have to fight the terrorists wherever they are, the one who said if you are not with us, you are against us; you are either a terrorist, and if you are a terrorist, we are opposed to you. If you harbor terrorists, if you support terrorists, if you fund terrorists, you are a terrorist. Now there is some habitat in Spain that might cause terrorists to settle in there, and that might potentially be a risk for more terror to come out of there. Maybe they will leave the Spanish people alone, but that does not mean the rest of the people are safe.

So we are confronted with appeasement over there. We need to stand together here. We need to stand together with our allies who have come together behind the United States. No other nation out there seems to be willing to crack and go off in that direction.

We have a large job ahead of us, to stand with our military, those who have given their lives and limbs, those who have given years out of their lives to protect us and protect our freedom.

I will continue to defend our President in this country, and let us be ready for any attacks. If we have to do it, let us go to the polls and defend our war on terror.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. LAMPSON) is recognized for 5 minutes.

(Mr. LAMPSON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida (Ms. CORRINE BROWN) is recognized for 5 minutes.

(Ms. CORRINE BROWN of Florida addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THREAT FROM MERCURY EMISSIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Maine (Mr. ALLEN) is recognized for 60 minutes as the designee of the minority leader.

Mr. ALLEN. Mr. Speaker, I am here today with the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) and later others of my colleagues to tell a story. It is not the most pleasant story, but it is an important story. It is a story of the threat from mercury emissions from coal-fired power plants around the country to the health of the American people, and it is a story of how the Clean Air Act requires that mercury be regulated as a hazardous pollutant, but this administration has chosen not to do that. In fact, this administration has submitted a proposed mercury rule which in major respects was written by the industries it is supposed to regulate. This story is an indication of what needs to be done to change the direction of the environmental policy of this administration.

Let me begin by talking about the Clean Water Act and the threat that mercury emissions pose to people in this country.

Three decades ago, the Clean Water Act promised that America would have water bodies that were fishable, that were swimmable and drinkable. Clean water, that was the goal.

But today, all across this country there are warnings that particularly women and children should not eat the fish from our lakes and streams and rivers because those fish are contaminated with mercury. Mercury pollution has contaminated 12 million acres of lakes, estuaries, wetlands, 30 percent of the national total. Nearly every State has issued warnings about eating mercury-contaminated fish. Seventeen States have mercury warnings for every single inland body of water, and 11 States have issued warnings for mercury in their coastal areas.

This is an extremely serious health issue for people in this country. In February 2004, a new EPA analysis found that about 630,000 children are born in the United States each year with blood mercury levels higher than 5.8 parts per billion, the level at which the risk of poor brain development is doubled. The study found one in every six women of child-bearing age has enough mercury in her bloodstream to threaten the health of her child.

Where does this mercury come from? Well, it comes mostly from the burning of coal in electric generating plants; and the mercury goes up into the air, it travels great distances through the air, and then comes down and it gets into the food chain in our bodies of water. According to the National Research Council, effects from prenatal exposure include mental retardation, cerebral palsy, deafness, and blindness. Adult exposure can produce sensory and motor impairments such as slurred speech, blurred vision, tremors, and memory loss.

Members may remember the expression ''mad as a hatter.'' Well, that expression grew out of 19th century England because hatters then were literally driven mad because there was a compound containing mercury that they used in processing the felt that went into their hats. Mercury can be extraordinarily dangerous in those kinds of concentrated forms. Mercury also threatens our loons, our ducks, our mammals. Recent evidence shows that exposure threatens reproductive success, liver damage, kidney damage, and neuro-behavioral effects.

Like 41 million Americans, I love to go fishing, but it has changed because fresh water fish in so many instances cannot be eaten without risk of mercury contamination, and that is why our States have so many warnings about the risks of mercury.

In Maine, my home State, we have about 26,000 people employed in the fishing industry, and we have thousands and thousands of recreational fishermen. Nationwide, recreational fishing generated more than $35.6 billion in expenditures in the year 2001 and $116 billion of total economic output. It supported more than 1 million jobs.

Now, in December the Bush administration was faced with a court requirement that it submit a proposed rule to regulate mercury emissions from power plants. Unfortunately, the rule that they proposed reinterprets the Clean Air Act, I believe, illegally in order to help polluters. It dramatically delays by how soon and by how much plants will have to clean up their act. Under the Clinton administration, EPA concluded that mercury is a hazardous air pollutant that had to be regulated under the strict section 112 entitled ''Hazardous air pollutants.''

Section 112 requires that EPA issue a maximum achievable control standard which would require every plant, here is one of the key differences, it would require every plant to reduce mercury emissions by 2007 to the maximum achievable level. Instead, the Bush administration proposes to regulate mercury, a hazardous air pollutant under section 111, ''Standards of performance for new stationery permits,'' in order to allow the use of tradeable permits.

Senator George Mitchell of Maine and the gentleman from California (Mr. WAXMAN), and all of the Members of this body who worked together in 1990 to write the Clean Air Act amendments, I know intended for EPA to regulate hazardous air pollutants under the section of the law entitled ''Hazardous air pollutants.'' It is exactly that simple. But the Bush administration proposal delays reductions. EPA agreed in court to regulate mercury emissions by December 15, 2007. This proposal delays any regulation until 2010 and full implementation to 2030. The cap-and-trade system they propose requires only a 29 percent reduction in 2010 and a 69 percent reduction by 2018.

So what we have is a weakening of the Clean Air Act in a way that I believe is absolutely illegal. But the EPA has not come to this with clean hands. Their own modeling shows that the 69 percent cut will not be achieved until 2030 because the trading system encourages many power plant owners to delay making improvements.

Here is a quote from Jeffrey Holmstead, the assistance environmental protection administrator in charge of air. This is what he says today: ''What our models now show is we won't get there as soon as we expected we would.'' That is what he told the New York Times on Sunday, but the truth is the EPA knew very well

that their mercury proposal would take well beyond 2025.

The proposal is designed to mirror the President's Clear Skies initiative. Clear Skies is a classic case of chutzpah, a triumph of marketing over substance, if I have ever heard one.

□ 1545

In July 2003, the gentleman from Massachusetts (Mr. MARKEY), the gentleman from New Jersey (Mr. PALLONE), the gentlewoman from California (Mrs. CAPPS) and I wrote to President Bush asking him to correct the claim made in the State of the Union address that his plan would mandate a 70 percent cut in air pollution from power plants by 2018. It was not true. In fact, the underlying EPA modeling made it clear that the reductions that the President proposed would not be achieved until years after 2018. We simply asked the President to get back to us and study by what date his proposal would actually reach that 69 or 70 percent reduction. Jeffrey Holmstead responded to our letter for the EPA and he wrote, ''The presence of banking will likely result in some undercontrol for a short period of time after the decline.'' If he knew that the goal was not going to be achieved, that the proposal would result in undercontrol, how could he be surprised today by the agency's predictions that 70 percent reductions would not come true when they said they would?

These reductions are really embarrassing. I am going to go on shortly to talk about some of the evidence out there that is absolutely compelling that, in fact, we can clean up, in most cases, 90 percent of the pollution from utilities burning coal with existing technology. We can get very, very close to that standard in a relatively short period of time.

What I would like to do is to stop my remarks for the moment, to which I will come back, and thank the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) for being with me here today to discuss the Bush administration's failure to come up with a reasonable proposal to regulate mercury emissions from power plants.

I yield to the gentlewoman.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I appreciate the opportunity to be here this afternoon and I thank my colleague from Maine for being willing to come to the floor and talk about a very serious issue.

I also applaud my colleagues for their hard work in bringing us together this afternoon, I think there will be others, to talk about a serious public health crisis that our country faces. That crisis is caused by mercury pollution. It is not only a national problem, it is also a very local one as well. The State of Texas leads the Nation in mercury pollution. Mercury emission from power plants is the major culprit. These plants dumped 8,968 pounds in 2001 alone. As a result, the whole gulf coast region has been placed under a consumption advisory. Our major fishing lakes are subject to such advisories.

Mr. Speaker, the citizens of Texas are urging us to take prompt and effective action to clean up mercury pollution from power plants. The Environmental Protection Agency's current proposals on mercury fall far short of what the law requires. The agency's proposals fail to protect the health of our children and our environment. This is especially true for Texas, where mercury emissions would increase, not decrease, under the proposed plan. We ask the EPA to carry out the requirements of the Clean Air Act to protect our Nation from toxic mercury contamination. We urge the agency to impose a 90 percent reduction in the mercury leaching from coal-burning power plants.

Last year, EPA proposed two alternative rules to address mercury emissions. Unfortunately, both of these proposals failed to meet clean air directives under section 112(d) for cleaning up mercury. EPA's proposals permit far more mercury pollution, and for years longer, than the Clean Air Act allows. This is playing games with the health of our Nation. Time and again scientists around the world have proven the toxicity of mercury. The agency's own scientists just released a study finding that approximately 630,000 infants, as my colleague said earlier, that were born in the United States in the dawn of this millennium had blood mercury levels higher than what is considered safe. This is a doubling of previous estimates.

Mercury emissions have also contaminated 10 million acres of lakes and 400,000 miles of streams. Soaring mercury levels have triggered advisories warning America's 41 million recreational fishermen that the fish they catch may not be safe to eat. Furthermore, evidence continues to mount that mercury causes reproductive problems in wildfowl populations such as loon and mallard ducks. Other fish-eating wildlife populations are at risk as well.

Mr. Speaker, we can address this public health and environmental problem if we just would do it. According to many States, industry experts and past EPA analyses, the technology to dramatically clean up these plants is available and affordable. I am concerned that EPA does not fully analyze the range of controls recommended by State utility and environmental and public health members of EPA's advisory group on this rule. I do not know what is holding EPA hostage, but once again they are failing to fulfill its reasonability to adopt standards that protect the public health and environment.

I look forward to working with my colleagues to call on EPA to develop appropriate mercury standards that reduce mercury emissions in the shortest time possible to protect public health and the environment. I thank my colleague for this opportunity to make a statement on this issue.

Mr. ALLEN. I thank my friend from Texas and I appreciate her willingness to engage in this issue and take a leadership role in trying to protect our citizens from the effects of mercury pollution.

I want to go back to the issue that we always hear about whenever we wind up talking about new kinds of environmental controls on a toxic pollutant. Industry always says, ''It's too expensive, we can't do it'' every single time. But the reduction levels that are proposed by the EPA are really embarrassing for our country. In February, the Southern Company, one of the largest mercury emitters in the world, announced that recently installed mercury control technologies at the Ernest Gaston coal plant in Alabama are removing about 80 percent of the mercury right now. Right now. They are very, very close to that 90 percent standard that would be the goal. The company's experts noted that this would barely comply with some draft versions of a MACT standard, a maximum achievable control technology standard, but they are complying. They are there. Furthermore, EPA's own data shows that most modern coal-fired power plants can and do achieve greater than 90 percent control of mercury and other toxic chemicals.

According to both industry and Department of Energy pilot tests and testimony in front of the Committee on Energy and Commerce, 90 percent reductions in mercury emissions are feasible and economical today. We are not suggesting they should be imposed today. There needs to be some time. But this could all be done between now and 2007 or 2008 and be completely feasible.

The data from EPA's interim report on the control of mercury from coal-fired boilers demonstrates that power plants with fabric filters and wet scrubbers are capturing over 90 percent of their mercury when bituminous coal is burned. There are a number of technical ways in which you can actually collect mercury. Carbon injection and a compact hybrid particulate collector baghouse, so-called, is one way of achieving the goal. Other industries like hospitals and city waste incinerators have been required to meet that 90 percent standard for over a decade.

In February of this year, the gentleman from Maine (Mr. MICHAUD) and I both wrote to the Bush administration asking that Maine people be given the opportunity to comment on EPA's proposed mercury emissions rules. There is a reason why those of us in Maine are particularly concerned about it. There is four times as much mercury in the feathers of loons in Maine as there is in the feathers of loons in Oregon. The wind blows west to east. It always has and it always will. Coming particularly out of those coal-fired power plants in the Midwest, mercury emissions are traveling east and northeast and contaminating many of our most scenic areas in the

country. We do not have a single coal-fired power plant in the State of Maine, but our mercury is coming from other parts of the country. We need help.

The gentleman from Maine (Mr. MICHAUD) and I, as I said, wrote to the Bush administration in February asking simply that we have the right to a hearing, that EPA come to Maine and hold a hearing. They refused. The closest they got to us was Philadelphia. If the EPA would not come to Maine, I decided, well, we would have a hearing there, anyway; I would call the mock hearing, I would invite interested members of the public. And they came, they came in force and their testimony was compelling, both as to the health risks of mercury and the inadequacy of the Bush administration proposal.

Mr. Speaker, I would like to submit the testimony given at that hearing in Maine as a part of the record of this proceeding here.

TESTIMONY OF MAINE ATTORNEY GENERAL STEVEN ROWE ON STANDARDS PROPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY FOR MERCURY EMISSIONS FROM POWER PLANTS

Good afternoon. Thank you, Congressman Allen, for the opportunity to present these comments on a matter of great importance for the State of Maine and its citizens: the need for strict federal mercury emission standards for power plants. My office formally requested that EPA hold a public hearing on this proposal in New England, but that request was denied. With that in mind, I especially appreciate your being here today to draw attention to this matter.

Regrettably, EPA's recent regulatory proposals under the Clean Air Act tend to fall into two categories: (1) those that would degrade air quality, and (2) those that would prevent air quality from improving. The agency's New Source Review regulations are a notorious example of the first category. As Attorney General, I have vigorously opposed EPA's efforts to gut New Source Review, a part of the Act that requires the nation's worst polluters to install modern control technology when modifying their plants. These rules would cause Maine's already serious ozone pollution problem to worsen significantly. We sued the agency in federal court to prevent these reforms from going into effect, and won a major victory on Christmas Eve when the court issued a stay until the case is decided on the grounds that the rules appear to violate the Clean Air Act.

EPA's proposed mercury rule falls into the second category: a new program that will prevent us from realizing the reductions in mercury emissions that the law promises. This is not a bold new environmental initiative, but a giveaway to the owners of coal-burning power plants.

Atmospheric mercury deposition is a serious public health and environmental problem. Mercury is a powerful neurotoxin that accumulates in the body. EPA's own studies show that over 600,000 babies born in this country each year may be exposed to levels of mercury in the womb so high that it can affect their brain development. Maine and 44 other states have issued fish consumption advisories because of mercury levels found in our freshwater fish. Mercury is also poisoning the wildlife that feed on those fish. Loons in northern New England, the classic symbol of our wilderness lakes, have the highest levels of mercury in the country.

Mercury emissions from power plants to our south and west are a major source of deposition in Maine, and we desperately need strong federal regulation to address this problem. Despite the need for strict federal mercury emission standards, and the fact that such standards are legally required by the Clean Air Act, EPA fails to deliver in this proposal.

As a matter of policy, this proposed rule is flawed for two basic reasons. First, the levels of reduction in mercury emissions are far too low. The proposed reductions not only are insufficient to protect public health and the environment, but they are considerably less than what can be achieved through available control technology. Second, the proposed ''cap and trade'' program is inappropriate for regulation of a toxic substance like mercury. This approach allows some sources to accumulate large quantities of ''pollution credits'', which in turn allows them to continue to pollute at high levels. The result is ''hotspots'' of deposition in areas downwind. While a cap and trade program may make good sense for regulating a non-toxic pollutant like carbon dioxide, it is unacceptable for a hazardous pollutant like mercury.

As a matter of law, EPA's proposal is defective in several ways. Three years ago EPA formally concluded that mercury is a hazardous air pollutant, and therefore it is ''appropriate and necessary'' to regulate its emissions from power plants under Section 112 of the Act. However, EPA has now tried to reverse course, and has announced that mercury may not be a hazardous air pollutant after all. Instead, the agency suggests that it may be able to regulate mercury under Section 111 of the Act, governing New Source Performance Standards. This idea flies in the face of the plain language of the statute, which requires that EPA conduct a formal ''delisting process'' before it can decline to regulate a substance under Section 112 that it has concluded is a hazardous air pollutant. EPA's proposal to summarily rescind its prior finding that regulation of mercury is ''appropriate and necessary'' under Section 112 has no support in the law.

There are numerous other legal defects with this proposal, and we are describing them in detail in written comments to be submitted to EPA. For our purposes today, it is enough to observe that the Environmental Protection Agency is once again failing to fulfill its responsibility to adopt standards that protect the public health and environment. Instead, the agency seems committed to re-interpreting the laws it administers in an attempt to avoid that responsibility. If this proposal is finalized in its current form, we will likely be forced to file another lawsuit in federal court to force EPA to do its job. I sincerely hope that will not be necessary. Thank you.

TESTIMONY OF SENATE MAJORITY LEADER SHARON TREAT, HEARING ON FEDERAL MERCURY EMISSIONS PROPOSALS

Congressman Allen, I am Sharon Treat, Majority Leader of the Maine Senate. I am a member and former chair of the Mercury Products Advisory Council and an environmental lawyer. I am here today to testify in opposition to proposals by the federal Environmental Protection Agency (EPA) which will significantly undermine the effectiveness of the Clean Air Act with respect to control and reduction of mercury emissions, leading to even dirtier air in Maine and significant, harmful, health and environmental impacts.

Maine has gone to extraordinary lengths to control mercury emissions from sources within our State, and for good reason. It is hard to think of a symbol of the purity and wildness of Maine's north woods more ubiquitous than the loon. Yet despite our efforts at the State level, loons in Maine are threatened with the highest measured mercury levels found anywhere in the United States, due in large part to our unenviable position at the tail end of the Nation's prevailing winds, which sweep mercury and other airborne pollutants from States to the west and south of us. A quarter of Maine's loon population is considered to be at ''high risk'' from the effects of mercury, and studies show that mercury pollution is the decisive factor in the negative loon population growth rate in Maine.

Mercury deposition has contaminated our lakes and rivers, to the extent that Maine's Bureau of Health has issued strict fish consumption advisories for all of Maine's lakes, rivers and streams, as well as for coastal bluefish and striped bass. It is a sad fact, at odds with our pristine image as ''vacationland'' and ''Maine, the way life should be.''

Surveys done both in Maine and nationally, indicate that 10 to 20% of women of childbearing age have blood levels of mercury considered too high for the safety of a developing fetus. The Center for Disease Control and Prevention has found that some four million American women of child-bearing age have blood mercury levels that exceed E.P.A.'s 5.8 parts per billion standard. Exposure to mercury puts the babies born to these women at risk of brain damage, learning disabilities and motor skills deficits.

It is time for the Federal Government to step up to its responsibilities in this area. That means at a minimum enforcing the Clean Air Act to require antiquated coal burning plants to upgrade to modern pollution control technology, and to continue to require state of the art controls on new facilities. It does NOT mean weakening the already weak law we have to be even more ineffective, as EPA proposes.

Section 112(d) of the Act sets forth a ''maximum achievable control technologies'' standard to control emissions from hazardous air pollution sources equivalent to what is achieved by the best-controlled similar source in the industry. When Congress amended the Clean Air Act in 1990, it specifically called for ''maximum achievable'' clean-up of major sources of toxic air pollution, including mercury. It is beyond dispute that EPA has the authority under the Act to adopt a standard requiring a minimum of 90 percent mercury emissions reductions at all of the Nation's power plants. Instead, EPA had proposed two alternatives each of which fail to protect the public health and carry out the requirements of the Clean Air Act—(1) that the Agency has discretion, but is not required, to apply a weak emission standard to existing sources, or alternatively (2) creating a novel ''pooled performance standard'' that is apparently designed to escape the restrictions of the law entirely. Both alternatives fall far short of the clean air standards required and should be rejected.

I think it is important for EPA to recognize the longstanding efforts of this State to make sure that we have done everything we can to reduce and even eliminate sources of mercury pollution here in Maine. We have done so even though our actions have placed practical and cost burdens on our citizens, business and government, because we recognize we must take responsibility for that part of the problem we have ourselves created.

One of my very first bills in 1990, as a freshman State representative, was legislation to ban mercury-containing batteries from garbage incinerators. I subsequently passed a resolve that required the State to identify all sources of mercury within and outside of the State and to develop a strategy to control and reduce that mercury. From that legislation, a comprehensive report was developed which provided scientific

data that established the extent to which mercury deposition comes from sources outside the State, as well as in-state sources such as garbage incinerators. That report has led to a series of laws taking stringent measures to control in-state sources.

In the spring of 2000, the 119th Legislature passed An Act to Reduce the Release of Mercury into the Environment from Consumer Products, (Public Law 1999, c.779). The law defines mercury-added products to include thermostats, thermometers, electrical switches, relays or other electrical devices, scientific and medical devices, and lamps if mercury is added during manufacture of the product. The law established a Mercury Products Advisory Committee (Committee) to advise the Department of Environmental Protection (DEP), the State Planning Office (SPO) and the Legislature on actions needed to prevent and reduce the environmental releases of mercury from consumer products. The law contains several key provisions intended to increase the amount of mercury-added products collected for recycling. These provisions include:

As of July 15th, 2002, businesses and public entities may not knowingly place a mercury-added product in the solid waste stream sent for disposal.

As of January 1, 2005 this disposal ban is extended to all Maine residents.

The development and implementation of an aggressive education and outreach campaign by DEP to inform Maine citizens and businesses about the disposal bans and proper waste management techniques.

State assistance to municipalities and regional associations to develop collection programs.

A commitment by the State, within available resources, to develop and implement a capital investment grant program for public infrastructure development and improvements to enable municipalities to collect and recycle mercury-added products and universal wastes.

Since the passage of P.L. 1999, c. 779, the Legislature has passed additional mercury legislation, including the following:

An Act to Further Reduce Mercury Emissions from Consumer Products, P.L. 2001, c. 373. This bans the sale of mercury fever thermometers and dairy manometers; requires manufacturers to provide written notice to the Department before offering a mercury-added product for sale in Maine; prohibits the purchase of mercury or mercury compounds for use in schools; and requires manufacturers who sell products to hospitals to provide a certificate of mercury content upon hospital request.

An Act To Address The Health Effects of Mercury Fillings was enacted as P.L. 2001, c. 385. It requires the state Department of Human Services, Bureau of Health to prepare a brochure and a poster on alternative dental restorative materials and procedures and their health and environmental impacts, and for dentists who use mercury to display the poster and provide patients with the brochure.

An Act to Prevent Mercury Emissions when Recycling and Disposing of Motor Vehicle was enacted as P.L. 2001, c. 656. It prohibits the sale of mercury switches in automobiles as of January 1, 2003 and establishes a statewide system to collect, consolidate and recycle the switches. A bounty of $1 is provided to people who remove switches and return them for recycling, with the money to be provided by the auto manufacturers. Although challenged in court by the auto manufacturers (who argued in part that such programs are a federal, not state, responsibility), this law was recently upheld by the Federal District Court.

An Act to Phase Out the Availability of Mercury-added Products [P.L. 2001, c. 6201. It prohibits the sale of most mercury thermostats used in non-manufacturer applications (effective January 1, 2006), and requests DEP to submit a comprehensive strategy to further reduce the mercury content of products by January 2003.

An Act to Change the Reporting Requirements for the Mercury Switch Removal Program [P.L. 2003,c. 6] requires the DEP to file its initial status report on this program by January 1. 2004. The program provides for the removal of mercury switches from motor vehicles before they are crushed and shredded for the scrap metals market.

An Act to Reduce Mercury Use in Measuring Devices and Switches [P.L. 2003, c. 221], bans the sale of most mercury switches, relays and measuring devices beginning July 1, 2006. Measuring devices include barometers, gastrointestinal tubes, flow meters, hydrometers, hygrometers, manometers, pyrometers, sphygmomanometers and thermometers. The effective date of the ban coincides with the effective date of a similar law in Connecticut, and gives manufacturers time to phase in non-mercury alternatives or seek an exemption. The law allows the DEP commissioner to grant an exemption from the ban if the manufacturer of the mercury product demonstrates that functional non-mercury alternatives are not available.

An Act to Require the Installation of Dental Amalgam Separator Systems in Dental Offices [P.L. 2003, c. 301], requires the installation of amalgam separator systems in dental offices by December 31, 2004. The separators trap amalgam particles to prevent the discharge of mercury in dental office wastewater. If installed prior to March 20, 2003, the separators must achieve a minimum of a 95%, while separators installed on or after that date must have a minimum of a 98% removal efficiency as determined through testing under ISO 11143.

Maine has also put state dollars into these programs. In addition to paying for DEP staff to administer these programs and funding our defense of the auto switch provisions in court, we have also put funding into municipal mercury collection programs. In 2000, the Legislature allocated $438,000 from the Solid Waste Management Fund to jump start the activities mandated by the legislation. In November 2002, Maine voters approved an environmental bond request, of which $900,000 was slated to fund completion of the shed deployment statewide and the infrastructure/collection needs. We are still struggling with identifying funding sources to assist communities with the ongoing costs associated with these collection and recycling efforts. In the private sector, many Maine businesses have also incurred costs installing pollution control equipment to meet tough in-state mercury emission standards and complying with various mercury product separation and collection mandates.

Needless to say, Maine has done its part, having enacted the most sweeping mercury control laws in the country. While we are more than willing to do whatever we can, our pollution from mercury is in large part a federal responsibility: it comes from outside the state, and there is already a requirement under the Clean Air Act for the federal government to address it. It is time for the EPA to comply with the law, not undermine it. It is time for the EPA to provide assistance to states dealing with this toxic metal which threatens our children and our wildlife, not make our efforts more difficult. Thank you.

STATEMENT OF EVERETT ''BROWNIE'' CARSON, EXECUTIVE DIRECTOR OF THE NATURAL RESOURCES COUNCIL OF MAINE

(On the U.S. Environmental Protection Agency's Proposed Rulemaking on National Standards for Reduction of Mercury Emissions From Coal and Oil-Fired Electric Utility Power Plants and Maximum Achievable Control Technology (MACT), Published in the Federal Register on January 30, 2004 (69 FR 4692), EPA Docket ID Nos. OAR–2002–0056 and A–92–55.)

Presented at Hearing in Augusta, ME March 1, 2004

My name is Brownie Carson. I testify here today on behalf of the Natural Resources Council of Maine, a citizen supported environmental advocacy organization with 8000 members and supporters. Thank you to Congressman Tom Allen for giving us all the opportunity to express our views on the critical environmental issue of proposed national standards for mercury emissions from electric utility power plants. We would like to thank you and the entire Maine Congressional delegation for your efforts on this and related clean air and environmental matters. We commend, for example, Senator Collins strong leadership in introducing legislation that would eliminate and retire mercury.

On the issue at hand, we conclude that both the two alternative proposals put forward by the U.S. Environmental Protection Agency (''EPA'' or ''Agency'') for mercury emissions standards are environmentally unsound and legally deficient. These proposals go in the wrong direction.

These things we know:

(1) Power plants that burn coal and oil release mercury and are the largest source of mercury released to the environment in the United States;

(2) The mercury emitted from these plants is transported downwind where Maine and other Northeast states receive a disproportionate share;

(3) In the environment, mercury from power plant emissions is converted into methylmercury, the dangerous organic form of the element;

(4) Methylmercury builds up and is magnified in the food chain making it a major environmental and public health hazard; methylmercury concentrations in fish are the worst pathway for human exposure;

(5) Exposure to methylmercury, a potent neurotoxin, puts small children, infants and fetuses at risk of brain damage, learning disabilities and motor skills deficits;

(6) An unacceptably high proportion of women in Maine and nationally have blood levels of mercury considered too high for the safety of a developing fetus; and

(7) Mercury also has insidious effects wildlife: Maine's loon population is at ''high risk'' with a negative growth rate attributed to mercury exposure. Maine bald eagles have high mercury body burdens and the lowest reproductive rate of any major bald eagle population in the country;

These facts are undisputed. EPA's own February 1998 report to Congress summarized how mercury emissions from power plants caused toxic exposures and grave threats to public health.

There is a ready solution both technically and legally. The technical solution is simply to retrofit each of the 1,100 coal fired power plants with modern emission control equipment.

Commercially available technologies and techniques in use today achieve up to 91 percent emissions reductions over uncontrolled levels—and do so at a cost of approximately 1/50th of a penny per KWh. Up to 98 percent reductions have been observed in tests of the most modern mercury controls.

These conclusions are supported by EPA's own analysis in 2001 which found that the use of currently available pollution controls at each power plant could reduce total emissions by 90% by 2008. The Northeast States for Coordinated Air Use Management in 2003

reviewed the pollution control technologies and affirmed 90% reductions can be achieved with existing technologies.

Moreover, there are no legal obstacles to achieving these reductions. Section 112 of the Clean Air Act, that regulates hazardous air pollutants, sets forth the ''maximum achievable control technologies'' standard. The Act contemplates control of emissions from hazardous air pollution sources equivalent to what is achieved by the best-controlled similar source in the industry. When Congress amended the Clean Air Act in 1990, it specifically called for ''maximum achievable'' clean-up of major sources of toxic air pollution, including mercury. It is beyond dispute that EPA has the authority under the Act to adopt a standard requiring a minimum of 90% mercury emissions reductions at all of the nation's power plants.

In Maine, a remarkable consensus on mercury pollution has led to positive action.

In 1997, the Maine Legislature called for a report and plan of action to control mercury pollution. The State's goal, set back then, was ''to ensure that, over time, Maine people and wildlife are able to enjoy the full use of the state's waters and fisheries'' and to ''make Maine's fish safe to eat and to protect our wildlife and other resources.''

Over ensuing years Maine took a series of actions on mercury, including the following:

Before 2000, we achieved mercury emission reductions of more than 90% at four municipal waste combustors achieving substantial reductions, meeting or exceeding federal limits, or where inapplicable applying equally stringent state limits;

In 2000, we closed the Holtra-chem, the heavily polluting chlor-alkli plant. In 2002, we made arrangements for safe removal and storage of 185,000 pounds of surplus mercury from the site;

In 2003, we enacted a law that bans the sale of most mercury-added switches, relays, and measuring devices; and

In 2002, we enacted a landmark law to require automobile manufacturers to recover mercury-containing switches from vehicles before they are scrapped.

When Maine's mercury auto switch law was challenged in Court, the State mounted a legal defense. On February 17, federal District Judge John Woodcock turned back the carmaker's challenge and upheld the auto switch law in its entirety.

The decision rejected all of the carmakers' claims, saying that burdens were reasonably ''imposed on manufacturers in recognition of the fact that the need for a mercury switch recovery program existed solely by virtue of the manufacturers' incorporation of these mercury-laden components in their automobiles for roughly ten years after the industry's cognizance of the mercury disposal problem.''

This is important, because it points the way to what the federal government should be doing with mercury pollution from power plants. Utilities should simply be made to clean up. That would be 90 percent reductions at all existing coal-fired power plants by 2008, that would bring total mercury emissions down from the current 48 tons to five tons annually. ''EPA's proposal would still allow be allowing the release of 15 tons of mercury from the power plants in 2018.''

Operators of power plants have been dodging pollution controls for decades. On the verge of achieving what the Clean Air Act was passed for, legal counsel for the Bush Administration and EPA say that they fear that if they require maximum achievable controls, as specified by the law, the utilities will challenge the rules in court. Threat of a court challenge must not deter EPA from doing what is necessary to protect public health and the environment.

We urge EPA to abandon its weak proposals and instead follow the Clean Air Act as written. Genuine maximum achievable control standards are technologically feasible, legally sound and eminently defensible. We urge EPA to recognize the health, environmental and economic importance of this outcome to Maine and the nation. Thank you again for the opportunity to present our views on this important issue.

STATEMENT OF LANI GRAHAM, MD, MPH, FAMILY PRACTICE PHYSICIAN AND FORMER CHIEF HEALTH OFFICER OF THE STATE OF MAINE

(On the U.S. Environmental Protection Agency's Proposed Rulemaking on Standards for Reduction of Mercury Emissions From Coal and Oil-fired Electric Utility Power Plants and the Use of Maximum Achievable Control Technology (MACT), published in the Federal Register on January 30, 2004 (69 FR 4692), EPA Docket ID Nos., OAR–2002–0056 and A–92–55.)

Good afternoon. I come here today to testify on behalf of the people of Maine, and particularly the children of Maine, who cannot speak for themselves. I am a Family Practice physician, but my real love throughout my professional life has been public health. Two alternative proposals have been offered by the U.S. Environmental Protection Agency (EPA) to reduce mercury emissions from electric utility plants. Neither is acceptable and both will condemn the next generation of Maine people to adverse health impacts from toxic levels of mercury in our environment, to say nothing of the terrible impacts on our wildlife and the natural resources.

Rather than repeat a lot of the very good scientific information that you have already heard and will continue to hear, regarding why these proposals must be scrapped, I want to provide a little history lesson. It is said that those who do not learn the lessons of history will be condemned to repeat them. This appears to be the reckless course that will be embarked on if these proposals are not substantially altered.

More than a decade ago, when I was the Chief Health Officer for this state, I received a letter from a Park Official at Acadia National Park. The letter revealed that a fish had been caught in one of the park's lakes and tested for mercury. I could see immediately that the provided results indicated that the fish contained mercury at a level many times what would be considered safe for a child to consume on a frequent basis. The letter queried whether I was going to consider ''posting'' the lake, on the assumption that this particular lake was uniquely contaminated. Needless to say, I was both shocked and frightened. Who in Maine, or even from out of state, might have already been affected by eating fish caught in this lake? It was bad enough that any lake in Maine might be significantly contaminated by a known neurotoxin, but that the particular lake would be in the heart of our widely admired national park was a particular blow. Tragically, that blow was just the beginning of a lengthy investigation that revealed that the lake was not uniquely contaminated, and that it would not be sufficiently protective of public health to post that particular lake or even a dozen such lakes. Based on a study of fish caught from lakes all across Maine, it was clear that a great many lakes were contaminated, and that the contamination could not be accounted for by looking for natural sources of mercury or local pollution. The facts led to a number of conclusions and actions that were among the most discouraging of my tenure as Chief Health Officer in Maine.

In collaboration with four Departments of State Government (Agriculture, Environmental Protection, Human Services, and Inland Fish and Wildlife), we were forced to issue a statewide warning recommending a strict limit on the consumption of fish caught in Maine lakes by women of childbearing age and children under 8. To my knowledge ours was the first such warning in this country, but, sadly Maine is now one of 28 states that have issued statewide advisories, including three new states in 2002, Florida, Illinois and Rhode Island. I also am aware that New Brunswick, Canada has had to follow suit, making this an international problem. Air pollution does not respect state or international boundaries.

It is very sad that in these times when childhood obesity is such a problem and good nutrition is the hope of the future, that any Health Official must issue warnings on the consumption of fish, widely respected as healthy food, because it has become contaminated through our carelessness. But worse, from a public health point of view the warning approach to the protection of human health is highly undesirable. It is not effective. No matter how many lakes are posted or warnings issued, large portions of the population are likely to be adversely impacted despite your best efforts. What about the immigrant populations for whom fish is a basic part of the diet and who may not speak English? What about the Native Americans who similarly depend on locally caught fish? What about people with limited education who may not understand the advisories or those who just don't believe there? There is some parallel to the warnings on cigarette packages. Lead paint is another example. Parents are warned of the hazard, but children get poisoned by the thousands anyway. History has taught us that complicated medical advisories are insufficient to be protective of the public's health. Despite the warnings people, particularly children, get sick, become damaged for life, or die. Yet these proposed rules indicate clearly that another generation is being asked to repeat this history lesson. Unless our federal government takes a different course of action, one designed to move us more rapidly toward reducing air pollution, the advisories are likely to remain and the children of Maine will continue to pay the price of this history lesson not learned.

Another awful lesson that the fish from Acadia National Park taught us is that Maine was not going to be able to solve this problem on its own. The extent and distribution of the mercury contamination indicated to us that local factors could not account for it. The mercury had to be coming from somewhere else. We now know that out beautiful state is the recipient of tons of airborne mercury coming from other states. Nevertheless on the theory that it is best to ''keep your own house clean'' first, Maine people have worked hard over the last decade to reduce all local sources of mercury contamination. But it will never be enough. Without support from outside this state, the advisories are likely to remain in place. More than a decade has gone by since that Acadia National Park fish brought its warning. I urge you not to condemn us and other sites around this country to another twenty years of contamination when real progress can be made now. I urge you to abandon these proposals and return to the Clean Air Act as written.

Thank you for your attention.

MAINE AUDUBON,
Falmouth, ME, March 1, 2004.

Re EPA's proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No. OAR–2002–0056, 69 Fed. Reg. 4652 (January 30, 2004).

Good afternoon, Representative Allen, members of the Legislature, fellow Mainers . . ., my name is Susan Gallo: I represent Maine Audubon and our 11,000 members and supporters.

Representative Allen, we greatly appreciate your continued leadership and good work on behalf of Mainers with regard to the control of mercury pollution. The EPA has put forward several proposals, none of which provides the degree of public health protections mandated by the Clean Air Act. We are here today to share with you our deep concern that the EPA's proposals are not only many times weaker than what is actually required by Clean Air Act, but if accepted will cause irreparable harm to the health of Maine's waters, wildlife and people, particularly women and children, and fall far short of what is urgently needed.

Power plants are ''major emitters'' of hazardous air pollution, which means that each plant emits more than 10 tons per year of one kind of hazardous air pollutant or 25 tons per year of all the 188 hazardous air pollutants listed in the Clean Air Act. Coal-fired plants are the nation's largest source of mercury air emissions, emitting approximately 48 tons of mercury each year. One-third of a gram of mercury per year is enough to contaminate all the fish in a 25-acre lake.

Maine, along with the other New England states, bears the brunt of the nation's airborne mercury pollution. Maine has more than 30,000 miles of rivers, and almost a million acres of lakes—but these waters harbor dangerously high levels of mercury—so dangerous, that in 2002, Maine posted health warnings for all of our lakes and rivers statewide. The EPA and 43 states, including Maine, have posted warnings urging people to avoid or limit consumption of fish. Consuming mercury-laden fish can damage the developing brain and nervous system and can lead to birth defects; such as cerebral palsy, delayed onset of walking and talking, and learning disabilities. Relying on fish consumption advisories will not solve the problem. We must reduce the contamination at its source.

Because Maine is subject to the highest mercury contamination in the U.S., and given the impact already felt by both people and wildlife, it is imperative Maine's concerns be heard.

The accumulation of mercury in Maine's environment has reached epic proportions, with mercury levels in rainfall in parts of Maine up to 23 times higher than the EPA standard for human health. Mercury is also accumulating in Maine lakes at an alarming rate, creating deadly habitat for fish-eating birds and mammals. Moreover, people are at risk when they eat fish containing high levels of mercury. As you know, it is no longer safe for pregnant women, nursing mothers, and young children to eat certain fish from our waters. We must act to reduce children's exposure to mercury as we have done to reduce children's exposure to lead in the environment.

A recent report from the Centers for Disease Control and Prevention found that one in twelve women of childbearing age already has mercury levels above EPA's safe health threshold. Adverse neurological effects of mercury exposure on the young, has lead both the federal and state governments to post advisories against consuming certain fish. The state of Maine along with a majority of other states, advises women who might get pregnant not to eat most types of freshwater fish including rainbow trout and bass.

Mercury contamination is also a threat to recreational fishing—a vital piece of our state economy. Recreational fishing is a multi-billion dollar industry in Maine; anglers in Maine spent more than $250 million in 2001 alone. Studies indicate that mercury contamination has a direct impact on where people choose to fish, how often they go, and for how long they choose to fish.

Wildlife that have no choice but to eat fish high in mercury are at risk from the accumulation of mercury in their systems as well. Maine's loons have the dubious distinction of having higher levels of mercury in their blood than loons in any other state. Nearly 30% of Maine's common loon population is at ''high-risk'' for mercury contamination and is less likely to reproduce as a result. Loons accumulate high levels of' mercury in their blood because their diet consists primarily of freshwater fish, which often harbors high levels of mercury. Some loons exposed to high levels of mercury in Maine's environment do not nest successfully because they do not spend enough time incubating their eggs. Others fail to feed their young once they hatch, leaving chicks to die from starvation. Loons in Maine experience higher levels of mercury in their blood, feathers and eggs than in any other state. Also, because loons are able to eliminate mercury from their system when they lay eggs, loon eggs from Maine also have higher levels of mercury than those from any other state. Other fish-eaters like osprey and kingfisher are subject to similarly high levels of mercury from eating fish from Maine's waters. It is imperative that we do what we can now to reduce the impact of mercury on Maine's loon population and on other fish-eating wildlife. If we wait until wildlife populations have significantly declined, it will be too late.

Maine Audubon has been a leader in working to reduce mercury pollution and protect the health of Maine's people as well as wildlife. Indeed Maine has made substantial progress in developing legislation to curb the use of mercury-added products as well as the collection of household hazardous waste, for example. But these efforts, while valiant and very much needed, do not address the largest source of mercury pollution—emissions from power plants beyond Maine's borders. The current EPA and Bush Administration proposal falls far short of what is needed.

The Clean Air Act requires that power plant mercury emissions be cut by 90 percent by 2008 and ensures that these reductions occur at each and every one of the nation's oil- and coal-fired power plants, the country's largest industrial source of mercury air emissions. In 2000, the EPA listed power plants as a category for which MACT standards must be developed. But one of the new proposals would ''de-list'' power plants, without any of the public health and environmental justifications mandated by the Clean Air Act. Such de-listing is illegal.

The EPA should uphold the law. Instead of setting a far weaker standard—in effect treating power plants' mercury emissions as non-hazardous air pollution—the EPA must abide by its prior decision that power plants must be regulated according to Maximum Achievable Control Technology (MACT) levels.

The EPA should continue to regulate mercury emissions from power plants under the MACT approach required by Clean Air Act for toxic pollutants, instead of issuing ''New Source Performance Standards'' for mercury, which are far less stringent. The EPA's own scientists two years ago concluded that 90 percent reductions are possible using existing technologies.

The EPA must abandon the current proposal allowing the trading of mercury pollution, which lets polluters continue to poison our air and waters. Trading mercury emissions is unacceptable from a public health and public policy perspective, because it creates new local ''hot spots'' of even mercury contamination—leaving some communities at risk more than others.

The EPA should not accept guidance from the Bush Administration which would set rules for power plants that give big energy special treatment—allowing them to put 6 to 7 times more mercury into the air than the law allows, and giving them an extra decade to clean up. The EPA should hold industry to the highest standard, and uphold—not weaken—the provisions of the Clean Air Act.

We respectfully ask that you convey to EPA Administrator Leavitt our testimony, urging the EPA to improve protections of human health and wildlife by strengthening, not weakening rules regulating mercury emissions to the level that we know is technologically feasible and morally imperative.

SIERRA CLUB, MAINE CHAPTER,
Portland, ME, March 1, 2004.

Re Environmental Protection Agency Docket Center, Attention Docket I.D. Number OAR–2002–0056.

Why is the Bush Administration rewarding corporate polluters at the expense of our children's health and safety?

Thank you Congressman Allen, for holding a hearing on this issue in Maine. My name is Maureen Drouin, I live in Hallowell, Maine, and I am here representing the 5,000 Maine members of the Sierra Club.

The Maine Chapter of the Sierra Club calls on Administrator Leavitt to throw out EPA's proposal to regulate mercury emissions and instead craft a serious plan that adequately protects American children from harmful mercury. Specifically, we call on the EPA to require 90% reductions in mercury emissions from ALL coal-fired power plants by 2008.

Coal-fired power plants constitute the largest source of industrial mercury emissions in the United States. This mercury falls to earth through rain and snow and enters lakes, rivers, and estuaries. Once there, it changes into its most toxic form, methylmercury, and accumulates in fish tissue. Americans are exposed to mercury primarily by eating contaminated fish.

Mercury poses a serious threat to Maine's families:

As with many toxic pollutants, children are the most susceptible to harm from mercury.

New estimates by the EPA indicate that one in six U.S. women of child-bearing age have mercury levels in their blood high enough to put their babies at risk.

During December 10–11, 2003, the FDA and the EPA issued a draft joint warning to pregnant women, women who may become pregnant, and nursing mothers against eating certain types of mercury-laden fish.

In 2001, the EPA estimated that if current clean air laws were enforced in conjunction with the use of current technology, mercury pollution would decrease by 90% by 2008.

Why is the Bush Administration rewarding corporate polluters at the expense of our children's health and safety?

Congressman, you and Representative Waxman recently sent a letter to EPA Administrator Leavitt requesting information

regarding a report in The Washington Post that portions of EPA's latest mercury air pollution control proposal may have been ''copied word-for-word from industry lobbying materials.''

You pointed out that ''Specifically, it appears that EPA has proposed a regulatory approach to mercury air pollution that in part is copied word-for-word from memos prepared by the law firm Latham & Watkins, which represents some of the largest polluters in the country.''

Both Jeffrey Holmstead, EPA's Assistant Administrator for Air and Radiation, and William Wehrum, Mr. Holmstead's chief counsel, worked for Latham & Watkins prior to assuming their positions at EPA where they have played key roles in the mercury pollution rule-making process.

According to the Center for Responsive Politics, the Energy Industry, which would be affected by these rules, gave nearly $50 million in campaign contributions to the Republican Party during the 2000 election cycle. Of that amount, $2.9 million went directly to the Bush-Cheney campaign.

Perhaps this is why the Bush Administration is rewarding corporate polluters at the expense of our children's health and safety.

Last spring, I went fly-fishing with a few friends at Little Lyford Pond Camps in T7 R10. In the heart of the 100-mile wilderness of Maine, the ponds there are remote and pristine and constitute the headwaters of the West Branch of the Pleasant River. The brook trout fisheries there date back 10,000 years to the retreat of the last glacier. I thought about how rewarding it would be to catch one of these primeval fish and cook it for dinner. But even far away in T7 R10, the fish are contaminated by upwind pollution, and Mainers, especially women and children, are advised to limit their fish consumption.

Maine is one of 19 states that have issued statewide fish advisories for all of their inland freshwater lakes and rivers.

We have the solutions to reduce mercury pollution now and we should implement them immediately to protect our communities.

Thank you again for holding this hearing and for the work you are doing to protect Maine's children by decreasing mercury pollution.

TESTIMONY OF ANN BREWSTER WEEKS (DELIVERED BY JONATHAN LEWIS), CLEAN AIR TASK FORCE, BOSTON, MA

(Before the U.S. Environmental Protection Agency Regarding Proposed National Emission Standards for Hazardous Air Pollutants; and in the alternative, Proposed Standards of Performance for New and Existing Sources: Electric Utility Steam Generating Units, 69 Fed. Reg. 4652 (January 30, 2004), Docket No. OAR–2003–0056.)

Good afternoon. For the record, my name is Jonathan F. Lewis, and I am an attorney with the Clean Air Task Force. I am appearing today to provide the testimony of Ann Weeks, CATF's Litigation Director. Ms. Weeks was an alternate member of EPA's Electric Steam Generating Units MACT Rulemaking Working Group of stakeholders from industry, environmental organizations, and state governments, which offered the Agency a range of recommendations for the development of a MACT standard for EGUs, in the Fall of 2003.

Now the Agency proposes both a weak MACT standard and a radically different alternative approach to the regulation of power plant hazardous air pollutants. EPA's alternative approach not only is radically different than the approach considered by EPA and the stakeholders in the Working Group, it is radically different than the approach mandated by the Clean Air Act. Martha Keating, the CATF representative to the Working Group, is presenting today in North Carolina oral testimony on the MACT alternative proposed by the Agency in this rulemaking package. I will therefore limit my remarks to the inadequacies, both legal and from a public policy perspective, of the alternative New Source Performance Standards and cap and trade approach contained in the proposal.

EPA first listed mercury as an air toxic in 1971. The public health effects of this toxic are not just coming to light, we have known for over a century about neurological disorders stemming from exposure to high levels of mercury in the environment. Each year, the science improves, and we learn more, for example, about how eating mercury contaminated fish leads to children's delayed language development, impaired memory and vision, problems processing information and impaired fine motor coordination.

The Center for Disease Control and Prevention has recently noted that 1 in 12 women of childbearing years in the United States have unsafe levels of mercury in their blood. EPA's own Federal Advisory Committee on Children's Health Protection has noted its concern that this proposed rule package does not go as far as possible towards reducing emissions of mercury from the electric utility industry.

Existing coal-fired power plants are the largest uncontrolled industrial source of mercury in the United States today. Congress recognized this when it drafted the Clean Air Act Amendments of 1990, when it listed mercury under section 112, and demanded to be kept in the loop as your Agency made its determination whether to regulate hazardous air pollutant emissions from the electric generating industry.

EPA now seeks to administratively rewrite section 112 of the Act in an effort to try to find a way to treat mercury differently from the other 187 air toxics listed in the Act. Rather than regulating the power industry under the ''Maximum Achievable Control Technology'' approach required by the Act, EPA instead proposes to finalize New Source Performance Standards under section 111, for mercury emitted by new coal-fired power plants, and a cap and trade system including caps of 34 tons of mercury by 2010 and 15 tons in 2018.

This aspect of your proposal is completely without merit.

First, an NSPS approach to regulating hazardous air pollutants emitted by the utility industry is simply not authorized by the Clean Air Act. Congress revised section 112 in 1990 in an effort to promote faster regulation of hazardous air toxics, through the identification and the MACT regulation of the industrial categories of most concern. EPA listed coal- and oil-fired power plants under section 112(c) in 2000, which triggered the requirement to issue MACT standards for all hazardous air pollutants emitted by the industry. Congress did not direct the use of section 111 for utility industry HAP air emissions, as it did for solid waste combustors in Clean Air Act section 129. If Congress had meant to grant such authority to the Agency, it clearly knew how. It chose not to do so.

Second, your attempt to ''de-list'' the utility industry in order to advance your section 111 proposal does not meet the express terms of the Clean Air Act, and in any event is unsupportable on the merits. Section 112(c)(9) of the Act requires that a listed industrial category can be deleted from the 112(c) list only if certain specific statutory criteria are met. Your Agency has not even attempted to satisfy these criteria. For toxics that ''may result in cancer in humans,'' as is the case with nickel from oil-fired units as recognized by the Agency in 1998 and 2000, the Administrator must determine that ''no source in the category . . . emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source.'' For air toxics like mercury, the Administrator must determine ''that emissions from no source in the category or subcategory concerned . . . exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source.'' Neither of these determinations is supportable on the record before the Agency, as we will point out in our detailed comments.

Finally the proposed cap and trade approach is not supported by the Act and represents very bad public policy. The tonnage caps are transparently based on the legislative targets in the Administrations Clear Skies approach to utility regulation, and do not go near far enough or fast enough—either to adequately protect public health, or to satisfy the requirements set out by Congress to govern the regulation of hazardous air pollutants.

The Agency asserts broad authority under section 111 to establish a cap and trade program for listed hazardous air pollutants, although no such authority is articulated in the statute. Resorting to the tired and long discredited argument that since it is not expressly prohibited, an action must be allowable, the Agency severely overreaches in this proposal.

Furthermore, while the Agency asserts that a 34 ton 2010 target is based on what can and must be achieved to control other conventional pollutants for the IAQR, the Act requires far more than this level of effort for the control of a hazardous air pollutant. Even if EPA attempted to justify this cap based on the results of its MACT approach, the MACT floor emissions levels EPA has conjured up in this proposal to support a 34 ton emissions level are themselves fundamentally flawed, legally and technically, as Ms. Keating is testifying in North Carolina today.

Finally, even if it were authorized by the Act, the Administration's approach in the proposed cap and trade program is just abysmal public policy. Despite the fact that 60% of the mercury emitted by U.S. power plants is deposited locally or regionally, the proposal would do absolutely nothing to avoid the creation of toxic hot spots—geographic areas that will experience even more mercury contamination than at present, because local sources are permitted to trade away the requirement to reduce their emissions levels. The caps are set at ''no action'' levels, furthermore: on the final pages of the proposal, the Agency admits that meeting the mercury caps will require very little (if any) effort beyond controlling for conventional pollutants. ''Look,'' the Administration seems to be saying to the industry—''just control your conventional pollutants a little further, and we will give you a hall pass on mercury.'' This approach is taken despite ample evidence, well-known to the Agency, that much deeper cuts in mercury and other hazardous air pollutants are achievable cost-effectively from the industry in the short term. It is taken despite the clear requirements of the Clean Air Act that a listed industry must be required to make the maximum reductions achievable, and to do so within 3, or at most 4 years of a final rule.

EPA's NSPS cap and trade approach to EGU toxics is simply unacceptable. It is unacceptable legally, and unacceptable from a public health perspective.

TESTIMONY OF CONRAD SCHNEIDER, ADVOCACY DIRECTOR, CLEAN AIR TASK FORCE, HEARING ON EPA'S PROPOSED MERCURY RULE

Good afternoon. My name is Conrad Schneider of Brunswick, Maine. I am the Advocacy Director of the Clean Air Task Force. CATF is a Boston-based, national environmental advocacy organization dedicated to restoring clean air and healthy environments through scientific research, public education, and legal advocacy. Our primary mission involves cleaning up the nation's grandfathered power plants.

You know, school vacation week in Maine was two weeks ago and our family went to Sanibel Island, Florida—our first ''sun and fun'' vacation ever. While down there, I went saltwater fly-fishing for the first time. This June I am going with some buddies to fish Grand Lake stream here in Maine. Although Sanibel was saltwater and Grand Lake stream will be fresh, there is a common denominator here. Both Florida and Maine warn us to limit our consumption of the fish I catch. While I was trying to catch a trophy sport fish in Florida, I managed to catch only a flounder. However, I tossed it back because my wife's sister, who is four months pregnant, and her husband were with us and pregnant women are warned to eat no fish because the mercury contamination threatens their fetuses. In fact, while it was bad enough that she couldn't drink a pina colada in Florida, she couldn't eat any fish either! That'll be true when she visits us in Maine this summer too. Maybe you think this is a small matter. But consider that in Maine, recreational fishing contributes $250 million to the economy here each year.

I would like to thank Rep. Tom Allen for his leadership in holding this hearing; the first of what may be many more such hearings around the country by concerned members of Congress to hear from citizens about the deficiencies of the Bush Administration's power plant mercury proposal. We share Rep. Allen's view that it is outrageous that on an issue of such critical importance to our people, U.S. EPA chose not to schedule one hearing on this rule in New England.

The people of our region have always looked to the sea and our inland water bodies—for commerce, for knowledge, for recreation and, perhaps most importantly, for food. Ocean and freshwater fish have been a staple of the New England diet since the first human settlements here.

But we're here today because that food source is under threat—from mercury pollution. Due to eating mercury in contaminated ocean fish and fresh water fish, one in six women of childbearing age in the United States have mercury levels above what EPA considers safe. That's nearly five million women nationally with elevated mercury levels in their blood. Because mercury travels through the placenta and breast milk that also means more than 600,000 children born each year are at risk for mercury's toxic effects.

And those effects are serious. They include poor attention span and language development, impaired memory and vision, problems processing information, and impaired visual and fine motor coordination. Deborah Rice, formerly with EPA, is a renowned expert on the effects of toxic metals on brain development that Maine DEP was fortunate to hire. Dr. Rice last year warned at a U.S. Senate hearing that the threat posed by mercury is comparable to that of lead. We have too many children today who struggle to keep up in school and who require remedial classes or special education. And those of you who have had even passing involvement with our public schools know that the cost of these types of programs present a major fiscal challenge. Adults, too, are at risk. Elevated mercury levels are linked to fertility issues, high blood pressure, and heart problems.

As a result, children and women of childbearing age not just in Maine and Florida are being advised to restrict their intake of certain fish. Fourty-four states have issued advisories limiting consumption of fish from certain water bodies—17 states for every inland water body. Maine, for example, has an advisory covering every freshwater lake, stream, pond, and river. Species with specific consumption advice include our famous brook trout and landlocked salmon. For our coastal waters, Maine warns about consumption of blue fish and striped bass. Ten states have issued advisories on canned tuna. The FDA has told pregnant women not to eat swordfish, another staple of the North Atlantic fishery. Later this week, FDA is expected to revise its consumption warning for the first time to include tuna. It is ironic that at the very time concerns over the health effects of mercury are growing, EPA is proposing to weaken the requirements for mercury reduction from power plants.

There are many sources of mercury in the environment but most of it comes from human activity such as burning mercury-containing coal for electricity, mining, and improper disposal of mercury-containing products. Through these releases, we've contaminated a large part of our region's and nation's food supply. This is simply unacceptable.

So what's to be done? The answers are not simple or quick, but we've already made a start. About 70% of the world's new annual mercury releases are from coal combustion and waste incineration.

Fortunately, we have the technology to reduce coal plant mercury emissions nationally by 90% within the next decade. The State of Connecticut has adopted this target for its plants. Massachusetts, New Jersey, Wisconsin, and New Hampshire are considering similar targets.

But air pollution travels, so the states can't act alone. We need the federal government to act. We're aggressively controlling waste incineration in the U.S. by requiring incinerators to reduce their mercury emissions by 90%. But the biggest fish to catch—coal-fired power plants—has yet to be caught. Coal plants account for fully one third of U.S. mercury emissions and, amazingly, are completely unregulated.

In its proposed rule, U.S. EPA again proposes to let power plants off the hook. The proposed emissions standards are transparently based on the legislative targets in the Administration's so-called ''Clear Skies'' proposal, which is a broad attempt to roll-back the requirements and deadlines of the Clean Air Act—in large part the work of Maine Senators Muskie and Mitchell. The Bush Administration proposal does not go far enough or fast enough—either to adequately protect public health or satisfy the requirements set out by Congress.

Frankly, I should not even dignify what EPA has issued as a proposed rule. It is so blatantly illegal, in the laxity of the emissions standards and deadlines and in the lack of legal authority for its misguided emissions trading scheme that the Bush Administration knows full well that legal challenges by the coal industry will be successful and leave us with no rule at all. Which is just what they want. The environmental community had to sue EPA just to issue a rule. What they've proposed is just ''smoke and mirrors'' to satisfy the court that they've proposed something on time.

This cynical ploy should come as no surprise when you realize that my organization broke a story in the Washington Post recently that the language of the Bush proposal includes over a dozen examples where whole paragraphs from industry memos were lifted verbatim and inserted in the rule. Either that, or industry lawyers themselves were actually writing the rules for EPA.

Back in the Year 2001, in the first year of the Bush Administration, EPA signaled that it would issue a rule resulting in a 90 percent reduction in mercury emissions—from 48 tons a year down to 5 tons—per year by 2008. That is what the Clean Air Act Amendments require. EPA now proposes a rule, which if implemented, would still allow 34 tons of mercury emissions per year in 2008 and 15 tons in 2018—giving us a decade more of delay while leaving three times as much mercury in the environment as what is achievable with today's control technology.

We call on U.S. EPA to return to its original compass bearing, set the hook, and reel in the ''Big One'' by dropping power plant mercury by 90 percent within this decade. That isn't likely to happen. So, ultimately, Rep. Allen, it may be left to you to finish the job Senator Mitchell thought he had done in Clean Air Act Amendments of 1990 (which was signed by the first President Bush)—requiring the U.S. power sector to do its full share to solve the problem of mercury contamination.

TESTIMONY OF DEBRA DAVIDSON, MAINE CHAPTER—IZAAK WALTON LEAGUE OF AMERICA, LIVERMORE FALLS, ME

(Proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No. OAR–2002–0056, 69 Fed. Reg. 4652 (January 30, 2004).)

I would like to thank Tom Allen for giving Maine the opportunity to voice our concerns about hazardous air pollutant emissions from power plants, in particular mercury emissions.

My name is Debi Davidson and I am here today as a representative of the Maine Chapter of the Izaak Walton League of America. We are a national organization of 50,000 anglers, hunters and conservationists committed to responsible environmental stewardship.

I have attached a letter to my testimony, signed by the directors of midwest sportsmen's organizations including the Izaak Walton League of America, and representing over 400,000 people in Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, and Ohio asking the environmental Protection Agency to strengthen their proposed rule.

Mercury contamination threatens Maine's fishing heritage. Residents in Maine share a long tradition of outdoor recreation centering on our lakes, ponds and rivers. We are a region of camp owners, fishermen, hunters, and outdoor enthusiasts whose lakes and woods represent a large part of who we are. Unless we eliminate mercury pollution from our lakes, ponds, streams and rivers, we cannot safely eat our fish if we choose to. Even if catch and release is one way to enjoy fishing, we should not have to limit ourselves to this method. The effects of mercury pollution on an ecosystem very much affects the quality of a total fishing experience. Warnings about eating fish due to mercury contamination very much detracts from this experience.

Mercury contamination threatens Maine's economy. While fishing in Maine is clearly a

long-standing tradition, it is also big business. Figures show that recreational anglers who fish in our state spend more than $250 million dollars annually. This includes everything from fishing lures to special clothing to food, lodging and transportation for the trips we take. Economically, Maine cannot afford a contaminated fishery.

We can do better. Mercury contamination of fish in our lakes and rivers is a serious concern for our members and their families. The current EPA proposal falls far short of what is needed to address this threat. EPA's mercury MACT proposal fails to accomplish what is mandated by the Clean Air Act for mercury reduction. And the alternative New Source Performance Standard proposal is a poor substitute to an adequate mercury MACT standard.

We believe that the proposed mercury MACT rule should require emissions reductions from all coal-fired power plants by 2008 equivalent to the level that can be achieved by the most up-to date pollution controls and resulting in at least a 90 percent reduction in power plant mercury emissions nationwide. The technology to achieve these reductions is being developed and installed in Midwest plants right now.

The EPA should revise the mercury MALT proposal to meet the Clean Air Act's obligation to require the most up-to-date pollution controls on all power plants. The EPA should also reject the alternative New Source Performance Standard proposal and all mercury trading proposals.

The Maine Chapter of the Izaak Walton League asks that the EPA adopt a rule that maximizes the protection of human health and our fisheries by regulating mercury emissions to the level that we know is technologically feasible and to please do so now.

Thank you.

FEBRUARY 25, 2004.

Re proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No. OAR–2002–0056, 69 Fed. Reg. 4652. (January 30, 2004).

Administrator MIKE LEAVITT,

U.S. Environmental Protection Agency, EPA Docket Center (Air Docket), U.S. EPA West (6102T), Washington, DC.

DEAR ADMINISTRATOR LEAVITT: Sporting groups from Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin have worked for years to reduce mercury pollution and protect the health of our families. Today, we write to respectfully express our concerns over the proposed rule by the U.S. Environmental Protection Agency (EPA) to control mercury emissions from coal-fired power plants.

Fishing has been a tradition in the Midwest for generations, and sporting groups have been conserving fish habitat for decades. It has been an important part of family life and a bond between parents and children. Fishing is also important for our businesses, with sport-fishing adding $5 billion to our states' economies annually.

Unfortunately, all of our states are under statewide fish consumption advisories due to widespread mercury contamination. Catch and release is not just a choice anymore, it is a practice we must observe to safeguard the health of our children and grandchildren.

Power plants are one of the largest sources of mercury pollution in the Midwest. Twenty-three percent of the nation's coal-fired power plant mercury emissions come from the six states of Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin. In order for anglers to once again catch fish that are safe to eat, it is critical that we significantly reduce emissions from coal plants in these states.

Mercury contamination of fish in our lakes and rivers is a serious concern for our members and their families, but the current proposal falls far short of what is needed to address this threat. We know that existing plants using the best modern technology can achieve mercury reductions of up to 90 percent. The technology to achieve these reductions is being developed and installed in plants right here in the Midwest. We urge the EPA to adequately address our mercury problem by greatly strengthening the proposed mercury rule under section 112 of the Clean Air Act for plants burning all types of coal. We further urge the agency to reject alternative New Source Performance Rule in place of a MACT standard.

MERCURY AND FISH CONSUMPTION ADVISORIES

The entire Midwest is affected by mercury contamination to such a large extent that state health departments have issued fish consumption advisories specifically for mercury. Indiana, Illinois, Minnesota, Michigan, Ohio and Wisconsin all have blanket statewide fish consumption advisories for mercury. In addition, Lake Superior and Lake Michigan have fish consumption advisories because of mercury contamination.

Relying on fish consumption advisories, however, will not solve the problem. We must reduce the contamination at its source. Surveys of anglers in the Northeast, Southeast and Great Lakes have revealed that many anglers may have heard about the advisories, but anglers with lower income levels fish more often, eat more fish they catch as part of their diet, and are generally less aware of advisories than other anglers. In addition, relying only on advisories to address the mercury problem leaves a legacy of contaminated fish our future generations.

SAFE-TO-EAT FISH IS IMPORTANT TO OUR FAMILIES

Women of childbearing age and pregnant women are the most important members of the population in terms of mercury exposure. Methylmercury interferes with the development and function of the nervous system. It poses the greatest hazard to the developing fetus. This is the reason most fish consumption advisories warn pregnant women to limit their fish consumption or avoid fish altogether. However, infants and children are also at high risk. Infants may ingest methyl mercury through nursing and children are exposed through their diet. Children and infants are more sensitive to the effects of mercury because their nervous systems continue to develop until about age 14.

Mercury threatens the health of older fishermen, too. New evidence suggests exposure to methylmercury can adversely impact blood pressure regulation, heart-rate variability, and heart disease.

FISHING IS AN IMPORTANT TRADITION IN THE MIDWEST

Residents in the Midwest share a rich tradition of outdoor recreation centering on our lakes and rivers. We are a region of cabin owners, fishermen, hunters, and outdoor enthusiasts whose lakes and woods are as much a part of who we are as our agriculture, snow and fall foliage. If there is one thing we love as much as catching fish, it is eating fish. The fish fry and shore lunch are beloved traditions in the Midwest.

The ability to pass our traditions on to future generations is threatened by mercury contamination. Unless we eliminate mercury pollution from our lakes, streams and rivers, our children's children may not be able to safely eat fresh bass, walleye, or northern pike—the fish most heavily contaminated.

FISHING IS IMPORTANT TO OUR ECONOMY

Fishing in our states is big business. With the Great Lakes, cold-water streams, and tens of thousands of lakes, it is no wonder fishing is so popular. Sportfish like largemouth bass, smallmouth bass, yellow perch, walleye, northern pike and muskie are just a few of many sought-after species. According to the U.S. Fish and Wildlife Service, more than 7.87 million anglers fish in our states and spend more than $5 billion annually. This includes everything from fishing lures to special clothing to food, lodging and transportation for the trips we take. Our region simply cannot afford a contaminated fishery.

But the value of fishing cannot just be measured in dollars. Although less tangible and difficult to quantify, the effects of mercury pollution on an ecosystem can affect the quality of the fishing experience. A survey of anglers underscores the importance of the social aspects of fishing. Some of the main reasons that people fish are to relax, to spend time with family and friends, and to be close to nature. Warnings about eating fish due to mercury contamination detract from this experience. Reducing environmental contaminants like mercury must be a goal so we can continue to conserve and protect this resource.

WHY IS MERCURY FROM POWER PLANTS A PROBLEM?

Goal-fired electric power plants remain the largest uncontrolled source of mercury in the U.S. Each year, uncontrolled coal-fired power plants in the U.S. emit nearly 50 tons of mercury to the air in addition to an estimated 33 tons disposed of in waste left over after power plants burn coal. EPA estimates that coal-fired power plants alone account for 42 percent of all U.S. mercury air emissions. Municipal, medical and hazardous waste combustors—which are stringently regulated by the EPA—account for about ten percent of U.S. air emissions. Industrial boilers are responsible for ten percent and chlorine manufacturers for six percent. The remaining third is made up of incidental use and products containing mercury.

Existing coal-fired power plants not only remain uncontrolled, but if left virtually unregulated, over time they will account for a larger and larger share of mercury emissions, as other source categories meet their obligations to reduce their mercury releases.

Coal-fired power plants are found throughout the Midwest. According to the EPA's Toxics Release Inventory (TRI), coal-fired power plants in Minnesota, Wisconsin, Michigan, Illinois, Indiana and Ohio together account for 23 percent of mercury emissions from all coal-fired power plants in the U.S. Because mercury does not degrade when released and because the typical coal plant operates for at least 50 years, the accumulation of mercury released by these plants makes them the most widespread, large-scale, long-lived generators of mercury in the U.S.

Mercury is emitted from the stacks of coal-fired power plants, and although it can remain in the atmosphere for up to one year, a great deal of mercury is deposited on land and water bodies within 50 miles of the plant. In addition to being a significant concern in the areas closest to the plants, the deposition and reemission makes mercury pollution a regional and global problem. However, we cannot wait for international cooperation before we start addressing the emission and deposition problems that occur in the United States.

After mercury is deposited from the atmosphere, its greatest adverse impact occurs in the aquatic ecosystem. In a series of chemical reactions, bacteria in the sediments can convert mercury to methylmercury.

Methylmercury is a form of mercury that is especially toxic to humans and wildlife. Fish absorb methylmercury from the water as it passes over their gills and as they feed on other organisms. As larger fish eat smaller fish, methylmercury concentrations increase in the bigger fish, a process known as bioaccumulation. Consequently, larger predator fish usually have higher concentrations of methylmercury from eating smaller contaminated fish. Humans, birds and other wildlife that eat fish are exposed to mercury in this way.

EPA MACT PROPOSAL IS INADEQUATE

EPA's mercury MACT proposal fails to accomplish what is mandated by the Clean Air Act for mercury reduction. Further, the alternative New Source Performance Standard proposal is a poor substitute to an adequate mercury MACT standard.

We contend that the proposed mercury MACT rule should require emissions reductions from all coal-fired power plants by 2008 that are equivalent to the level that can be achieved by the most up-to date pollution controls. Based on data collected by the EPA, that would result in at least a 90 percent reduction in power plant mercury emissions nationwide.

By contrast, as proposed, EPA's MACT rule will only require an overall 30 percent cut in emissions, and that not until 2010 at the earliest. In addition, most of the reductions will come from power plants that burn eastern bituminous coal, while requiring very little emission reductions from power plants that burn western subbituminous coal. As a result, states like Minnesota, Wisconsin, Michigan, and Illinois, whose plants use a significant amount of western coal will see even more limited mercury reductions. Plants in Ohio and Indiana that use mostly eastern bituminous coal would have an incentive to switch to western coal. This could have the perverse effect of potentially increasing local emissions of mercury from plants in Ohio and Indiana. It would also create further strain on the coal industry in the eastern U.S.

The proposed alternative New Source Performance Standard (NSPS) rule would eventually require deeper reductions, but not for more than a decade and not to the levels mandated under a MALT approach. The NSPS alternative also creates different standards for different coal types and allows for some electric utilities to avoid making any mercury reductions, by allowing mercury trading. Treating coal types differently and allowing for trading raises the risk of increasing local emissions, exacerbating the problem of existing mercury hotspots, and creating new mercury hot spots in the Midwest.

The EPA should revise the mercury MACT to meet the Act's obligation to require the most up-to-date pollution controls on all power plants—regardless of the type of coal that they use—and by so doing achieve stringent and rapid reductions in emissions of this toxic pollutant. The EPA should also reject the alternative NSPS and all mercury trading proposals. These alternatives would cause additional mercury related adverse health risks through the promotion of pollution trading, and would allow unacceptable amounts of mercury pollution to continue.

We respectfully urge the EPA to adopt a rule that maximizes the protection of human health and our fisheries by regulating mercury—emissions to the level that we know is technologically feasible and to do so quickly.

Sincerely,

Jim Bahl, President, Minnesota Conservation Federation, St. Paul, Minnesota. 3,000 members.

Danny. J. Blandford, Conservation Director, Indiana BASS Federation, Martinsville, Indiana. 3,000 members.

Jim Doss, President, Ohio BASS Federation, Gallipolis, Ohio. 1,800 members.

Paul Hansen, Exccutive Director, Izaak Walton League of America, St. Paul Minnesota. 13,000 members in Midwest states of MN, WI, MI, IL, IN and OH; 50,000 members nationwide.

Mike Hofmann, President, Wisconsin State BASS Federation, Weston, Wisconsin. 1100 members.

Brad Maurer, President, Ohio Smallmouth Alliance, Bexley, Ohio. 160 members.

Edward L. Michael, Chairman, Illinois Council of Trout Unlimited, Oak Brook, Illinois. 3,000 members.

Larry Mitchell Sr., President, League of Ohio Sportsmen, Columbus, Ohio. LOOS and its member clubs represent about 200,000 Ohio sportsmen and women.

George Meyer, Executive Director, Wisconsin Wildlife Federation, Madison, Wisconsin. Representing 83 Wisconsin hunting, fishing, and trapping organizations.

Kim Olson, New Ulm Area Sport Fishermen, New Ulm, Minnesota. 150 members.

Bill Pielsticker, Chairman, Wisconsin Council of Trout Unlimited, Madison, Wisconsin. 4000 members.

Russ Ruland, DNR Liaison & Past President, Muskellunge Club of Wisconsin, Hales Corners, Wisconsin. 130 members.

Scott Sparlin, Executive Director, Coalition for a Clean Minnesota River, New Ulm, Minnesota. 600 members.

Vern Wagner, Conservation Director, Minnesota BASS Federation, Champlin, Minnesota. 14,000 B.A.S.S. members in Minnesota and 650 enrolled in the Minnesota B.A.S.S. Federation.

Jay Walton, Iowa BASS Federation Conservation Director (4,000 member affiliation), Iowa Conservation Alliance Board (50,000 member affiliation), Ames, Iowa.

Sam Washington, Executive Director, Michigan United Conservation Clubs, East Lansing, Michigan. A network of nearly 100,000 men and women and over 500 affiliated conservation and outdoor recreation clubs.

Paula Yeager, Executive Director, Indiana Wildlife Federation, Carmel, Indiana. 20,000 members.

LITIGATION FORM

Please return to:

IZAAK WALTON LEAGUE OF AMERICA
ATTN: Executive Director
707 Conservation Lane
Gaithersburg, MD 20878-2983

For National Office Use Only

APPROVED: _____

DISAPPROVED: _____

DATE: _____

PLEASE TYPE OR PRINT CLEARLY

1. Name of ALL Plaintiffs:

Izaak Walton League of America, National Wildlife Federation, Natural Resources Council of Maine. National Environmental Trust.

(a) Name of Plaintiff's Attorney (s), (include full address and telephone number):

Ann Brewster Weeks
Counsel and Legal Director
Clean Air Task Force
77 Summer Street, 8th Floor
Boston, MA 02110
(617) 292-0234

Neil S. Kagan
Senior Counsel
National Wildlife Federation
Great Lakes Natural Resource Center
506 East Liberty Street
Ann Arbor, MI 48104
(734) 769-3351

2. Name of ALL Defendants:

Michael Leavitt, Administrator, United States Environmental Protection Agency and United States Environmental Protection Agency

(a) Name of Defendant's Attorney (s), (include full address and telephone number):

Assistant Attorney General, Thomas Sansonetti, will assign an attorney to represent Leavitt and the U.S. EPA. No assignments have been made at this time.

3. Nature of IWLA participation (i.e. plaintiff, intervenor, amicus curiae):

Plaintiff

(a) Name of ALL Intervenors:

The case will not be filed until some time after February 24, 2004. Intervention can occur after the case is filed. Therefore, as yet, the name of all intervenors is not known.

(b) Name of Intervenors Attorney (include full address and telephone number):

See above.

4. Nature of complaint and relief sought (cite facts, figures, dates, hearings, court cases, applicable statues if known):

(a) Where is the specific injury or damage? (e.g. mineral exploration in a Wilderness Area):

Agency's failure to meet the statutory deadline for promulgation of final rules regulating hazardous air pollutants (including mercury) emitted by electric utility steam generating units by the statutory deadline of December 20, 2002. Since electric utilities are the largest domestic source of mercury emissions, failure to regulate these emissions in a timely manner poses serious hazards to public health and the environment.

(b) What are the immediate and long-range goals? (e.g. block exploration; overturn the 1872 Mining Act):

To achieve the District Court's declaration that the agency has failed to meet its mandatory duty to promulgate final Maximum Achievable Control Technology standards from hazardous air pollutant emissions from electric utility units, and that it failed to meet the mandatory deadline for such promulgation, which was December 20, 2002. The long range goal of the litigation is to establish a new enforceable deadline for the promulgation of final MACT standards for electric utility units.

(c) What is the history of the case? Be specific – (e.g. EIS public hearing – 6/1/73, followed by Federal District Court suit initiated 8/15/73...):

Please see attached "Notice of Citizen Suit" letter.

(d) Legal means to be employed to seek relief (e.g. preliminary injunction, temporary restraining order):

Declaratory judgment, court order setting new enforceable for final rules promulgation.

(e) Where will this action be brought?

United States District Court for the District of Columbia.

(f) Under what statues are you bringing the claim for relief?:

42 U.S.C. §7604(b)(2) and 40 C.F.R. Part 54.3

5. Please include copies of all complaints, pleadings, briefs, memos, and related materials such as news clippings, letters, etc. List materials below:

Enclosed, please find the December 23, 2003, "Notice of citizen suit..." letter from Clean Air Task Force to Administrator Leavitt.

(Please continue to keep National informed of all action taken. Provide the attorney with National's address and direct him to forward copies of all relevant documents filed on the League's behalf)

6. (a) Cost estimate. Include attorney's fees, filing fees, witness and investigation fees, court costs, if assessed, and incidentals. Consult your attorney on potential financial exposure and report his opinion:

CATF is funded to do this work but may seek supplemental funding if the case goes to trial. Supplemental funding will most likely be raised by CATF and come from their funder.

(b) How will you raise the needed money?

See above.

7. Is this request for approval only?

Yes.

(a) If assistance beyond approval is desired, please state the probable nature and extent of the assistance required (i.e. money, publicity):

8. Is Board approval needed before the next regularly scheduled meeting? (January, April, July & October):

No.

9. Chapter or Division contact:

(With address and phone number)

* *

January 6, 2004

(Date)

(Signature & address)

William Grant, Associate Executive Director
Izaak Walton League of America, Midwest Office
1619 Dayton Avenue, Suite 202
St. Paul, MN 55104

(651) 649-1446

(Telephone number)

billgrant@iwla.org

(E-Mail)

TESTIMONY: PROF. ELLEN K. SILBERGELD—EPA HEARINGS ON REGULATION OF UTILITY MERCURY EMISSIONS, PHILADELPHIA, FEBRUARY 25, 2004

I am Ellen K. Silbergeld, Professor of Environmental Health Sciences and Epidemiology at the Bloomberg School of Public Health, Johns Hopkins University, in Baltimore, Maryland. I am appearing without compensation as a private citizen, at the invitation of the Sierra Club, and my testimony is based upon my research experience on the toxicology and epidemiology of mercury compounds, as well as my experience in regulatory risk assessment and risk management, including the application of ''cap and trade'' mechanisms to achieve goals in reducing air pollution. My background and training are outlined in the attached documentation; my PhD is in environmental engineering sciences from Johns Hopkins School of Engineering, and I have held research positions with NIH and the University of Maryland Medical School. I have served as a member of EPA's Science Advisory Board as well as an advisor to the Department of Energy, the CDC, the World Health Organization, the World Bank, the Pan American Health Organization, the National Toxicology Program, the National Academy of Sciences, and many other international, national, and state commissions and expert committees. I was a member of EPA and NIH committees evaluating the sources and risks of mercury exposures and I participated by invitation in the deliberations of the NRC Committee on the Toxicology of Methyl Mercury. I am currently directing funded research in my laboratory on mercury compounds, studying exposures and mechanisms of both organomercury compounds (including methylmercury and thimerosal) and inorganic mercury. Last year we published two major research papers: an epidemiological study reporting that adults may be as sensitive as young children to the neurotoxic effects of methylmercury exposure, via fish consumption; and one of the first studies to show that very low doses of mercury can accelerate autoimmune disease, in an animal model of lupus.

In this testimony I want to make three points, relevant to important aspects of your deliberations: (1) mercury compounds must be considered toxic air pollutants; (2) exposures to mercury compounds are a serious and significant health concern for millions of Americans; and (3) it is dangerously inappropriate to propose a ''cap and trade'' policy for controlling the major remaining anthropogenic sources of mercury in the US.

Mercury compounds are toxic air pollutants. Mercury compounds are widely recognized as one of the most serious public health risks world wide, particularly for children (see WHO 1990 report; NRC 2000 report). Mercury compounds can affect many organ systems, including the nervous system, kidney, heart, and immune systems. However, we have not fully appreciated the range and severity of mercury toxicity. Public health policy, including the risk assessments conducted by federal and state agencies, has appropriately focused on the developing nervous system as a very sensitive target for irreversible toxic damage. However, mercury has multiple effects of many organ systems in addition to the developing brain. We recently published an epidemiologic study indicating that adults exposed to methyl mercury via fish are also at risk for neurocognitive deficits, with a dose:response relationship very similar to that found for children exposed prenatally (Yokoo et al 2003):

TABLE 3.—REGRESSION COEFFICIENTS β OF ADULT'S HAIR MERCURY CONCENTRATION AS A PREDICTOR OF NEUROBEHAVIORAL TRUST RESULTS

Test	β*	95% C1	β**	95% C1
Fine Motor Speed	−3.40	−5.80;–1.00	−3.20	−5.40;–1.00
Digit Span	−0.14	−0.29;—0.001	−0.15	−0.29; 0.003
Digit Span backward	−0.09	−0.18;—0.001	−0.09	−0.19;–0.009
Digit Symbol	−1.21	−2.8;–0.33	−0.54	−1.2;0.16
Easy Learning	−0.37	−0.70;–0.04	−0.34	−0.64;–0.04
Difficult Learning	−0.21	−0.42;–0.001	−0.15	−0.34;–0.03
Logical Memory first story	−0.29	−0.51;–0.09	−0.27	−0.49;–0.06
Errors of commission	−1.39	−0.26;–2.5	−1.45	−0.28;–2.6

*—bit adjusted; **—adjustsed by age, gender, and education level.

In addition, recent research in our group and elsewhere has identified the cardiovascular system and the immune system as important targets for mercury toxicity across the lifespan. Because these studies have been published since the 2000 NRC report and risk assessments by FDA and EPA, I will review these data here. In follow up studies in Minimata and in the Faeroes study of children exposed perinatally to methyl mercury via fish consumption, alterations in cardiovascular function have been reported (Oka et a1 2002; Sorensen et al 1999). In 2003, my colleague Dr Eliseo Guallar reported that mercury exposures were associated with cardiovascular disease in adults. In this elegant analysis, Guallar et al (2002) demonstrated that consumption of fish containing mercury resulted in loss of the beneficial effects of fish consumption for cardiovascular function, that is, the methyl mercury ingested by fish consumers abrogated the recognized benefits of consuming omega-3 fatty acids of which fish are an excellent source.

The immunotoxic effects of mercury have long been reported in experimental studies, many conducted by researchers here in Philadelphia (Prof. Shenker, Monestier, and Kono). These researchers and others have shown that administration of mercury compounds to rats and mice can induce autoimmune dysfunction similar to that observed in such autoimmune diseases as lupus and scleroderma. However, there has been little data to suggest that mercury could cause autoimmune disease in humans. We have examined these potential risks of mercury in a different way, to test whether mercury can accelerate autoimmune disease in the context of triggers of these diseases, such as genetic susceptibility, infection, or exposure to antigens. We reported last year that pretreatment of mice with very low doses of mercury can accelerate and exacerbate lupus in an animal model of disease, resulting in premature mortality, more extensive kidney damage, and more rapid dysregulation of the immune system (Via et al 2003).

To put our experiments in perspective, we are exposing our mice to doses equivalent to consuming one can of tuna fish per day with a concentration of 5–10 ppm methyl mercury. In our current research we are examining interactions of low dose mercury with infections, such as Coxsackie B virus, which are major causes of autoimmune cardiomyopathy in humans. Again, we found that mercury accelerates and worsens heart disease in the context of viral ''priming'' (Nyland et al 2004). Autoimmune myocarditis is a leading cause of sudden heart failure in young persons; the possibility that mercury exposures could uncover latent disease, or worsen disease, is very serious.

Based on these studies, and the continued research on mercury worldwide, it is fair to say that we have not yet fully comprehended the range of mercury toxicity and its risks for human health. In many ways, we are still at the point in evaluating mercury as a toxic air pollutant as we were in thinking about lead some 25 years ago. We know that mercury is dangerous, and we know some people may be excessively exposed. However, we do not fully appreciate its toxicity and hence we cannot disregard the range of exposures current in the U.S. population.

Exposures to mercury compounds are a significant threat to millions of Americans. One yardstick by which to judge the need for urgent interventions in a public health problem is to evaluate current levels of exposure to a toxic agent like mercury. Several recent analyses have been undertaken on exposures of the U.S. population to mercury compounds, most recently by Dr. Kathryn Mahaffey and her colleagues at EPA. (Their report is available on line from Environmental Health Perspectives, the scientific journal published by NIEHS). Mercury exposures can be evaluated either by population studies of mercury concentrations in blood or hair, which was done by the CDC in 2003 (Schober et al 2003). Exposures can also be determined by analyzing mercury concentrations in food, which is the major source of exposure for the U.S. population. Mahaffey and colleagues have updated the earlier assessment of U.S. exposures, using information on blood mercury levels and on diet. Their analyses support the urgency of taking comprehensive and effective actions to reduce ongoing inputs of mercury into the environment. For all U.S. women of childbearing age, half have blood mercury levels in excess of 0.94 micrograms/L. Nearly 10% have blood mercury levels greater than 5 micrograms/L, with a range of 2.7 to 25% depending upon ethnicity. The NRC recommendations in 2000 supported a reference dose for mercury in cord blood of 5.8 micrograms/L. Mahaffey et al estimate that more than 300,000 infants may be born each year to women whose blood mercury levels are in excess of this health based guidance. Clearly, this is an environmental health issue demanding rapid intervention.

Mercury comes from many sources, natural and anthropogenic, and each individual is exposed to the sum of all these sources. For most Americans, the proximate source of mercury exposure is through the food supply, primarily through seafood. Finally, the FDA seems ready to adopt the current risk assessment, developed by the National Research Council and adopted by EPA. However, this is the proximate source of mercury, and attempting to reduce exposure by controlling the foods we eat is an inefficient and ultimately uncertain public health policy. Moreover, without controlling the ultimate sources of mercury, we are essentially writing off seafood as a food source.

The ultimate source of mercury is overwhelmingly from energy production using fossil fuels. Prudent and effective public

health policy requires that we examine options for controlling this source, rather than eliminating seafood and some freshwater fish from our diets for now and forever.

''Cap and trade'' policies are not appropriate for mercury. I am proud that I worked for the environmental organization Environmental Defense that has developed innovative strategies for protecting our environment and human health. One of these strategies has been the careful selection and implementation of so-called ''cap and trade'' policies for certain pollutants, notably sulfur oxides. From this experience, there are criteria we can apply in determining what policies are appropriate for controlling specific pollutants. First, trading only works to prevent environmental impacts and harness efficient private sector mechanisms under the following conditions: (1) it doesn't matter where the pollutant is released, so that if one source accumulated ''trading rights'' and emits more pollution than a source that sells these rights, there will be no local impacts around the buyer source. (2) the pollutant should not accumulate in the environment, such that continuing emissions do not build up in ecosystems or food pathways. (3) the current levels of exposure should be acceptable such that it is not necessary to implement a rapid overall reduction in exposures at the local or national level.

None of these conditions are met in the case of mercury. It does matter where mercury is emitted. In an analysis of EPA data conducted by Environmental Defense, it was shown that in many states with mercury problems (evidenced by fish advisories) local sources are the cause of environmental ''hot spots''. If these sources utilize trading rights, then the problem of local ''hot spots'' will continue. This is likely, since the reason for these hot spots is current levels of release, reflecting the fact that it is more convenient, economically and technologically, for these sources to emit mercury rather than control their facilities. Mercury accumulates in the environment and in food pathways affecting wildlife and humans. Mercury is an element and thus never disappears. In addition, in the aquatic environment, inorganic mercury emissions are transformed by bacteria into methyl mercury, which is bioaccumulated by organisms through complex food webs resulting in concentrations of methylmercury in large fish that eat other fish tens of thousands of times higher than the concentrations in water or sediments. Current levels of exposure are unacceptable. For that reason, it is imperative for us to take action to reduce mercury exposures from all sources, but most expeditiously to reduce the largest and least controlled sources. We have the technology to control utility emissions, as has been demonstrated in this country for other combustion sources and in Europe for utility plants. Data below show the dramatic reductions achieved by waste incinerators.

We do not have room for trading, when hundreds of thousands of adults and babies are at risk because of current levels of exposure. We do not have time for trading, when consumers must choose between a healthy diet, incorporating seafood, and avoiding the hazards of mercury for themselves and their children.

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MAINE COUNCIL OF CHURCHES,
ENVIRONMENTAL JUSTICE PROGRAM,
Portland, ME, March 1, 2004.

Re public hearing on mercury emissions ruling.

Congressman TOM ALLEN,
House of Representatives,
Augusta, ME.

DEAR CONGRESSMAN ALLEN: The Maine Council of Churches' Environmental Justice Program asks you, as our representative to the U.S. Congress, to carry a message to the Environmental Protection Agency and the Secretary of Energy. With deep concern for the sustainability of the living web of creation we oppose the proposed rule change on mercury pollution as well as the recently announced plan to build 94 new coal-burning power plants across the nation. Both proposals are appalling in light of our growing scientific knowledge that human activity—primarily burning fossil fuels in power plants and vehicles—is seriously compromising the health of our environment and all of the earth's inhabitants for generations to come. We have the technology available today to reduce mercury pollution by 90%; yet our federal government proposes to introduce a ''cap-and-trade'' program for this toxic pollutant and to build more power plants that will generate mercury emissions.

Living close to the land, most Mainers have experienced firsthand the effects of mercury and air pollution emitted by coal-burning power plants to our south and west. At our rivers and lakes we read the posted fish advisories. We see inhalers in backpacks reminding us that our children suffer from the highest asthma rate in the region. We've learned on hot summer days that the heavy haze that hugs our coastline is ground ozone and is dangerous for our friends and neighbors who have respiratory problems. Stay inside and reduce your level of activity, we are warned.

Concerned about these growing problems in our environment, congregations and their members across Maine have been working together to do something. Together we are conserving energy as we obey the first Commandment and put into practice our covenant with the Creator ''to care for the garden.'' With support from the state Public Utilities Commission's Efficiency Maine, congregations are participating in free energy audits and rebates to install energy-efficient appliances; individuals are replacing incandescent light bulbs with compact fluorescent light bulbs at rebated prices and implementing other technologies that conserve energy in their homes.

We want to learn and participate in state programs that collect items containing hazardous wastes like mercury.

And it is not only the faith community. Businesses and the state have also made commitments, purchasing Maine-produced ''green'' electricity and supporting wind and solar power development through green tag purchases—all as a result of Maine Interfaith Power & Light's successful campaign to bring renewable electricity options to Maine residents.

One by one, community by community, Mainers are making a difference in the amount and kind of energy consumed in the state and cleaning up our own contributions to air and water degradation. But we can't do it alone. We need those who create policy and oversee the protection of our environment and its resources—the EPA, especially—to stand with us and enforce the Clean Air Act and the Clean Water Act, which are vital to the future of all of our neighbors on the earth. These leaders must indeed work with us, not against us, and champion life-sustaining energy and toxic pollution-reduction policies.

Thank you for your continued efforts on behalf of the earth and its living inhabitants.

Respectfully submitted,

ANNE D. (ANDY) BURT,
Director, Environmental Justice Program.

MERCURY RULE HEARING SPONSORED BY TOM ALLEN, MONDAY, MARCH 1, LEGISLATIVE COUNCIL CHAMBER, ROOM 334, MAINE STATE HOUSE, AUGUSTA

Thank you Rep. Tom Allen for holding this shadow hearing to the Environmental Protection Agency's field hearing in Philadelphia. We deserve the right to discuss their proposal to weaken the Clean Air Act's protections against mercury pollution from power plants, as it is Maine that will continue to see the high rates of mercury deposition.

My name is Patricia Philbrook. I am here today as a board member of the Maine People's Alliance (MPA), a statewide citizen action organization with 22,000 members.

Power plants are the largest industrial source of mercury in our environment. Mercury emitted from power plant stacks falls as rain, snow, and even dry deposition here in Maine. Three and one half years ago MPA co-released a report at the HoltraChem site in Orrington indicating our rain and other forms of precipitation, commonly thought to be pure, is tainted with varying levels of mercury, in some instances enough to be a threat to aquatic organisms. Remarkably, power plants are the only major mercury polluters yet to be regulated under federal clean air standards. Thus, in large part, our nation's mercury problem is due to the fact that while other sources must meet strict emission limits, power plants continue to spew unlimited quantities of mercury into our air, where the rain and snow wash it into our rivers, lakes and oceans, and, ultimately, into our food chain. Public health demands that we act on mercury to reduce children's exposure, who are especially vulnerable to this potent toxin, and to protect all members of our population.

Maine also has local mercury problems, which we have been addressing. Currently, the Maine People's Alliance and many others have serious concerns about the proposed cleanup plan at HoltraChem, one of the worst mercury pollution sites in the country. Basically, Mallinckrodt plans to ''cover and run,'' leaving many tons of toxic mercury in close proximity to the Penobscot River. Mallinckrodt chose the best opportunities for cost cutting rather than the right

options for eliminating toxic threats. This cheap solution is neither acceptable to the residents of Orrington, nor to the people living in the Penobscot Valley. Clearly, Mallinckrodt is solely responsible for this mess. It built the plant, and for years it profited while polluting one of Maine's great natural treasures.

As the sole responsible party left among the many that operated the plant at one time, Mallinckrodt should be legally bound to remove all toxic threats to human health and the environment. To date, it has been operating on a voluntary basis with the EPA to implement corrective actions at the site. The government should require Mallinckrodt to sign a consent agreement, legally binding it to follow through with a thorough cleanup. The consent agreement should also obligate Mallinckrodt to address any future problems at the site that may not be apparent today. While the Maine People's Alliance has worked tirelessly over three decades to clean up HoltraChem and has supported the Maine Legislature in efforts to reduce mercury contained in products sold in Maine, we will continue to have some of the highest mercury levels unless power plants are forced to observe strict standards at the federal level.

Unfortunately, the Bush administration has taken several steps in the wrong direction. Instead of protecting mothers and children from exposure to mercury, EPA's proposals would protect electric utilities by setting targets so weak that the industry will be allowed to continue polluting. What the mercury standard should be and what the EPA should be implementing is current law (Section 112 of the Clean Air Act), which requires that industries install maximum achievable control technologies to reduce air toxics such as mercury.

Two years ago, EPA's own scientists said the existing power plants could achieve a 90 percent reduction in mercury emissions using existing control technologies. This means we can reduce mercury emissions from power plants from 48 tons annually to roughly 5 tons per year by 2008. We should accept no less.

MERCURY RULE HEARING: TEACHING THE UNTHINKABLE

Hello, my name is Chris Coleman and I am here as a representative of the Chewonki Foundation. We are a non-profit center for environmental education located in Wiscasset, ME. Personally, I am the Assistant Director of our Travelling Natural History Programs. To put it simply: I am a teacher. In the course of a year I teach thousands of elementary school children throughout the state of Maine about Owls, Hawks, reptiles, amphibians, waste management, global warming, predators, prey, food chains, mammals, trees, etc. If it's going on outside we have a lesson that will teach you about it. In just about every lesson I teach, there is a time when I explain the problems that the particular subject of that lesson faces, whether it be plant or animal. I teach with the understanding that awareness leads to action. To each problem I offer a solution. Since the majority of these problems are related to humans, the solutions deal with things students can do to fix them, i.e., picking up trash on the beach, not throwing apple cores out car windows, buying things in the grocery store that produce less waste, etc. I feel that it is important that children understand they are not helpless in the grand scheme of things just because they are kids.

I pride myself in my ability as an educator to present issues to students in a nonbias, ''middle of the road'' sort of way. They deserve to hear both sides of the issue. I think it is unfair to take advantage of such a malleable mind. Children need to be given the facts, and then, from there it is truly an amazing thing to watch as they go through a very intense deductive process which almost always culminates in the simple but entirely justified question, ''Why?'' Gone are the days when as adults we can get away with the answer, ''Because that's just the way it is.'' They have matured far too much to accept such a thoughtless answer. Even at ten years of age they need some ''hard science'' to reinforce every concept within their own environment.

Now I have a new problem to teach: mercury contamination. I know the problem is not new to most of us here, but upon researching the topic I have decided that the issue now warrants a great deal of awareness among children in order to create the action I spoke of earlier. Afterall, they are the ones that will be forced to deal with this issue as it becomes more and more of a problem. First I give them the ''hard science'':

Mercury is a highly toxic chemical with effects on the central nervous system comparable to those of lead, especially for unborn fetuses, very young children whose brains are still developing, and piscivorous animal.

Forty-five states have issued freshwater fish consumption advisories.

Loons of Maine in high-risk mercury situations have been observed spending far less time sitting on their eggs in the nest, foraging for food, and increased time brooding and resting.

High mercury levels are being passed on to loon chicks.

4.9 million women of childbearing age in the U.S.—that's 8 percent—have mercury levels in their blood that are unsafe. (Center for Disease Control).

Two years ago, EPA scientists concluded that 90 percent reduction in mercury output from coal fired power plants is possible using existing technologies.

The list goes on, and on, and on.

Here is my dilemma though. What do I offer as a solution to kids? What can they do? Maybe it's a problem better left for adults to handle. And then they'll ask, ''What are the adults doing about all of the mercury that goes into our water?'' Now, thankfully I have an answer. Based on recent decisions made by our government, I can honestly say to them, ''Absolutely nothing.''

What I fear the most though are the questions students ask that they have no idea are even related to mercury, like, ''Where are all the loons that used to live on my lake? How come that bald eagle doesn't come back to its nest anymore? I used to hear the shrill cries of an osprey every time my family visited that island. Now everything is so quiet. Where did the osprey go?'' Do I then explain to them that a deadly neurotoxin called methylmercury is slowly killing off these birds and it will only get worse as they grow older.

Don't make me answer those questions. I shouldn't have to answer them. Those answers should come from the people who have created and perpetuate the ill effects of mercury contamination. I always have such high hopes for children, for the things they are capable of now and in the future, but why do we constantly stack the deck against them. It is time to right the wrongs of my generation, your generation, and generations before us so that the children of today will be able to swim in their lakes, eat their fish, and enjoy the wildlife within their forests. I fear we as adults have created so many problems for them to deal with, so why not remedy this situation before it becomes catastrophic. My name is Chris Coleman. I am a teacher. I came here today to speak for the children of Maine.

TESTIMONY BY PHILIPPE GRANDJEAN, MD, PHD, AT THE MERCURY MACT RULE HEARING SPONSORED BY REP. TOM ALLEN

My name is Philippe Grandjean. I am an MD, PhD, and I work as an Adjunct Professor of Environmental Health at Harvard School of Public Health in Boston. I am also a Professor and Chair of Environmental Medicine at the University of Southern Denmark. I apologize for not being able to be present today due to commitments in Europe and my field studies in the Faroe Islands. I am grateful to you for allowing me to present a short summary of the current status of our studies of adverse effects of methylmercury in regard to human health.

I started studying the effects of mercury on human health almost 20 years ago. Together with Dr. Pal Weihe, I collected information on births in the Faroe Islands, a fishing community located in the North Atlantic between Norway and Iceland. In over 1,000 children, we determined the prenatal exposure to methylmercury by analyzing the cord blood for mercury. The mercury originated from the traditional Faroese diet, which includes pilot whale meat in addition to frequent meals of fish and shellfish. The pilot whale is a toothed whale that eats fish and squid, and the mercury concentration in the meat corresponds to the levels in swordfish and shark, or higher.

When we examined the children at age 7 years with sophisticated neurobehavioral methods, we found that increased prenatal mercury exposure was associated with deficits in several brain functions, including attention, language, verbal memory, spatial function and motor speed. These associations could not be explained away by a multitude of other factors that we also recorded. In fact, the Faroese population is relatively uniform, and whale meat is freely shared when available, so that one would not expect that socioeconomic or other factors would play any great role.

In 2000, the National Research Council released its report on the Toxicology of Methylmercury. This report identified our work as critical evidence in regard to identifying an exposure limit for methylmercury. The NRC committee used the so-called benchmark dose for these calculations and agreed with the U.S. EPA that an exposure limit of 0.1 micrograms per kilogram of body weight per day was justified.

Since then, our research has made substantial progress, and I would like to share some of these achievements with you.

One insight comes from efforts in statistical theory by my colleague, Dr. Esben Budtz-Jorgensen, a Danish statistician who now works as a postdoc at Harvard. Esben first calculated the degree of imprecision of the exposure assessments—that is, in this case, how well the cord-blood mercury concentrations reflected the ''true'' exposure. Imprecise exposure assessments result in an underestimation of the true effect of an exposure, in this case methylmercury. We had anticipated that our mercury measurements would not be a precise measure of the dose that the fetus (especially the fetal brain) had received. But Esben documented that the measurement error was much greater than we had thought. In addition, the mercury concentration in the mother's hair was a poor measure of the ''true'' exposure to the fetus.

Such imprecision of course also affects the calculations of benchmark doses. Esben has now calculated the influence on the results that the NRC used in their report. In short, the benchmark dose has been overestimated

by a factor of 2. Accordingly, if we were to calculate an exposure limit today by the same procedure as the one used by the NRC, now using the adjusted benchmark dose, then the exposure limit would be only one-half of the limit used by the U.S.EPA.

Another issue of importance is how you convert mercury concentrations in hair to concentrations in blood and vice versa. The calculation originally presented by the NRC was based on cord blood and needs to be adjusted to the concentration in adult whole blood. The EPA now estimates the annual number of births in the US that exceed the EPA exposure limit to be 630,000. However, the number would have been even larger, had the EPA used the adjusted exposure limit.

Current risk assessments have been based on the assumption that the fetal brain is the most sensitive organ. Brain development also continues after birth, but we have been uncertain how long an increased susceptibility to mercury might last. Accordingly, some states have chosen to warn against mercury exposure from fish only with regard to pregnant women, while others have included children up to various age levels. Our new results, just published in The Journal of Pediatrics in the February issue shed new light on the vulnerability of the brain.

We had recently examined the Faroese children again at age 14 years, and the tests carried out included brainstem auditory evoked potentials. In this test, the child was hearing a sound from a headset, and we then recorded the resulting electrical activity in the brain using surface electrodes placed on the skull. Using standard clinical procedures, we measured the transmission of the electrical signal from the acoustic nerve through a series of ''relay'' stations in the brain. We found that the latency, or transmission time, of the signal from the acoustic nerve to the brainstem was significantly increased at higher prenatal exposure to mercury. This was true both at 7 years and at 14 years, suggesting that this effect of mercury on the developing brain is irreversible.

This mercury-associated delay in transmission appeared to be parallel to the effects on the child's cognitive functions that I mentioned before. The measurement of electrical signals is regarded an objective assessment that is independent of factors, such as age and socioeconomics. It therefore represents an important, independent confirmation of the neurotoxicity of methylmercury from seafood. We are currently working on the neuropsychological test results at age 14 years to see whether they too, as we anticipate, reflect lasting mercury toxicity. So I can't report on these results yet.

An additional finding at age 14 years was that a subsequent component of the signal transmission to the midbrain was delayed at higher current mercury exposures, but in this case it was not affected by prenatal exposure. Postnatal mercury exposure up to adolescence therefore also seems capable of damaging brain functions, although they may not be the same as those that are sensitive to mercury during fetal development. This conclusion is entirely plausible and agrees with experimental animal studies.

It is noteworthy that these children at age 14 had an average exposure that was similar to the exposure limit used by the U.S.EPA, and that 95% of them had exposures below the level which has previously been considered safe by the FDA. Yet, at these exposure levels, we saw a steady slope of increasing delays of the electrical signals, the higher the mercury exposure: The delay in the signals appeared already at mercury doses below the EPA limit.

All of these results regard cognitive effects and other changes of brain functions. The autonomic nervous system performs important, but unconscious functions, such as regulating the heart beat, the blood pressure, etc. We have now found that the mercury associated neurological changes are also linked to decreased nervous system control of the heart function. At higher mercury exposures, the children were less capable of maintaining the normal variability of the heart rate necessary to secure proper oxygen supply to the body and to maintain an appropriate blood pressure.

This finding has wider potential relevance, because other research has suggested that mercury from fish may increase the risk of heart disease and of dying from heart disease. The most recent reports were published in The New England Journal of Medicine in November, 2002. We suspect that part of the reason for these findings is that the mercury affects the autonomic nervous system and its control of the heart function. Such effects are of course highly relevant to Americans in general. These new results therefore suggest that we should not only be concerned about mercury exposures of pregnant women and small children. The EPA report that over 10% of all births every year exceed the exposure limit should therefore also be considered in regard to the population at large.

The importance of brain functions means even a small deficit, whether measured as a decrease in IQ points or otherwise, is likely to impact on an individual's quality-of-life, academic success and economic prospects in life. Even though the children that we examined were all basically normal, we have documented detectable deficits that appear to be permanent. I would consider such changes as adverse health effects that should be prevented. Further, even a small increase in the incidence of heart disease is important, because cardiovascular disease is the major cause of death in this country.

Freshwater fish and seafood are excellent supplies of energy and essential nutrients. If fish is not contaminated with mercury, it will help prevent heart disease. I believe that it is an important effort to support public health to prevent mercury contamination of the environment.

Thank you.

STATEMENT OF REBECCA WEINSTEIN, JD, MSW, EXECUTIVE DIRECTOR, MAINE DEVELOPMENTAL DISABILITIES COUNCIL

(On the U.S. Environmental Protection Agency's Proposed Rulemaking On Standards for Reduction of Mercury Emissions from Coal and Oil-Fired Electric Utility Power Plants and the Use of Maximum Achievable Control Technology (MACT) Published in the Federal Register on January 30, 2004 (69 FR 4692) EPA Docket ID Nos. OAR–2002–0056 & A–92–55.)

Good afternoon, my name is Rebecca Weinstein and I am the Executive Director of the Maine Developmental Disabilities Council. The Council is an independent advocacy organization working toward systems change to assure that individuals with developmental disabilities are fully included, integrated and involved in their communities and the decisions impacting them.

It is not often the case that I have the opportunity to testify on environmental issues; until fairly recently, discussion of disability meant discussion of health and other human services. However, increasing knowledge of the potential role of environmental toxins and other factors in causing developmental disabilities means that a much broader spectrum of issues now must be considered as disability issues.

According to the federal definition, a developmental disability is a condition which occurs before the age of 22, has severe impact in three major life areas and is likely to continue indefinitely. In most cases it is impossible to identify a direct cause of a developmental disability. The most current scientific research indicates that complex interactions between social environment, genetics, and environmental toxins such as lead, PCBs, and mercury play a profound role in the causation of developmental disabilities. While it is extremely difficult to have a measurable impact on social environments and genetic factors legislatively, emissions of these kinds of potent neurotoxins can be substantially reduced and even eliminated through stringent regulation.

Mercury can have a devastating impact on fetal brain development. Large exposures can cause mental retardation, gait and visual disturbances, and even small exposures can cause impairment in language, memory and attention. When fish contaminated with mercury are consumed, women of childbearing age can put their future children at risk for a range of developmental disabilities. Warnings are regularly issued to attempt to protect fetuses and young children from these effects, but even with this warning system in place, the Centers for Disease Control estimate that 1 in 12 women of childbearing age in the U.S. has unsafe levels of mercury in her blood. Women who have become contaminated with enough mercury to cause substantial harm to a developing fetus may not themselves have, or show signs of, mercury poisoning. This is because the developing brain is especially sensitive to the effects of mercury, where its presence can cause significant disruption to a variety of processes including cellular function, protein synthesis, cell division, and cellular migration.

As an additional cause for concern, recent studies have shown that methylmercury in combination with polychlorinated biphenyls (PCBs) act synergistically, raising questions about the impact of mercury in combination with other neurotoxins at very low levels. Many water systems in the US are contaminated with a variety of toxins including PCBs and other neurotoxicants, raising questions about analyses and alerts based solely on a single toxin.

The potential damage that mercury emissions pose to America's children make it imperative that mercury emissions be limited to the greatest extent possible. The more mercury that is prevented from entering the environment, the greater the chances that children will avoid its toxic impacts. Power plants have been allowed to emit these toxic chemicals for years, negatively impacting the health of our environment and the nation's children. It is simply unacceptable not to demand that these polluters meet anything but the most stringent emissions standards, especially when technologies already exist that can remove a large majority of these emissions.

I urge you to push for the most stringent standards possible to help protect America's children.

Thank you for your consideration.

MAINE COUNCIL
OF TROUT UNLIMITED,
March 1, 2004,

Re Proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No. OAR–2002–0056, 69 Fed. Reg. 4652 (January 30, 2004).

Administrator MIKE LEAVITT,
U.S. Environmental Protection Agency, EPA Docket Center (Air Docket), U.S. EPA West, Pennsylvania Avenue, NW, Washington, DC.

DEAR ADMINISTRATOR LEAVITT: EPA's current proposal to regulate hazardous air pollutants emitted by the electric utility industry does not adequately protect public health or our fisheries. It is important to Maine Trout Unlimited members that the electric utility industry takes responsibility for its harmful emissions.

Congress specifically lists mercury as a hazardous air pollutant in section 112 (b) of the Clean Air Act because of its toxic nature and its health effects. Toxic air pollutants must be regulated so as to require the maximum achievable control technology (MACT) at every source. The Maine Council of Trout Unlimited is concerned about EPA's proposal to allow trading of this toxic material.

All of the New England states have Statewide Mercury Advisories and within the State of Maine's Open Water and Ice Fishing Regulations book is a warning about eating freshwater fish: Warning: Mercury in Maine freshwater fish may harm the babies of pregnant and nursing mothers, and young children.

The proposed mercury MACT rule should require emissions reductions from all coal-fired power plants by 2008 that are equivalent to the level that can be achieved by the most up to date pollution controls. We strongly urge the EPA to adopt a rule that will protect human health and our fisheries.

Sincerely,

GREG PONTE,
Council Chair.

My name is Marjorie Monteleon. I live on Mt Desert Island where Acadia National Park is located. I chose to drive between 5–6 hours round trip to protest the EPA's proposed relaxing of the regulatory approach to mercury in air pollution.

Why?

Because: Some tree swallows in Acadia National Park are more mercury-contaminated than birds at a Superfund site in Massachusetts, according to Jerry Longcore, of the U.S. Geological Survey.

Because: ''The mercury in rain falling on Acadia National Park peaked at . . . close to four times the current EPA standard and over 23 times higher than the Great Lakes human-health standard.'' On average, the rain in Maine carries mercury levels more than three times greater than the EPA's updated human-health standard for the Great Lakes.

Because: Seal Cove, Hodgdon Pond, and Aunt Betty Pond, in Acadia National Park are highly contaminated. It may be unsafe for anyone to eat any fish from these ponds.

Because: 20 to 25 percent of ''loons'' in Maine have high mercury levels, high enough, in fact, that they are at risk of neurological and behavioral problems; those loons fledge 40 percent fewer young and we know that mercury levels in loons are a measuring stick for mercury levels in our environment. And we know that mercury in our environment eventually winds up in our bodies.

Because: 3–4 million people come to Acadia each summer. We year-rounders depend on them for our living. They eat tons of our seafood, ride in our boats, buy our boats, rent lodging and campsites, buy souvenirs, gasoline, etc. What happens when our fish is completely inedible? What about the fishermen, my son included? What about the boat builders?

Because: Not just Acadia.

The rain in Bridgeton is contaminated with ''more than twice the generic EPA aquatic life and wildlife standard and over 14 times the new more protective human-health standard developed for the Great Lakes,'' according to studies by the Mercury Deposition Network.

The EPA's motto is Protecting ''Human Health, Safeguarding the Natural Environment. Pray tell what do they propose to tell the populace as it slowly dies from mercuy contamination? What does it take to get them to abide by their motto?

Apparently it takes many lawsuits to require the EPA to do it's job.

1. The goal of one case, by Earthjustice is to force the EPA to require Ohio to tighten the controls on some of the worst air pollution in the country. Oct. 02

2. Another case: The court settlement requires EPA to formally determine, by April 2004, which areas have smog that violates the 1997 national air quality standards for ozone. Once EPA makes those determinations, state and local governments will be called on to prepare smog cleanup plans adequate to meet the standards.

3. Another case: Challenged EPA's authorization of the use of vinclozolin; a dangerous fungicide linked with serious birth defects and other health maladies.

Mercury is one of the most toxic substances in the world, more toxic than lead or arsenic.

So how do we get the EPA to do it's job? Another lawsuit? We demand an end to airborne mercury pollution. We demand that the EPA protect over 630,000 infants born every year with levels of mercury in their blood so high that it can cause brain damage.

Good afternoon. My name is Jon Devine, and I am representing the Natural Resources Defense Council. I am an attorney in NRDC's Health and Environment program. Before coming to NRDC, I defended and implemented the Clean Air Act in a number of policy and legal positions for both state and federal agencies. I am also a parent of two young sons. I am troubled that the agency is shirking its public health mission and its duties under the Clean Air Act while consigning states to a future of contaminated waterways and fish. Beyond that, EPA's mercury proposal offends me as a parent, because the agency is telling my kids to wait until adulthood to see fewer mercury reductions than the law requires to be accomplished before my youngest is in grade school.

EPA has proposed a program that demands no mercury reductions in the near term except those that would otherwise occur, asks power plants to make only modest improvements by 2018, and sets up a trading mechanism that will actually delay pollution controls far beyond 2018. The agency's approach stands in stark contrast to what the Clean Air Act requires—reducing mercury pollution by as much as 90 percent within three years. My testimony focuses first on EPA's grotesquely weak section 112 proposal, then its proposal to revise history and undo the agency's determination that regulating power plant mercury is necessary and appropriate, and finally its proposal to find the authority in section 111 of the Act to do exactly what the administration had failed to accomplish with the so-called ''Clear Skies'' Act. That bill would establish a cap-and-trade system for mercury in two phases, with the first phase cap set at the level expected to occur as a ''co-benefit'' of controlling other pollutants, and the second phase cap requiring a reduction of roughly 70 percent in the far distant future.

Starting with section 112, EPA's mercury emission standards violate the Clean Air Act in several ways. First, EPA used stack tests and coal data from the lowest-emitting facilities, and then, in the name of establishing an ''achievable'' standard, subjected these data to a series of statistical manipulations that resulted in an emission standard far higher than what the plants achieved as a regular matter. EPA took several short-term emission observations from each facility, ranked them from best to worst, and picked the emission level that was worse than 97.5 percent of the data set, resulting in a figure that represented virtually the worst performance the plant experienced. The agency then took this figure for each of its top-performing sources and applied a second 97.5 percent adjustment, thus resulting in a number that, as best we can tell, is meant to represent a prediction of the worst performance any similar source might experience under the worst conditions. As a last step (or perhaps I should say straw), EPA then took this calculation of the worst-of-the-worst short-term emissions and used the result as the basis for an annual emission limit. This statistical manipulation is indefensible—it effectively assumes that the worst conditions that the worst facility in the group briefly experienced will exist throughout the year. EPA goes far beyond ensuring that regulated facilities will be able to meet the standard under ''reasonably foreseeable circumstances,'' and instead makes sure that they will meet them under circumstances statistically certain never to occur. Even if one accepts some of EPA's assumptions, the consequences of the agency's most egregious numbers games are extreme; for example, by using the second 97.5 percent adjustment and by making the emission limit annual, EPA weakened the standard for bituminous coal burning units by more than a factor of four. Had EPA not used these two devices, we calculate that the agency would have to reduce emissions from bituminous, subbituminous, and lignite units to approximately 10.5 tons per year. By contrast, EPA uses these gimmicks to justify allowing power plants to emit approximately 34 tons per year, which is precisely the same level of mercury control that EPA predicts will occur as a co-benefit of controlling other pollutants. What a remarkable coincidence that EPA's technical staff performed these calculations and just happened to find that they required the exact same level of reductions EPA had sought to achieve legislatively and that it now proposes to accomplish with its alternative section 111 proposal.

The second major flaw with EPA's section 112 proposal is its failure to examine basic emission reduction techniques as MACT. EPA discards precombustion controls by suggesting that some sources in the industry might find them difficult to implement, but it does not undertake a MACT analysis to evaluate whether the superior performers in the industry engage in pollution prevention activities that minimize mercury emissions. Moreover, when one compares EPA's proposed 29 percent reduction to analyses by State regulators and others, the agency's characterization of its program as MACT appears laughable. For instance, the Northeast States for Coordinated Air Use Management recently concluded that ''existing control devices designed to reduce other pollutants can

deliver substantial mercury reductions,'' with some bituminous-fired units achieving 95 percent reductions and subbituminous units achieving over 70 percent reductions. NESCAUM also noted that mercury-specific controls, such as activated carbon injection, were successfully deployed in U.S. coal-fired plants and achieve over 90 percent control, and Iowa permitting authorities recently required a new subbituminous plant to achieve 83 percent control.

Third, EPA's proposal does not set emission limits for several hazardous air pollutants the agency admits are released from utility units. Doing so simply flies in the face of prior court decisions interpreting the MALT provisions of the Clean Air Act, and nothing in section 112(n)'s ''necessary and appropriate'' language allows the agency to issue rules only for those pollutants the agency feels are of concern.

Fourth, EPA proposes to allow sources to participate in a pollution trading scheme so that plants in the aggregate will emit 34 tons of mercury annually, but no individual plant would need to meet any particular emission limit. The agency suggests that either section 112(n)(1) or 112(d) of the Clean Air Act might provide it authority to create such a system, but neither section authorizes such a radical approach. Section 112(n)(1) does not provide authority to vary the characteristics of a MACT standard, and section 112(d) does not permit EPA to create a cap-and-trade program encompassing multiple sources. The agency itself acknowledged this several years ago, when it concluded that ''no averaging can be permitted between sources that are not part of the same major source.''

Fifth, EPA's proposal arbitrarily defines subcategories based on coal rank. This choice is flawed because EPA admits that nearly a quarter of the coal-fired units in the Nation currently fire different ranks of coal, and because many more may be capable of doing so. This fact suggests that the purported differences between units that burn different ranks of coal are of little real-world consequence.

Perhaps because of these obvious legal problems with the agency's attempt to shoehorn its desired result into section 112 of the Act, EPA has developed an alternative plan to avoid section 112—it proposes to undo the December 2000 regulatory determination that controlling mercury from power plants under section 112 is necessary and appropriate, and proposes to remove utility units from the list of source categories subject to MACT. EPA cannot lawfully rescind its determination because section 112(c)(9)(B) dictates the specific mechanism that EPA must follow in order to avoid setting emission standards for listed source categories. That provision only allows source categories to be removed from the regulatory list if no individual source is a danger to health or the environment, but EPA does not even attempt to make this showing in its proposal.

Finally, I want to turn to EPA's proposed section 111 two-phase, cap-and-trade, mercury program, which is the administrative twin of the Clear Skies proposal. This element of the agency's preferred approach is remarkable because it is simultaneously audacious and feeble. The proposal is audacious because EPA purports to find the authority in section 111 to do virtually anything it pleases in regulating stationary source emissions. The agency interprets the section's use of the terms ''best,'' ''system,'' and ''standard of performance'' to allow EPA to devise, so long as it considers certain factors in doing so, whatever emission control regime it thinks works best, and to permit the industry to comply at individual units, across whole plant sites, or even by averaging throughout whole industries. This strained interpretation fails because it threatens to swallow the rest of the Clean Air Act whole and because other parts of the Act—such as the MACT provisions—use the same or similar terms and would be rendered absurd if they were read the way EPA now reads section 111. The proposal's reach also exceeds its grasp by concluding that the Clean Air Act can be read to allow EPA to regulate HAPs under section 111, when the law was clearly intended to achieve HAP control under section 112.

Most of all, however, the section 111 proposal is feeble. It concludes that a 29 percent mercury cut by 2010 and a 69 percent reduction by 2018 represents what companies can achieve, even though greater reductions are possible much earlier with existing technology. Moreover, EPA intends to implement this reduction program using a cap-and-trade scheme that would allow polluters to bank emission credits and therefore would permit emissions to remain significantly elevated far into the future. Last summer, EPA performed modeling analyses of the Clear Skies Act and predicted that power plant mercury emissions would be cut by only 43 percent, to approximately 27.8 tons, by 2026, despite the law's 15–ton cap established for 2018. The trading scheme also raises the specter of toxic hotspots around companies that buy credits rather than clean up.

This brings me back to where I began. EPA's proposals deny our children's generation what the Clean Air Act promises. Rather than deliver dramatic mercury reductions by the time my sons are 7 and 3 years old, EPA has proposed a program that will allow emissions to remain at excessive levels at least until they are well into their twenties. To do so, EPA will have to violate numerous provisions of the Act, and will likely provoke litigation that causes additional delay. Rather than choose this ill-conceived course, the agency can and must implement the law and require companies to implement demonstrated technology to reduce toxic mercury pollution immediately. Thank you.

To the Environmental Protection Agency from a Maine physician:

The EPA must be true to it's mission and fight to the bitter end against the ''cash and carry'' proposals the Bush administration has adopted from secret industry memos. We in Northern New England have a huge stake in this since much of the toxic mercury that rains down on us originates in Pennsylvania and a few other big coal States upwind. The Bush administration will enshrine ''Clear Skies'' into law unless government agencies sworn to protect public health dig in to protect the people from these assaults as they did against arsenic in our drinking water!

Mercury is a persistent poison which is concentrated many thousand times as it moves up the food chain into the bodies of ''top predators''—loons, eagles, Florida panthers—and mothers and babies. Your new EPA guidelines, based on the latest research, indicate 600,000 babies yearly are at risk of a wide range of developmental and learning disorders from mercury. The risks continue into early childhood.

Mercury poisons our bodies by interfering with proteins, which are the machinery of all cells. They orchestrate every move of the dance of life. Proteins are long strings of smaller molecules known as amino acids that must fold up like origami after creation, then bind to other proteins or chemicals in our cells. They must maintain their shape perfectly to do their jobs. Mercury deforms the shapes of proteins.

Proteins do an amazing number of different jobs. They transport materials into and throughout our bodies, and convert food into energy. They enfold and protect the DNA double spiral staircase. They form the delicate spindles that pull the chromosomes into the two daughter cells after division. On immune system cell surfaces, they recognize and help engulf invading microbes. They help us perceive our environment and survive through our five special senses.

One of the most amazing things proteins do is control brain development. The brain does not just start out as a single cell and grow ever larger. Brain cells actually move around in the embryonic brain. Some cells are killed off by others. Brain cells send out axons and dendrites that hook up with other very specific neurons which are often many inches away. All these actions must happen at very precise times, measured in single days or even hours. At every step proteins on the surface of cells and their outgrowing axons and dendrites must sense their environment. They react to minute traces of messenger chemicals released by other brain cells that tell them where they are and where to go. Thousands of such events happen during thousands of moments that are ''windows of vulnerability'', during which bad things can happen.

Each gene makes a protein that interacts with many other proteins. Fetal brain development is like a symphony with a hundred thousand instruments. Each must come in at the perfect time and the perfect pitch or you get a damaged child. This damage can often be detected by sophisticated psychological tests such as ''The Boston Naming Test''. These children can often look superficially normal but have problems with hearing or motor skills and later problems with language, attention, and memory. They are often marginalized and end up in special ed, in prison, and on the welfare rolls.

Field research summarized in a recent report by the Biodiversity Research Institute shows multiple adverse effects of mercury on various fish-eating birds, such as our beloved Maine loon. Loon fertility in Maine lakes can be 40 percent reduced because of mercury blown in on the prevailing winds from the Midwest. Stress hormone levels have been shown to increase as mercury increases. No reproduction occurs when mercury levels in fish are over a certain threshold. Loon parents with high mercury levels will spend less time sitting on their eggs and chicks warming and protecting them, less time foraging to feed them, and less time in generally high energy activities needed to support the next generation. They rest more or swim aimlessly in front of the nest. Present mercury levels can even cause abnormal loon feathers. Some fishing birds like the Great Egret have been shown to have problems catching fish. This is felt to be due to difficulty seeing. Some fish species with high mercury levels have been shown to have trouble avoiding predators.

The present administration has a long history of ignoring science in favor of short term profits for friends in industry. The EPA must help them accept the truth!

Sincerely,

Paul Averill Liebow MD FACEP, Bucksport, Maine. Maine Physicians for Social Responsibility, Steering Committee; Natural Resources Council of Maine, Board of Directors; National Wildlife Association, Maine Representative to Annual Meeting March 2004.

MARCH 1, 2004.

Re: proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No. OAR–2002–00.56, 69 Fed. Reg. 4652 (January 30, 2004).

Administrator MIKE LEAVITT,

U.S. Environmental Protection Agency, EPA Docket Center (Air Docket), U.S. EPA West (6102T), Washington, DC.

DEAR ADMINISTRATOR LEAVITT: As chefs from Portland, ME, we are deeply invested in the safety of the seafood we prepare and serve to our patrons. Today, we write to respectfully express our concerns over the proposed rule by the U.S. Environmental Protection Agency (EPA) to control mercury emissions from coal-fired power plants.

Every year, people from all over Maine and the country enjoy the fine seafood offerings of Portland; we pride ourselves on the wide selection of fresh seafood dishes that our many visitors enjoy year after year.

Whether preparing a salmon filet or seared tuna, chefs know that fresh seafood is a critical component of our cuisine, which is why keeping it safe is so important. Unfortunately, the levels of mercury in some species of fish such as swordfish, oysters, tuna, halibut, red fish, pike, sea bass and others make them unsafe for young women and children. Mercury pollution poses a real threat to public health.

Right now, power plants across the country are contributing to a looming mercury crisis, contaminating much of the seafood that Portland is so famous for. Electric power plants are responsible for approximately 30 percent of the country's mercury emissions and are the only major mercury polluters that remain uncontrolled. Smokestacks spew mercury pollution into the air, where it rains and snows down into our waterways and accumulates up the food chain.

The principal way that people are exposed to mercury is by eating fish, a staple of our restaurants. Maine and 43 other States, the EPA and the Food and Drug Administration have issued various advisories warning people, especially women and children, to avoid or limit eating some types of fish. Even with such warnings in place, the Centers for Disease Control and Prevention estimate that 1 out of 6 U.S. women of child-bearing age have unsafe levels of mercury in their blood.

In the interest of our customers, our health and our environment, we are joining together to ask for action to keep the mercury levels from increasing. To make sure that mercury contamination does not affect the popularity of the restaurant industry in Portland, we write to request stronger regulations on power plant emissions of mercury.

Officials can, and should, take immediate action to nearly eliminate the mercury pollution that's spewing into our air from power plants. Two years ago, EPA's own scientists said current technologies could achieve a 90 percent reduction from power plants. The Bush administration should remove as much mercury from power plants as is technologically feasible—90 percent.

We respectfully urge the EPA to adopt a rule that maximizes the protection of human health and our fisheries by regulating mercury emissions to the level that we know is technologically feasible and to do so quickly.

Sincerely,

BECKY LEE SIMMONS,
Chef, Owner,
Katahdin Restaurant.

TESTIMONY OF DR. JIM MAINER REGARDING AIRBORNE MERCURY POLLUTION

Thank you Representative Allen and others for this chance for Mainers to speak out on this issue!

I'm Dr. Jim Maier, a child and family psychiatrist with over 25 years experience living and working in Maine. I'm also the father of two daughters of child bearing age. And since I've spent most of my professional career helping to take care of the behavioral and neurological problems of kids who, for whatever combination of reasons including fetal brain damage, have been handicapped in school and in life, this is not just an academic issue for me.

The glaring fact that this is a ''Shadow'' hearing in the absence of EPA speaks volumes about the moral cowardice and irresponsibility of this administration. The Feds know a lot about the toxicity of mercury emissions of coal-fired plants in the Midwest for New Englanders and others ''at the end of the tailpipe,'' but seem not to care what we think. It's a lot like a Bishop who has learned there's a bad priest in his Diocese sending that individual out of State to some other parish, and just not wanting to hear how many more children have been abused and harmed in the new location.

We know mercury is a bad actor. We've taken many measures here in Maine to clean up our own State. Like 45 other States, we're warning people not to eat much fish. (The administration does deserve credit for promoting ''catch and release,'' but only because it's allowing the fish to become progressively more toxic to mothers of child-bearing age!) But to delay implementation of the existing technology to reduce mercury emissions by 90 percent by 2008, and allowing another decade of relaxed standards in return for fat campaign contributions from the polluters, is a devil's bargain Mainers don't accept. This proposed delay, or meaningless shell games allowing some plants to continue to pollute if others clean up, means that perhaps 5 percent or more of women of childbearing age will continue to have unsafe levels of mercury in their bodies, and be putting tens of thousands of their babies at risk of damage to their developing brains or cardiovascular systems. (A long term study sponsored by Dr. Philippe Grandjean of the Harvard School of Public Health in the Faroe Islands has published objective evidence about this in the Journal of Pediatrics.)

Again to use the sex offender analogy, it's as if we are registering all sex offenders and pedophile priests in Maine, notifying neighborhoods and churches about the risks of letting them be in our communities, but then permitting any other States to send convicted child molesters here, and turning a blind eye to what damage and trauma these out-of-state sex criminals may inflict on Maine children.

Like all other medical students, I learned the name Minimata early in my training. Like Chernobyl, Bhopal, and Love Canal—other names that live in environmental infamy—it was the site of an environmental tragedy that taught just how poisonous high dose mercury can be. Death, blindness, cerebral palsy, severe mental retardation, seizures and other severe symptoms occurred in the exposed population around Minimata Bay, Japan where an industrial spill occurred. But we also know that subtle but definite brain and central nervous system effects can happen with exposure to far lower doses that come from eating even moderate amounts of fish contaminated by methyl mercury, an easily absorbed compound that is spread through the body, across the placenta, and is secreted in breast milk. This is insidious, because mothers may not even be symptomatic with levels of mercury that can definitely affect their more vulnerable fetus. Higher mercury exposure on the developing brain has been correlated with decreased attention, fine motor impairment, problems with language and visual-spatial abilities, and memory impairments. It's hard to pin down just what role mercury plays in such impairments because the research is less well developed than with lead, another known bad actor. But as with lead poisoning, as more research is done, we will probably become more concerned, and may be lowering what we think of as ''acceptable'' exposure levels. What's an acceptable level to a loon? The EPA heard testimony from the Natural Resources Council of Maine at a recent hearing in Philadelphia that loons in Maine test 4X higher with respect to mercury levels than loons in Oregon. What levels are o.k. for Bald Eagles, whose reproductive success may be jeopardized by the mercury they concentrate in their bodies. Unfortunately they don't vote, but we'll be voting on their behalf in November!

Perhaps if the Bush administration cared to reduce their blatant hypocrisy about ''No Child left Behind,'' they should just come out and speak plainly about ''No Child Left Unexposed to Toxics.''

Representative Allen, we hope that you will pass on to your colleagues in the Maine Delegation who also care about clean air and water, and to the EPA which apparently doesn't care nearly enough, the angry earful you're hearing today from Maine people!

Respectfully Submitted,

JAMES H. MAIER, M.D.,
A.B.P.N. Certified Child and Adult Psychiatrist.

The rule that I mentioned, the proposed rule that favors polluters, raises serious questions about this administration's commitment to the health of our citizens. Regulating hazardous air pollutants is in fact for many people a life-and-death matter and Congress designed a system under the Clean Air Act to ensure regulations are developed through an objective rulemaking process. Yet the attainment dates and level of reductions exactly match the President's Clear Skies proposal. In other words, the proposal that he and his staff generated for reductions is the proposal that has come out of the EPA. But that is not the way the EPA is supposed to work. The EPA is supposed to do independent, scientific analyses so that its rules are based on sound science, not made up as part of a political document.

The Bush administration allowed industry to write part of the rule. That is profoundly disturbing. The proposal that would allow trading under section 112 appears to have been written word for word by Latham and Watkins, a law firm in Washington representing utilities. EPA's assistant administrator for air and radiation, Mr. Jeffrey Holmstead, used to be a partner at Latham and Watkins. Mr. Holmstead now says, well, the Latham and Watkins contribution to the rule was submitted by the Energy Department. He says it came from the Energy Department. The White House says Jeffrey Holmstead was the brains behind the cap-and-trade proposal. But wherever it came from, the Latham and Watkins language, about three or four paragraphs, submitted to the EPA, is in the finished rule, word for word.

An EPA career professional told the L.A. Times the other day that they, the career professionals, were told not

to undertake the normal scientific and economic studies called for under a standing executive order in preparing the rule. In other words, they take the information straight from the law firms representing the utility industry, they do not do the scientific tests that are required by law, and they come out with a proposed rule and that proposed rule is a bonanza for the coal industry and those utilities that use coal. It is outrageous.

I am very pleased that the gentleman from Washington (Mr. INSLEE), the other end of the continent, his loons do not have as much mercury in their feathers as loons do from Maine but he is here because this is an issue that he cares deeply about. I thank him very much for being here.

I yield to the gentleman from Washington.

Mr. INSLEE. I appreciate the gentleman from Maine bringing this important matter to national attention. I do care about the mercury contamination which this country will be experiencing because of the attempted sellout by this administration to special interests which will result in more mercury in the blood of young children in America. If that sounds like a strong statement it is, and it is true.

But one of my concerns here is this is not just the only instance when this administration has knuckled under to the interests of special interests on K Street rather than the public interest which is supposed to be expressed on Independence Avenue where the U.S. Capitol is located. I just want to say that this is not, unfortunately, an aberration of this administration's sellout to special interests, to ignore science, to ignore clear health implications. It is consistent with their pattern of neglect of science and they are showing great attention to special interests. They need to do it the other way around. We need an administration that will show special sensitivity to health interests and ignore special interests on occasion. They have got it exactly backwards. They show exquisite attention to lobbyists from these industries and ignoring the clear science for health to the American people. I want to list some of the other places where they have done this.

□ 1600

And the oil and gas industry that has attempted to open up these methane drilling wells in a variety of places, the Rocky Mountains, including wilderness areas in Utah and in the Arctic National Wildlife Refuge, they have catered to specialists; and they have ignored the clear import of science.

We are not the only ones who care about this. There have been some investigations in the Department of Interior about a fellow who used to work for the oil and gas industry, then was put as the fox in charge of the hen house, supposedly regulating. What was the first thing he did, like in the first few weeks on the job? And what did the investigators find out? They found out that he hosted a get-together, a little shindig for all the lobbyists to come down and do business with me, boys, I am now in charge of the Department. That is not what we expect from our public officials, and as a result, we have seen some ignoring of good science, which has caused tremendous problems for ranchers in Wyoming of contaminating the water supply because they have shown more interest to K Street than to Main Street.

Second example, we had over a million people testify about whether to preserve old-growth timber in our remaining 10 percent of our national forests that have not been clear-cut, and we went out to ask what the public thought of the President's proposal to open up what we call the roadless areas to clear-cutting, and the public responded. There were over a million people who told the administration to keep their handsaws and their chainsaws from clear-cutting our roadless areas. And they got maybe three letters from the lobbyists on K Street.

So what did this administration do? They are gutting this protection of the most pristine, the most precious crown jewels in our national forest system to allow these 6-foot and 8-foot and 10-foot 600-year-old trees to be cut down in clear-cuts, violating the clear science that that is not what we should be doing with the roadless areas. And why did they do it? They did it because this administration is extremely sensitive to K Street and not sensitive to the health interests and well-being, as they should be, of our constituents.

Let me tell the Members why this is important. A lot of people do not think of forests as a health issue, but we have found out that is where our clean water comes from, from the forests. This is the greatest water purification system the planet has. And this administration ignored 1.2 million people who told this administration to ignore K Street and fall to the wishes of people, which they did not do.

Third issue, and again I think it is important to note, anyone can make a mistake and any administration can make a mistake once in a while, but this is just a long train of abuses, an unbroken chain of following special interests rather than the health of the American people. When we are considering lead poisoning levels in the lead paint industry, which is of some interest to Members of Congress now because we are drinking water with too much lead in it in the Washington, D.C. system, which is an issue we are going to have to address, and maybe that explains some of the bad legislation around here, I am not sure; but in consideration of lead poisoning levels, in 2002, the CDC's Advisory Committee on Childhood Lead Poisoning Prevention was preparing to address the issue, and they had been advising that we need to address this issue. Did the administration address this issue in an aggressive, health-oriented way? No. Did they appoint people to the reflective committees that made their decision? No. They had special interests on their operation, and they failed the health of the American people.

We could go on and on, but we are limited by time. This is a system that has corrupted the democratic process, and some of the best evidence that I know of, and the gentleman may have talked about this already, about a month ago, 20 nonpolitical Nobel laureates, and Nobel laureates usually think about physics and chemistry rather than politics, and they do not pound a lot of yard signs and they are not interested in running for public office, but 20 people who won the Nobel Prize, Americans in various sciences, chemistry, physics, name it, they were so disturbed by what this administration was doing in ignoring science to cater to special interests, they got together and wrote a letter to the President of the United States, and their basic message was start listening to good science rather than bad special interests.

And it is a pretty extraordinary event when scientists will get out of the lab, frankly, where they do tremendous work, and write a letter like that to the President of the United States. These are Democrats and Republicans, probably some Green Party members in there too. So I think it is an indication of how sour and corrupted this system has become. And so we are down here blowing the whistle on it, and I want to thank the gentleman from Maine (Mr. ALLEN) for his efforts.

Mr. ALLEN. Mr. Speaker, I thank the gentleman from Washington (Mr. INSLEE) for his remarks, and I appreciate his leadership on this issue. And he is exactly right. That group of distinguished scientists was saying that this administration over and over again manipulates science to serve the ends of their policy.

I am going to yield to my friend from Maryland in just 1 minute, but just to pursue this question of who is writing the regulations, we have already pointed out that the EP professionals were shut out of the process of doing scientific studies of this proposed mercury rule and that Latham & Watkins, a Washington law firm, wrote part of the rule. There is another group involved. This is West Associates, a research and advocacy group representing 20 power and transmission companies in California and other Western States. The proposed rule contains exact language requested by West Associates, and the West language suggests a standard for determining likely mercury emissions at power plants.

In other words, a provision that was enormously beneficial to the power plants was put in this proposed rule, an EPA rule, word for word. So part of it came from Latham & Watkins here, a law firm here, and part of it came from West Associates in California. How can the public have any faith that their interests, their health interests, are

being protected by an administration which routinely violates the Clean Air Act in developing its regulations, all as a way to try to reduce expenses for the coal industry and the utility industry, both big contributors to Republicans and to the administration?

Mr. INSLEE. Mr. Speaker, just one final note. There is a reason that the Vice President of the United States refuses to let the people who hired him, which is the American people, know what went on in this secret operation that took lobbyist language and put it in our energy bill. There is a reason for that. And that reason is another symptom of the sickness that is on our body politic right now. And I want to thank the gentleman for his efforts

Mr. ALLEN. Mr. Speaker, unfortunately the problem continues. Justice Scalia today issued a statement that he would not recuse himself from a Supreme Court case involving the Cheney documents even though he went on a hunting trip with the Vice President on Air Force 2 to a preserve owned by an oil executive. The beat goes on.

It is my pleasure to yield to the gentleman from Maryland (Mr. VAN HOLLEN), who has taken a real leadership position on these issues. And Maryland is next door, it has got a lot of water, and the last thing they need is contaminated waterways. And I yield to the gentleman.

Mr. VAN HOLLEN. Mr. Speaker, the gentleman is right, and I want to thank the gentleman from Maine (Mr. ALLEN) for his leadership and the gentleman from Washington State (Mr. INSLEE). And I want to tell the gentlemen a little good news/bad news story; and we had some good news this morning, which is that a group of bipartisan Members of Congress from the Chesapeake watershed States got together and established the Chesapeake Bay Watershed Task Force. The Chesapeake Bay is one of the greatest national treasures in the United States, indeed in the world; and so we got together to pledge ourselves to work together to clean up the Chesapeake Bay and take the steps that are necessary. But this Bush administration proposal on mercury that the gentleman has drawn our attention to takes us in exactly the wrong direction. It takes us backwards.

We all know that mercury consumption advisories have been issued throughout the United States; and, in fact, mercury contamination of fish is, of course, is the number one cause for human contamination, human poisoning. In my State of Maryland, we have had statewide advisories. In Pennsylvania and other States in the Chesapeake Bay Watershed, we had a Statewide advisory. And we know that recent studies have shown that Maryland is one of the States with the highest deposition of mercury in the country due to airborne mercury emitted from power plants. And this, as the gentleman has said, is a problem that is not unique to Maryland and to the Chesapeake Bay Watershed. It is a problem up in Maine. It is a problem in Washington State. It is a problem around our country. And currently advisories for mercury are increasing faster than any other pollutant. They now represent 60 percent of all water bodies with fish advisories nationwide. So this is a national problem. It is a problem obviously in the Chesapeake Bay Watershed, which we have a particular interest in locally; but it is a problem throughout the country.

And as my colleague from Maine was pointing out, we have an administration now that when it comes to issues of science, when it comes to issues of the environment, really the White House has become an evidence-free zone. I mean, we can get scientists, we can get Nobel laureates, we can get a consensus of opinion throughout the scientific community coming down on one side of an issue; and yet time after time the administration throws out the facts, buries its head in the sand, and decides to go the other way.

We understand that mercury poisoning is something that affects people throughout this country. Of course, pregnant women and children are particularly vulnerable to mercury poisoning. And so this idea that the EPA now has, the Bush administration EPA, of establishing a cap-in-trade program for mercury, which may be a very acceptable proposal for less poisonous contaminants, but when they have a cap-in-trade program for something as poisonous as mercury, what they are saying to those people who happen to live right next door to the power plant that is emitting mercury is it is okay if they get poison; as long as their power plant buys credits from somewhere else, buys the right to pollute, they can put as much mercury into the air around their plant as they want. That is a health disaster for people in the area. Again, it is one thing to treat less poisonous pollutants that way; but to take a hazardous pollutant like mercury and say go ahead and pollute, go ahead and contaminate the water in a particular area, it is going to mean serious health problems for women and children in that area and throughout the country.

Mr. ALLEN. Mr. Speaker, I thank the gentleman for those comments, and they are worth elaborating on because in the past sometimes people who have lived around large power plants, particularly coal-fired power plants, they may have known that pollution problems were created in those plants in States far away, but they enjoyed the benefit of lower rates.

The difficulty with mercury is just what the gentleman said. Mercury is a substance that does travel some distance, but lots of it comes down in the vicinity of the power plant itself. So along the Ohio River Valley in east Texas, in other parts of the country where we have coal-fired power plants, what the administration's proposal is basically saying is we do not care if the dirtiest plant in the country stays just as it is. We are going to develop a system that was developed for sulfur dioxide that will allow that dirty plant to buy credits from clean plants, and so the dirty plant can simply continue spewing out the mercury and poisoning people in the surrounding area. It is the height of irresponsibility.

That is why I come back to what I said earlier. There is no question that under the Clean Air Act mercury, which has been found to be a hazardous air pollutant, was meant to be regulated under section 112 of the act, entitled ''Hazardous Air Pollutants,'' and all of the work being done by the administration to date with this proposed rule is a way to let coal producers and utility companies off the hook so they will not have to spend the additional money they need to spend to clean up their act. And in doing that, the administration is simply putting the health of the American people at risk.

It is absolutely mind boggling. Unless one is down in the middle of this and seeing this going on over and over again, with this administration, when the choice is between public health or the interests of polluters, polluters win.

I yield back to the gentleman.

Mr. VAN HOLLEN. Mr. Speaker, I thank my colleague for yielding to me, and he is exactly right. The problem with this is we need to make sure that the American people understand what is happening. That is why I am glad that he is doing this. Because we have an administration that goes out and does a lot of photo ops with beautiful landscapes in the background. There is a lot of rhetoric about the importance of preserving our environment, protecting areas like the Chesapeake Bay; but while we have this great public face of environmental protection on the one hand, on the other hand, when it comes to the regulatory process, people are very busy unraveling protections that have existed for years and years and years, and that is what this regulatory assault is about.

□ 1615

It is one of many that has taken place in recent years, and it is very important that we put a stop to it.

Mr. ALLEN. Mr. Speaker, those are excellent points.

I wanted to mention another point here that has just come up. The administration is starting to feel the heat. The new administrator of the EPA, the Environmental Protection Agency, Mr. Leavitt, has now said that he is going to reexamine this proposed rule. In other words, they did not do the studies; they issued the proposed rule. Now he is saying we need to go back and do the studies. This is the exact opposite of what normally happens.

The gentleman said the administration was an evident-free zone. That seems to be the case. In past administrations, you do the scientific analysis first and then come up with a rule. You would not come up with a rule written

by industry and then, when the heat got too much, say, well, we have to go back and do some studies now. But that is exactly what has happened. I think we need to say to the administration, well, it is about time, thank you for going back and doing the studies. But they have also made it clear that they do not really have much of an intention, as far as I can tell, of producing any results until December, conveniently, after the election.

I wanted to make a couple of points. Over the past year, I guess I would say, I have written on numerous occasions, on February 12 of this year, last October 14, and May 21, 2003, I have written letters to the EPA about this exact problem, about the importance of doing the analysis and coming up with a Mercury MACT standard, as it is called, by the deadline. I never dreamed that they would come up with a proposal but never bother to do the science.

Mr. Speaker, I would like to submit for the RECORD at this time the three letters I sent to the EPA.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 12, 2004.

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

DEAR GOVERNOR LEAVITT: We are writing regarding reports that portions of EPA's proposal to address mercury air pollution have been copied word-for-word from industry lobbying materials.

Specifically, it appears that EPA has proposed a regulatory approach to mercury air pollution that in part is copied word-for-word from memos prepared by the law firm Latham & Watkins, which represent some of the largest polluters in the country. This is particularly troubling because two key EPA officials who worked on the proposal were previously employed by Latham & Watkins.

On January 31, 2004, the Washington Post reported that an EPA proposal published on January 30, 2004, ''is similar to recommendations from two memos sent to federal officials by'' Latham & Watkins. The article explains the remarkable connections between EPA's proposal and the Latham & Watkins' memos: ''A side-by-side comparison of one of the three proposed rules and the memorandums prepared by Latham & Watkins—one of Washington's premier corporate environmental law firms—shows that at least a dozen paragraphs were lifted, sometimes verbatim, from the industry suggestions.''

It does not appear to be in dispute that EPA used the Latham & Watkins language to make the substantive proposals that Latham & Watkins advocated. The Washington Post quotes one Latham & Watkins representative who states that it is ''gratifying'' that the law firm's work had been ''cut and paste[d]'' into EPA's rulemaking. Additionally, Jeffrey Holmstead, EPA's Assistant Administrator for Air and Radiation, confirmed that the language had originated from outside of the agency. He stated, ''That's not typically the way we do things, borrowing language from other people.''

However, it is unclear how the Latham & Watkins language entered EPA's rulemaking process. As you know, Mr. Holmstead and his chief counsel, Bill Wehrum, worked for Latham & Watkins before joining the EPA. Both Mr. Holmstead and Mr. Wehrum have had high profile roles in this rulemaking.

The Administration's public statements on this matter appear to be less than completely transparent. In the January 31, 2004, Washington Post article, Mr. Holmstead stated ''it came to us through the interagency process.'' He also stated, ''Neither Bill [Wehrum] nor I had any idea this language came from Latham & Watkins. . . . Our technical folks . . . used it.'' The Post reports: ''According to Holmstead, the law firm's language was part of the public record and was passed along to the EPA by the White House budget office and the Energy Department.''

This appears to be at odds with press accounts of this rulemaking from just over a month ago. On December 30, 2003, the Washington Post reported that a senior White House adviser said: ''If you had to pick one person, it was Jeff Holmstead in EPA's air office who played the key role in development of the cap-and-trade approach to regulation of mercury emissions.''

We are deeply concerned that EPA's rulemaking process has been improperly influenced by industry at the potential cost of the health of future generations of children. Congress and the American people need to know how industry lobbyists came to write a significant portion of an EPA formal rulemaking proposal.

Therefore we request that you provide us with all communications (whether written, electronic, or oral) relating to mercury air pollution between EPA officials and the law firm Latham & Watkins, other industry law firms, electric utilities, and other outside parties since January 1, 2003. Additionally, please provide us with information on any meetings that took place since January 1, 2003, between EPA officials and representatives or employees of Latham & Watkins, including a list of the participants and the nature and purpose of the meeting.

Additionally, please explain if Latham & Watkins memos were docketed in the rulemaking process. If not, please explain why such influential documents that formed the basis for EPA's proposal were not docketed.

Please provide answers to each question and responsive documents no later than February 18, 2003. Thank you for your immediate attention to this issue.

Sincerely,

HENRY A. WAXMAN,
Member of Congress.
TOM ALLEN,
Member of Congress.

CONGRESS OF THE UNITED STATES,
Washington, DC, October 14, 2003.

Hon. MICHAEL O. LEAVITT,
Governor of Utah, Office of the Governor, State Capitol, Salt Lake City, UT.

DEAR GOVERNOR LEAVITT: We are writing regarding our concern that EPA is at risk of violating its legal and public commitment to control emissions of mercury and other hazardous air pollutants from power plants by the end of next year. Given the serious public health and environmental harms from this pollution, any further delay in regulation would be unacceptable.

Under a court-approved settlement agreement, EPA is required to propose a regulation establishing emission standards for hazardous air pollutants from electric generating units (electric utility MACT rule) by December 15, 2003. For a ''significant'' rulemaking, such as this one, EPA must submit a draft of the proposed rule to the Office of Management and Budget (OMB) for interagency review. OMB may, and frequently does, take up to 90 days to complete this review. In numerous public pronouncements, Governor Whitman and other EPA officials have repeatedly promised that EPA will issue the MACT rule proposal by the December 15, 2003, deadline. Yet to our knowledge, EPA has not yet transmitted a draft utility MACT rule proposal to OMB.

We seek your assurance that, if confirmed, you will act to ensure that the drafting and review of the proposed rule are completed on a schedule that will honor the commitments the government has made to propose a rule by December 15, 2003.

We make this request because of the seriousness of this issue. Two major Environmental Protection Agency reports to Congress document how hazardous air pollution from power plants, most notably mercury pollution, contaminates our lakes, streams, and other water bodies, concentrates in fish, and causes serious health risks for pregnant women and children who eat those fish. A Centers for Disease Control and Prevention report in January 2003 found that one in twelve women of childbearing age have mercury levels above EPA's safe health threshold. In adults, exposure to unsafe levels of mercury can adversely affect fertility and blood pressure regulation and can contribute to heart-rate variability and heart disease. The problem is nationwide: across the U.S., mercury pollution alone has contaminated 12 million acres of lakes, estuaries and wetlands (30% of the national total) and 473,000 miles of streams, rivers, and coasts (13% of the national total). As a result, forty-five states and territories have issued fish consumption advisories warning citizens to limit how often they eat certain types of fish, because the fish are contaminated with mercury.

We would appreciate receiving a written response to this letter as soon as possible, given that this is a time-sensitive matter and that the Senate may be considering your nomination in the very near future. Thank you for your attention to this matter.

Sincerely,

HENRY A. WAXMAN,
Member, U.S. House of Representatives.
PATRICK J. LEAHY,
Senator, U.S. Senate.
THOMAS H. ALLEN,
Member, U.S. House of Representatives.
JANICE D. SCHAKOWSKY,
Member, U.S. House of Representatives.

CONGRESS OF THE UNITED STATES,
Washington, DC, May 21, 2003.

Hon. CHRISTINE TODD WHITMAN,
Administrator, Environmental Protection Agency, Washington, DC.

DEAR MS. WHITMAN: We are concerned by recent reports that EPA has cancelled key analytical work intended to support the ongoing rulemaking on mercury and other hazardous air pollutants emitted by the utility sector (''utility MACT rule''). The failure to conduct this analysis threatens to derail this important rulemaking to reduce highly toxic mercury emissions from power plants, as well as impair congressional consideration of pending legislation to reduce air pollution from power plants.

It is particularly disturbing that the Bush Administration may be seeking to delay the release of this information for political reasons. Reports indicate that the analysis may have been cancelled because it could undercut the Administration's Clear Skies Initiative (CSI) by demonstrating that implementation of the existing Clean Air Act toxic air pollution requirements would produce greater reductions in mercury emissions than CSI, sooner, and at an acceptable cost. In the absence of EPA analysis, the Northeast States for Coordinated Air Use Management (NESCAUM) conducted an analysis, which indicates that recommendations from all but one of the stakeholder groups would produce greater reductions of mercury emissions and produce them significantly earlier than would CSI.

EPA should conduct timely analysis of mercury control options identified by the utility MACT rule stakeholder working group established by EPA. Absent such analysis, neither the public, EPA, nor Congress will fully understand the expected environmental benefits from reduced emissions and deposition of mercury, nor the expected costs to install and operate control technologies for the various options under consideration.

I. BACKGROUND

A. Mercury

Mercury is a highly toxic substance. It is a potential neurotoxin, and it is particularly damaging to the development of the fetus. Effects from prenatal exposure can include mental retardation, cerebral palsy, deafness, and blindness. Even low-dose prenatal exposure can cause persistent adverse effects on children's development, such as delayed walking and talking and impaired learning abilities. Adult exposure can produce sensory and motor impairment, such as slurred speech, blurred vision, tremors, and memory loss. In addition, several studies suggest that even small mercury exposures may cause adverse cardiovascular effects. The adverse effects of mercury exposure on birds and mammals include impaired growth and development, behavioral abnormalities, liver damage, kidney damage, and neurobehavioral effects.

Mercury exposure is a serious public health concern in the United States. Forty-two states have issued fish advisories warning against consumption of fish caught from various water-bodies based in whole or in part on mercury contamination. EPA has found that 8 percent of women of child-bearing age in the United States—about 5 million women—have blood mercury levels that would put children born to them at increased risk of adverse health effects.

B. Clean Air Act requirements

Under section 112 of the Clean Air Act, EPA must require sources of hazardous air pollutants to reduce emissions to the maximum degree achievable through application of control technology. These requirements are commonly referred to as ''maximum achievable control technology'' or MACT standards. For coal-fired power plants, the most significant hazardous air pollutant is mercury. Pursuant to a court-approved settlement agreement, EPA must issue a proposed MACT rule for hazardous air pollutants from utilities by December 15, 2003. Furthermore, EPA must finalize the rule by December 15, 2004, and utilities must comply with the rule by December 15, 2007.

This rule will for the first time require controls of mercury emissions from coal-fired power plants, which are the largest source of anthropogenic mercury emissions in the United States and contribute approximately one-third of annual mercury emissions.

C. Stakeholder process

Before beginning the rulemaking process, EPA recognized that promulgating a utility MACT standard would be a significant and potentially controversial rulemaking that would attract substantial public interest. In June 2000, EPA committed to solicit and consider the ideas and comments of the groups affected by this regulatory process. Subsequently, EPA has engaged in an extensive process to develop and use input from states, tribes, local governments, industry representatives, and environmental representatives throughout the development of the rule. This process has been carried out under the auspices of the Working Group on the Utility MACT, formed under the Clean Air Act Advisory Committee Subcommittee for Permits/New Source Reviews/Toxics.

As stated in the charge to the Working Group, the overall goal of the Working Group is to provide input to EPA regarding federal air emissions regulations for coal- and oil-fired electric utility steam-generating units that will maximize environmental and public health benefits in a flexible framework at a reasonable cost of compliance, within the constraints of the Clean Air Act. The Working Group is to ''conduct analyses of the information, identify regulatory alternatives, assess the impacts of the regulatory alternatives, and make preliminary regulatory recommendations for the source category.''

The Working Group has met 14 times to date. While the initial intent was for the Working Group to develop consensus recommendations, that did not prove possible. However, the Working Group has done extensive work identifying technical and policy issues, thoroughly discussing these issues, and clearly identifying the various stakeholder positions on each issue. In October 2002, the Working Group presented a report to EPA laying out eight key issues for the rulemaking and the stakeholder positions on each of these issues, including recommended approaches for settling the MACT standard. Since October, the Working Group has continued to build upon this work, last meeting on March 4, 2003. Although EPA has promised at least one if not more further meetings, none have been scheduled to date.

II. MERCURY CONTROL OPTION ANALYSIS

A. Purpose of IPM analysis of mercury control options

Conducting an Integrated Planning Model (IPM) analysis of the control options identified by the stakeholders is an important step in the rulemaking process for the utility MACT rule. IPM is an electric utility planning model that EPA uses to estimate air emission changes, emission control technology choices, incremental electric power system costs, changes in fuel use and prices, and other impacts of various approaches to air pollution control. IPM simulates how the utility industry would respond to an air pollution control requirement by selecting the least-cost compliance options for a set of model plants representing all of the power plants in the United States. IPM indicates where in the country control technology would be applied, the resulting emissions reductions, the costs of the technology, changes in fuel use, any resulting shifts in generation costs, and other effects.

The results of an IPM run are then fed into EPA's air quality models to project what a specified emissions control requirement will produce in terms of air quality effects and, in this case, the quantities and location of mercury deposition.

Every major EPA analysis of a rule or legislation related to the power sector over the past eight years has relied upon IPM analysis. These include the Ozone Transport Assessment Group, process, the NO_X SIP call, and most recently CSI.

B. Issues regarding IPM model's simulation of mercury controls

The Working Group process has addressed the need for technical adjustments to the IPM model. In May 2002, EPA heard recommendations from various members of the Working Group regarding adjustments to the IPM model. In June 2002, EPA issued a memo indicating how it planned to address such recommendations and the timeframe for such actions. In July 2002, EPA received further feedback from Working Group members on the proposal for addressing the recommendations. For example, the environmental representatives made recommendations for input assumptions on the effectiveness of certain mercury control technologies, particularly when applied to facilities combusting subbituminous and lignite coals. They also urged EPA to update the model to incorporate the latest findings on control technology demonstrations, particularly with respect to activated carbon injection.

C. Cancellation of planned IPM analysis

EPA has indicated that the next step in EPA's intended rulemaking development process is to analyze regulatory alternative control options. The members of the Working Group have expended substantial effort in developing their recommendations for these options.

Initially, EPA planned to conduct this analysis far earlier in the utility MACT rulemaking process. The proposed regulatory development schedule included in the charge to the Working Group stated that EPA would conduct overall economic impacts and benefits analyses of regulatory alternatives from June through August 2002. After a period for the Clean Air Act Advisory Committee to consider the alternatives and provide recommendations to EPA by February 2003, the schedule provided that EPA would select the proposed regulatory alternative or alternatives in March 2003, and EPA would draft and review the proposed rule from April through August 2003. OMB would review the draft proposal through November 2003, allowing the Administrator to sign the proposal by December 15, 2003.

While the initial target date for conducting this analysis slipped substantially, as of earlier this year EPA planned to conduct the analysis in time for the Working Group meeting on March 4, 2003. When EPA failed to complete the analysis by that date, EPA informed the stakeholders that EPA would conduct the analysis prior to a scheduled April 15 meeting of the Working Group. EPA said it would present the results of this analysis at that meeting. EPA also stated that at that meeting it would present to the Working Group the changes EPA had made to the IMP model.

Instead, EPA did not conduct the analysis and cancelled the April 15 meeting. EPA still has not informed the Working Group of how the agency has responded to the recommendations for modifications to the IPM model that stakeholders made during the summer of 2002, or of any other changes that EPA has made to the model. EPA also has not scheduled another meeting of the Working Group.

In addition, there does not appear to be any internal agency deadline for conducting the IPM analysis of utility MACT options. Assistant Administrator Holmstead has reportedly stated that conducting modeling for the CSI is ''higher priority'' than modeling for the utility MACT rule.

EPA's deviation from its announced plan to conduct this important analysis is sudden and inexplicable. It is simply not credible for EPA to point to resource constraints in this instance, as Assistant Administrator Holmstead is reportedly doing. While agency resources are undoubtedly constrained due to the Bush administration's budget cuts, EPA is apparently running the IPM model for CSI. There is no reason why further analysis of CSI should take precedence over the utility MACT rule. EPA has been conducting analyses of the CSI for over two years, and the agency has completed dozens of runs analyzing variations on CSI options. Yet to date, EPA has released no analysis of the identified utility MACT regulatory options, and it is unclear whether EPA has conducted any analysis of these options. Moreover, there is no legal deadline for additional CSI work, in contrast to the utility MACT rules.

Viewed in the larger political context, it appears that the Bush Administration has a

strong incentive to delay release of information on the utility MACT regulatory options. The Administration has been engaged in a public relations battle to publicize and support its assertion that the CSI represents an environmental improvement over, and not a rollback of, the existing Clean Air Act. Most of the utility MACT regulatory options identified by the stakeholders would result in a greater quantity of emissions reductions and all of them would produce these emissions sooner than CSI would, if it is enacted. Information on the costs and benefits of most of the utility MACT options seems unlikely to help the Administration make its case for CSI.

CSI is the Administration's own initiative, with no deadline, while the utility MACT rule was required by Congress under existing law, is already past the statutory deadline, and is now required under a court-sponsored deadline. There is no legal or policy-related justification for deferring the utility MACT modeling in favor of CSI modeling. To the extent that the modeling delay may be in furtherance of the White House's political agenda, the delay is even more troubling.

D. Effect of continued failure to perform analysis

At the point, EPA's continued failure to reconvene the Working Group and to conduct the IPM analysis threatens the timing and substance of the utility MACT rule, as well as the achievement of significant reductions of mercury emissions from power plants. This analysis is not a legal prerequisite to EPA's identification of the minimum level at which it may set the MACT standard (known as the ''MACT floor'') under section 112 of the Clean Air Act, as the MACT floor is a technology-based standard. EPA's failure to perform such analysis would in no way justify delaying issuance of the utility MACT rule proposal beyond the court-enforceable deadline. Nonetheless, if EPA fails to complete this analysis soon and falls further behind schedule in drafting the proposal, EPA may well try to make the bootstrap argument that the analysis is necessary and therefore the agency needs more time for the rulemaking. Moreover, the IPM analysis will provide critical information, both for understanding the effects of the options recommended by the stakeholders and for informing Congress regarding the level of mercury reductions and environmental effects that may be achieved under the utility MACT rule. In addition, EPA likely must complete this or comparable analysis to comply with Executive Order 12866 prior to issuance of the proposal.

Considering practical constraints, it is clear that EPA is already in danger of missing a court-approved deadline. Working backward from the December 15 deadline, EPA must provide the draft rule to OMB by the end of August 2003 to allow OMB its mandated 90 days to review the draft prior to issuance. As you know well, staff drafting and management review commonly take many months, particularly for a technically complex rule such as this one. Assuming a minimum timeframe of several months to draft and review the rule internally, it appears that EPA should begin this process immediately, and certainly no later than June. Before the bulk of the drafting begins. EPA management must select the regulatory alternative to propose. To the extent that EPA believes it would be helpful to have information on technology options, costs, air quality and environmental effects, and other factors, EPA must conduct the analysis now.

III. QUESTIONS

We would appreciate your response to the following questions regarding EPA's planned activities on the utility MACT rule:

1. Is EPA committed to continuing the stakeholder process for the utility MACT rule? If so, when will EPA reconvene the Working Group and present to the Working Group a description and explanation of any changes EPA has made to the IPM model? If not, why is EPA abandoning this process for maximizing public involvement in this controversial and important rulemaking?

2. Will EPA model mercury control levels identified by the environmental and state stakeholders (as specifically recommended in the Working Group report or as subsequently updated by the stakeholders)?

3. If EPA commits to complete this modeling, by what date will EPA complete it and present the results to the stakeholders?

4. Is EPA committed to meeting the court-approved deadline of December 15, 2003, for issuing the proposal regardless of the status of EPA's modeling efforts? Please provide EPA's current schedule (with dates) for completing: all analyses EPA is planning to conduct; management decision on regulatory options; a staff draft of the proposal; intra-agency review of the proposal; and submission to OMB.

5. In making the decision to postpone this analysis, did EPA officials consult with Administration officials outside of EPA, such as officials from the White House (including the Council on Environmental Quality and the Office of Management and Budget), DOJ, and DOE? If so, which entities were consulted and what did they recommend? Did EPA officials consult with any of the stakeholders represented on the utility MACT Working Group? If so, which entities were consulted and what did they recommend?

We would appreciate receiving a response to this letter by June 2, 2003, as this is a time-sensitive and urgent matter.

Sincerely,

HENRY A. WAXMAN,
Member, U.S. House of Representatives.
THOMAS H. ALLEN,
Member, U.S. House of Representatives.
PATRICK J. LEAHY,
Senator, U.S. Senate.
JANICE D. SCHAKOWSKY,
Member, U.S. House of Representatives.

Mr. ALLEN. Mr. Speaker, one of the times that I raised this, the gentleman may be interested to know, was at a hearing before the House Subcommittee on Energy and Air Quality, and Jeffrey Holmstead, the Assistant Administrator For Air, came before the committee. I asked him this question. I said, have you done the modeling to do the MACT standard? In other words, have you done the scientific and technical analysis to come up with a mercury standard that is based on Maximum Achievable Control Technology, not on some idea that is dreamed up by the political people? And here is what he said, and I quote: ''We are doing all the analysis that we need to do to propose a MACT standard, to do a proposal on time by December 15, so we are on track to do everything we need to do, including the evaluation of options, to get the MACT standard out.

Well, guess what? They did not. They did not have a MACT standard by December 15; they just had that old Clear Skies proposal which is, in my opinion, illegal under the Clean Air Act. And on Tuesday, Mr. Leavitt, the new EPA administrator, told the L.A. Times the process is not complete, nor is the analysis. Well, as my kids might say, duh, if you waste the year not doing the analysis, you will not have the analysis when it comes time to do the rule.

Mr. Speaker, I yield to the gentleman from Maryland.

Mr. VAN HOLLEN. Mr. Speaker, the gentleman is exactly right. I mean, the way most people go about planning when they are making major decisions is to take a look at the facts and then figure out what the policy is based on the facts, not to come down with a politically motivated policy and then try and make up the facts to fit that policy, and this administration has gotten in trouble in many ways with respect to that approach.

You really do not want to make a mistake when it comes to something like mercury, because if you make a mistake now, it is something that is going to live with us for many, many years to come.

Let us just take the Chesapeake Bay for an example. When it comes to nitrogen, when you are cleaning up nitrogen in the bay, if more nitrogen is going in today, and we take strong efforts, for example, in the bay watershed to get rid of that nitrogen, we can do it. We have to work hard to do it. Mercury, on the other hand, is something that stays in the ecosystem for a very long time. We cannot get rid of it overnight. And it stays in the ecosystem, it gets into organisms, it gets into fish and then, of course, it gets into the human food chain and gets into the food we eat, and then eventually can get into the brains of developing fetuses and of children.

This is a very, very serious issue, obviously; and it is one where we want to make sure we get the science right, we do our homework before we leap off the cliff. I appreciate again my colleague, the gentleman from Maine (Mr. ALLEN), drawing the attention of this body to this issue. Hopefully, we will pull the administration back from the precipice on this and, more important than saving the administration from a bad decision is saving the American people from what could be a very, very serious health problem in years to come.

Mr. ALLEN. Mr. Speaker, I thank the gentleman. I see we have been joined by my friend and colleague from Maine (Mr. MICHAUD). It is good to have the gentleman here, and I yield to him.

Mr. MICHAUD. Mr. Speaker, I thank the gentleman for yielding, and I too want to thank the gentleman from Maine (Mr. ALLEN) for bringing this to the attention of Congress. He definitely has been a leader in environmental issues and prescription drug issues. I appreciate the gentleman's leadership.

Mr. Speaker, today is March 18; and in my district in Maine, people who enjoy fishing are counting down on the days until they begin the fishing season. Again this year, as in the past,

recreational anglers who fish in Maine's lakes will be unable to feed their catch to their children.

Mercury has made fish unsafe for children and pregnant women. We have known for years that many fish caught in fresh water posed a risk to our health. Now, just recently, we have confirmed that the canned tuna fish that we buy in grocery stores should not be eaten in large amounts either. Due to their position downwind of many of the most offensive mercury polluters, the people in Maine by themselves cannot control the amount of mercury in their communities.

As someone who enjoys fishing, I can say that the fishing in Maine remains some of the best in the country, but there was a time when it was not only about recreation; fresh water fishing also helped feed families.

In my district, the Maine Environmental Health Unit has a responsibility to inform the public of this mercury problem. For children and pregnant women, they have set a consumption advisory of zero for nearly every species of fresh water fish in Maine. They have also issued the following warning to the public: ''It is hard to believe that a fish that looks, smells, and tastes fine may not be safe to eat, but the truth is that fish in Maine's lakes, ponds, and rivers have mercury in them. Mercury in the air settles into the waters. It then builds up in fish. Small amounts of mercury can harm a brain starting to form or grow. That is why unborn and nursing babies and young children are most at risk. Too much mercury can affect behavior and learning. It may cause numbness in hands and feet or change in vision.''

Mr. Speaker, these words are not mine. These words are not political. These words are statements of scientific fact from an agency tasked with protecting our health. Mercury in our environment is dangerous to our health, and it is particularly dangerous to the health of our children. It is the responsibility of EPA and this administration to protect the public from mercury pollution.

Why does the administration not propose real mercury regulations? Contrary to some claims, it is not because of fear of losing jobs. Enforcing the Clean Air Act and limiting mercury pollution will not end the business of generating power in the Midwest. In fact, when the administration eliminated air pollution controls in August, people with high-paying jobs, with good benefits were actually laid off because of pollution control equipment that they installed was no longer needed.

The administration cannot outsource this problem. The responsibility to control mercury pollution is a challenge our country must face together. Recently we have heard reports from the Environmental Protection Agency that in creating its mercury proposal, usual EPA methods were not used. Sound science was not adhered to. Politics became more important than defending our health and our environment.

When EPA policy is taken word for word from the industry letters, there is a credibility problem there. The result of this mismanagement of mercury by the administration is a mercury plan that may violate the Clean Air Act and does little to make real, swift reduction in mercury released in the environment.

Because we have not stopped mercury pollution, the people of Maine continue to see their lakes and rivers polluted by a poison that cannot be controlled. The administration must understand that the American people expect the EPA to introduce a mercury rule that complies with the Clean Air Act and protects the health of our families. The administration must work with Congress to create an environment in which people can have good jobs, a clean environment, and a country where they can feed the fish that they catch to their children.

Mr. ALLEN. Mr. Speaker, I thank the gentleman for his leadership on this particular issue.

Before we close here, it is worth going back to that study I mentioned at the beginning. In February of this year, just last month, a new study came out which showed that of the 4 million babies born in this country every year, some 630,000 have been exposed while they were fetuses to levels of mercury in their mothers' body that are considered unsafe. Instead of dealing with that threat, this administration has written a proposed rule limiting mercury written by the industry lobbyists.

What is happening is, now the EPA is going to go back and say try to do it over again, try to fix it up, but we do not know when they will do it or what they will do. This problem is growing. It is manageable.

I said earlier that the technology is available today so that we could establish a rule to phase in mercury pollution control equipment; we could have that rule take effect in 2007. The industry would have time to make the changes. Ninety percent reductions in mercury emissions today are feasible, they are possible, they can be done. The only resistance is coal-fired power plants do not want to spend the money. So on the one hand, we have the interest of an industry that have been major, major contributors to the majority party here and, on the other hand, the health of our children. It is, or ought to be, a simple choice. And we are here tonight to make sure that people understand that choice and encourage policymakers here to make the right one.

PARENTAL CHOICE IN EDUCATION

The SPEAKER pro tempore (Mr. PORTER). Under the Speaker's announced policy of January 7, 2003, the gentleman from Arizona (Mr. FRANKS) is recognized for 60 minutes as the designee of the majority leader.

Mr. FRANKS of Arizona. Mr. Speaker, today we would like to address the House related to education. I think as all people have contemplated history and the betterment of human kind, most of the greatest leaders have recognized that some of the core hope of humanity lies in the education of its children. That is reflected by some of the words of great leaders of the past. Aristotle said, the longer I study the art of governing mankind, the more I realize that the fate of empires depends upon the education of youth. Teddy Roosevelt said, to educate a child not in line with moral capacity is to educate a menace to society. Thomas Jefferson said, the purpose of education is to create young citizens with knowing heads and loving hearts. And sometimes, Mr. Speaker, that loving hearts part complicates all of our lives, because it seems today in education we focus strictly on the academics of education. We forget that the real heart of education is indeed the education of the heart.

□ 1630

And I have to think sometimes, Mr. Speaker, that as we look across the spectrums of society and we recognize that some of the great tragedies in this world are not so much that our academics are out of kilter, but that sometimes our hearts simply have not been taught to truly respect and care about one another.

And I have had the beautiful privilege of teaching a group of 1 year olds in Sunday school for the past almost 21 years. And I have seen coming generations rise up around our knees. And as I look at how they grow up in the different areas they go into in life, it becomes very obvious to me that in nearly every case if a child is given the proper opportunity, they can grasp a lot of the academics of this world; but what they need to understand is that they are indeed a miracle, that they are part of a miracle of life, and that somehow that they were put here on this earth for a purpose. And I truly believe that that is where the education of the heart comes in.

But unfortunately, oftentimes in the public square in our country today, we run from the idea that parents or guardians should have any input in the foundational moral training of their children. It is left to the schools, and the schools make the decision and that is the way it is.

Mr. Speaker, I believe that we make a great error in doing that. Because if a child understands that they are indeed a miracle, that they are put here on this earth for a purpose, then somehow they are part of a significant enterprise that really begs human description. Once they understand that they have that purpose, then they begin to grasp the academics. They have the motivation to learn science and math and history. They have the