ample margin of safety to protect public health. The EPA has moved responsibly in the past to regulate mercury emissions from all major non-utility sources, leaving utilities as the largest source of mercury air emissions in the country.

According to data collected by EPA and presented to industry groups in December 2001, there are technologies available today to reduce mercury and other HAPs from utilities in an efficient and economical manner. In fact, EPA's own analysis shows that several of today's technologies can control mercury emissions from coal-fired utilities by 99% for new sources, and by 98% for existing sources, without subcategorization by coal type. The upcoming utility MACT proposed rule must reflect this technological capability. Furthermore, given that this technology is already available today, there is no defensible reason to delay for any source the compliance date of December 2007, a deadline mandated by both the Clean Air Act and the settlement agreement.

Section 112 (d) of the Act allows for subcategorization of the standard, but only by class, type, and size of source, assuming it does not result in a delay of the compliance date. In other words, subcategorization is allowable for physical differences in plant design. We are concerned that EPA may be

considering subcategorization by coal type, which does not constitute one of these allowable distinctions. Including such a subcategorization in the MACT rule would not be legally defensible.

As you know, the Executive Order on regulatory review (No. 12866) enhances planning and coordination with respect to new and existing regulations, with the understanding that the, "... American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being. . . ." In particular, E.O. 12866 states that in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, as well as distributive impacts and equity.

Despite that directive, we are concerned that EPA and OMB may not be considering a full range of regulatory options that includes accurate implementation of the Clean Air Act, namely, a standard based on technologies available today that can achieve a 98%+ reduction in mercury emissions. We expect the upcoming proposal to reflect what the law requires by offering either the most stringent technology standard for public comment, or at least a range of options that includes this most stringent standard. We also expect that the regulatory impact assessment, as required by the Executive Order, which accompanies the proposed rule to include an assessment, and the underlying analysis, of the costs and benefits (including reductions in other air pollutants such as fine particulate matter) of potentially effective and reasonably feasible alternatives to the proposed rule that have been identified by the public.

We are also troubled that the Clean Air Act Advisory Committee established under the Federal Advisory Committee Act to advise EPA on development of utility MACT standards has not received promised analyses and has been inappropriately and abruptly excluded from the regulatory process. EPA worked with industries, environmental organizations, and State and local agencies in the context of these FACA workgroup meetings over a two year period. During these meetings, environmental stakeholders requested specific considerations and mercury reduction scenarios to be included in a model the Agency was developing.

The Agency promised to incorporate group recommendations and deliver findings of this updated modeling to the workgroup by March 4, 2003, yet the analysis was not available by that time. The Agency promised then to share the analysis by April 15, 2003, yet the analysis was again not available, and EPA staff abruptly cancelled that day's workgroup meeting, saying, "We will get back to you regarding a future meeting." The utility workgroup was never able to schedule a subsequent meeting with the Agency, and has still not received the modeling analysis promised almost eight months ago. This failure to deliver promised analysis is unacceptable, and the abrupt exclusion of stakeholder involvement is not good governance.

We expect the Environmental Protection Agency and the Office and Management and Budget to propose utility MACT standards on schedule. We expect that proposal will use the best performing facilities as the guide in setting standards that obtain the maximum reductions achievable. We also expect EPA to deliver on its promises by swiftly com-

pleting and distributing to the workgroup the modeling analysis for group-specified mercury reduction scenarios. Further, we expect EPA to continue to work in good faith to incorporate public comment on the proposal and finalize a thoughtful rule by December 15, 2004, while maintaining the December 2007 compliance date. To do any less would be legally indefensible, and would prolong damage to the public's health.

It is well documented that mercury from utility air emissions endangers our health and environment by depositing into our lakes, streams, and oceans and bioaccumulating in the fish we eat. The National Academy of Sciences has confirmed that fish consumption by pregnant women can lead to neuro-developmental damage in fetuses, and that all other adults can be put at greater risk of heart, kidney, and liver effects. Due to this public health threat, 44 States now post advisories warning the public about the risks of fish consumption. Dozens of other toxic air pollutants are released in significant quantities from power plants as well, including arsenic, cadmium, and lead, many of which are known carcinogens. The Clean Air Act does not allow for promulgation of a rule on this matter that is ineffectual in reducing to the maximum extent achievable the major HAPs emitted by utilities.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,

Jim Jeffords, Olympia Snowe, Joseph Biden, Ted Kennedy, Hillary Rodham Clinton, Jack Reed, Dick Durbin, Patrick J. Leahy, Susan M. Collins, Frank Lautenberg, John F. Kerry, Lincoln D. Chafee, Charles Schumer.

Mr. JEFFORDS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNFUNDED MANDATES AND THE INTERNET TAX NONDISCRIMINATION BILL

Mr. ALEXANDER. Mr. President, Mr. CARPER, the Senator from Delaware, is on the floor. He may want to speak in a few minutes. I have a few comments I would like to make about the debate we are having about unfunded mandates and Internet access taxes.

First, I thank Senator MCCAIN, the chairman of the Commerce Committee, who has been working very hard to help bridge what is a fairly big philosophical difference of opinion some of us have, and I express my appreciation to the leader, BILL FRIST, because he created some time today and last night for us to debate and talk about the issues. I think we have made some progress.

But here is where we are. As with most of our debates in the Senate, we have two valid principles in which most of us believe: First is, no taxation of Internet access. I have yet to run into a Senator who really wants to tax Internet access. Virtually all of us are willing to keep State and local governments from taxing Internet access.

I am a little bit of a purist on unfunded Federal mandates, with Washington politics telling State and local officials what to do, but the amendment which I have offered, and which Senator CARPER and others have joined in, would ban State and local government taxation of Internet access.

That is the first principle. We want the Internet to grow. We don't want local taxation. We don't want taxation that discriminates.

The second principle is, we don't want unfunded Federal mandates. That may be a little bit of a Washington word, but most people know what it means. It means Senators and Congressmen who come to Washington and pass laws and claim credit and send the bill to the school boards and Governors and mayors. Nothing makes local officials madder. This Congress, to its great credit, since 1995, has been very resolved against unfunded Federal mandates. So we don't want to tax Internet access and we don't want unfunded Federal mandates.

We haven't found out how to put the two together. We have offered a solution. There are really two basic ones out there. Ours would be to just take the current law, the current ban on taxing Internet access or allowing State and local governments to make that decision, and extend it for 2 years, and then to make a change to minimize discrimination between providers, providers being phone companies and the cable companies. That is our proposal.

The proposal on the other side was to create a much broader definition of what we mean by Internet access which would create a huge unfunded Federal mandate and take away, we believe, billions of dollars from State and local government tax bases, cause them to cut services or raise taxes on many other things, and make it permanent. That is the proposal.

Our argument is that our 2-year extension of the current law, with one adjustment to level the playing field between telephone companies and cable companies, is better for the country than a permanent installation of a very broad definition. So the issues are duration and definition.

The reasons for our amendment are these. One, we want to preserve the original intent of the Congress. The 1998 law was to keep the basic Internet access tax free. By that we mean, when you hook up your computer to AOL, the intention is that that is tax free. In our amendment, even as the telecommunications industry moves more on to the Internet, that would continue to be tax free. It is really a significant infringement on State and local prerogatives to decide what taxes to raise