Over the course of the summer, the Tatanka crew earned its reputation as a team that could be depended upon to get its job done quickly and effectively. Based upon its outstanding performance ratings and the respect it earned from other highly regarded Hotshot crews, Forest Service officials expect the team to attain National Type 1 status—the highest rating a firefighting team can receive—before the 2000 fire season, a full year ahead of schedule.

Mr. President, I am very proud of the accomplishments of this crew. Forest fires are dangerous and unpredictable, and fighting them is one of the most difficult, physically-exhausting jobs of which I know. Firefighters spend days deep in forests and far from possible help, digging fire lines and cutting trees to keep fires from spreading. In just one year, the Tatanka team has met these challenges head-on, and shown that it is equal to the toughest challenges our nation has to offer. I want to offer my congratulations to all of those who served on the team. I am sure that they will have an outstanding future.

OPPOSITION OF EFFORTS TO BLOCK THE DEPARTMENT OF JUSTICE'S RECENT ENFORCEMENT ACTION

Mr. LIEBERMAN. Mr. President, I rise today to speak briefly about an issue which has surfaced recently in the national press, and now arises with regard to the remaining appropriations bills before us. On November 3rd, the Justice Department filed seven lawsuits on behalf of EPA against electric utility companies in the Midwest and South. The lawsuit charged that 17 power plants illegally polluted the air by failing to install pollution control equipment when they were making major modifications to their plants. This action is one of the largest enforcement investigations in EPA's history, and seeks to control pollution which contributes to degraded air quality throughout the Northeast. I have recently learned that some of the defendants may be seeking relief from this enforcement action by adding a rider to one of the remaining appropriations bills. I am speaking with my colleagues here today in strong opposition to this effort. To seek relief for pending violations of federal law through a rider without any congressional hearing, debate, or voting record, is utterly inappropriate. It undermines the democratic process which is constitutionally guaranteed to American citizens, and to the states which have similar cases pending.

The alleged violations are extremely serious. Congress has long recognized the need to control transported air pollution. Provisions to study and address the issue have been included by major amendments to the Clean Air Act. Yet the problem still remains and the statistics are staggering. They demonstrate just how much older, Midwestern powerplants contribute to air pollution in the Northeast. For example, one utility in Michigan emits almost 6 times more nitrogen oxides than all the utilities in the entire state of Connecticut. Ohio power plants produce nearly 9,000 tons a day of sulfur dioxide, which directly contributes to acid rain. One single plant in Ohio produces as much nitrogen oxide as all of the plants in the state of New York. Approximately 67 million people east of the Mississippi River live in area with unhealthy levels of smog. EPA estimates that every year that implementation of regional pollution controls are delayed, there are between 200–800 premature deaths, thousands of additional incidences of moderate to severe respiratory symptoms in children, and hundreds of thousands of children suffering from breathing difficulties. Now these polluting power plants want special relief during the court's review.

The alleged violations result from a portion of the Clean Air Act that many refer to as the ''grandfathering'' provisions. When the Clean Air Act was amended in 1970 and 1977, there were two categories of requirements: those for existing power plants, and those for new sources. At the time, most people envisioned that the older coal burning plants would soon be retired, making the additional controls for old plants unnecessary. Instead, the life span of older coal fired plants has been extended by modifications to their facilities. Many of the older coal fired plants have stayed around for three decades; and coal power plants are now the largest industrial source of smog pollution. Of the approximately 1,000 power plants operating today, 500 were built before modern pollution control requirements went into effect.

Although the Clean Air Act did exempt older plants from the new standards, it required that the plants meet a test of ''prevention of significant deterioration'' to protect the public when a plant undertook a major modification. Although the definition of ''major modification'' has been debated, Section 111 of the Clean Air Act clearly states that a modification means ''any physical change . . . which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' What is at stake in the recent enforcement action is the question of whether the power plants undertook major modifications without installing state of the art pollution controls, in violation of this Clean Air Act requirement.

Mr. KERRY. Will the Senator yield for a question?

Mr. LIEBERMAN. Certainly.

Mr. KERRY. I understand from some of the publicity around a similar suit filed by the New York Attorney General that some of the modifications being made to power plants were significant. For example, one company allegedly replaced a reheater header and outlet, a pulverized coal conduit system, the economizer, and casing insulation. While it is impossible to judge any of these types of modifications without additional information, it certainly seems like utilities created a loophole in the law to essentially rebuild the system without considering it as a major modification. Would a legislative rider on this issue essentially pre-judge the court's findings as to whether the modifications undertaken at the plant are indeed ''major''?

Mr. LIEBERMAN. Yes. With this rider, Congress would be substituting its opinion for the factual and legal analysis by the court. There will be no opportunity for expert opinions to be heard. In fact, I understand there may even be discussions about trying to add rider language which would allow modifications which would result in significant increases in emissions, by basing them on a unit's potential to emit pollution. This change is a significant departure from the current law, which requires that pollution controls be included when plants are making modifications that cause emissions to increase. For example, a plant's potential to emit pollution may be at 10 tons, while it actually emits 7. The test has been that if modifications are made that raise emissions above the 7 tons, pollution controls are required to be instituted. Since the potential emissions are often much greater than actual emissions, actual emissions have been the threshold to trigger public health protections. A rider that would seek to allow modifications to go forward would give utilities a license to continue to pollute our air while the enforcement action is pending. In its worst form, it would also ''pre-judge'' the court's determination on these matters. These are major reasons why I oppose using a rider to address this issue. It makes no sense for Congress to make a statement on this complex issue with no opportunity for public deliberation. I yield back to my colleague from Massachusetts.

Mr. KERRY. I understand that some suggest that it would be impossible to achieve new pollution standards because of technological limitations. I would like to address that point. States in Northeast have already taken steps to reduce pollution to comply with Clean Air Act requirements, including instituting major controls on these older power plants ed plants. Northeast Utilities has spent $40 million in the last 8 years to reduce fossil plant emissions. In a July 31, 1998 letter to Administrator Browner, Northeast Utilities wrote that ''in our experience the Merrimack Station selective catalytic reduction technology is effective in removing NOX, can be installed fairly quickly, and the installation has minimal impact on the availability of the generating unit.'' Other companies, including Pacific Gas & Electric and Southern Company have made similar

investments at plants in Massachusetts. While these are only a few examples, the experience of these companies is echoed by others. Real world experience bears out the fact that solutions are available and are cost effective. It is also interesting to note that the Tennessee Valley Authority, which is the subject of the enforcement action, recently announced plans to implement state of the art ozone controls. The solutions are out there, and as utilities in New England have demonstrated, when there is a will there is a way.

I would like to address what is, in my opinion, the fundamental problem with this rider. These power companies and our Department of Justice have a legal dispute, and that dispute should be settled through the legal process. I understand that some of the defendant companies, and some in the Senate, may feel that the Environmental Protection Agency and the Department of Justice are being overzealous in pursuing this enforcement action or that there are politics at play here. I respectfully and strongly disagree, and I urge my colleagues to disregard such rhetoric. It has been estimated that as many as 1,000 people each year die in Massachusetts from air pollution from power plants, automobiles and other sources. And, in particular, emissions from coal-fired plants, the dirtiest of which are outside my state, cause high levels of ozone, which increases the incidence of respiratory disease and premature aging of the lungs. Acid deposition from sulfur can severely degrade lakes and forests. Mercury, which is highly poisonous, accumulates in fish locally. In other words, there is a very real cost to this pollution. Indeed, for some, the price they pay is their very health and well being. I can accept that some of my colleagues may feel that the Department of Justice or the Environmental Protection Agency is pursuing a flawed legal argument, but I cannot accept that the people who are alleging harm, who are paying the price for this pollution, should be denied their day in court. The Department of Justice should not serve at the pleasure of Congress and defendants with the power influence Congress, it should serve the law and the people. I yield to my colleague Senator LIEBERMAN.

Mr. LIEBERMAN. Thank you. Certainly, many of our constituents have concerns about how cost and service delivery would be implicated under any enforcement action. If the court were to impose fines and injunctive requirements which would force power companies to go out of business, I think we would all join in opposing that outcome. Yet time and again, we hear claims that such dire outcomes will occur when we ask companies to comply with the law. But the evidence shows that environmental goals are being met without sacrificing economic growth. In this circumstance, I believe the Department of Justice and EPA have been clear that their objective, if the violations are found to have occurred, is to require that the utilities make appropriate investments in pollution control. In fact, EPA has a demonstrated record on the kind of remedy it has sought in a similar case that involved another segment of industry.

EPA recently undertook a similar enforcement action against the paper and pulp industry for similar major New Source Review violations. After looking into the paper and pulp sector as part of its Wood Products Initiative, the EPA found New Source Review violations at roughly 70–80 percent of the facilities it investigated. Through its enforcement action, EPA was able to work with industry to generate emission reductions as high as 500 tons of volatile organic compounds. However, these enforcement actions did not require that controls be put in all at once. Rather, a schedule was created to phase in controls so that the pollution controls were instituted in a way that protected the public without crippling the industry. It is disingenuous to argue that we need a preemptive rider to protect against what the outcome of the pending enforcement action might be. There is a history of enforcement decisions which demonstrate that the courts secure remedies that protect the public's interest, and that EPA has had a willingness to work with industry to that end.

Fundamentally what we are addressing here is a matter of fairness. Right now utilities in Southern and Midwestern states emit over 4.5 times more nitrogen oxides than utilities in the Northeast. A study by the Northeast States for Coordinated Air Use Management found that northeastern states will have to pay between $1.4 and $3.9 billion for additional local controls to reduce ozone pollution if six upwind states fail to implement needed controls. I notice that my colleague from Vermont is here. I yield the floor for him to offer some remarks about how the equity issue is particularly important within a deregulated marketplace.

Mr. JEFFORDS. I thank my distinguished colleague from Connecticut for his acute remarks. He is quite right: at root, this is a question of equity, and it is a question of fundamental importance in a deregulated power market.

The Nation's dirtiest power plants have abused loopholes in federal law to dirty our air, pollute our lungs, and kill our most vulnerable citizens. With one set of loopholes about to close, these power plants now seek to create new ones.

These power plants have exploited the law for nearly 30 years. Now, EPA is exposing their effort for what it is: a blatant violation of the public trust. In response, these dirty polluters are pushing appropriations riders that would justify and permanently extend their unlimited ability to pollute.

Haven't these power plants done enough damage already? Isn't it enough that they have been allowed to pollute 10 times more than our plants in the Northeast for years and years? Couldn't they now apply the same pollution control equipment that our plants in the Northeast employ?

The problem is growing even worse with the deregulation of electricity markets. In the five years since deregulation of the wholesale electricity market, increased generation at coal fired power plants has added the equivalent of 37 million cars worth of smog to our air. These power plants are now seeking to permanently extend their unfair advantage.

We need a level playing field. The nation's dirtiest power plants should not be able to exploit loopholes in federal law at the expense of the rest of the nation. We need to pass laws to clean up our air, not make it dirtier. I strongly oppose any attempt to make it easier for the nation's dirtiest power plants to continue their excessive pollution.

Mr. MOYNIHAN. Mr. President, I want to thank my colleagues for voicing their justified concerns on this important issue. I understand that there is the potential for language to be added to one of the remaining appropriations bills that would interfere with the efforts of a number of states to seek relief from dangerous air pollution they receive from a number of large coal-burning facilities which may have violated the Clean Air Act.

As Senator LIEBERMAN has explained, a number of coal-burning facilities were ''grandfathered,'' exempting them from pollution control requirements. Congress believed that utilities would soon retire these older plants. The grandfathered facilities were given permission to proceed with routine maintenance, but any major modifications would be subject to review. It now appears that a number of these facilities did circumvent the law by increasing generating capacity without installing the appropriate pollution control technologies.

Now, it appears these same facilities—after receiving notification that New York and potentially other states intend to sue for these violations of the Clean Air Act—may, once again, circumvent the law by encouraging the adoption of a rider which would interfere with these lawsuits. Any effort by implicated utilities to thwart efforts of States to obtain injunctive relief, which States could use to mitigate damage which has already occurred, is inappropriate.

Throughout my career, I have been a strong proponent of allowing the Courts to do their work without interference of politics—indeed, that was the intent of the Framers of the Constitution. Madison and Hamilton eloquently explained the importance of a balance of powers in The Federalist Papers. The Framers of the Constitution presumed conflict. The Constitution assumes self-interest. It carefully balances the power by which one interest will offset another interest, and the

outcome will be, in that wonderful phrase of Madison, 'the defect of better motives.'

The States must be allowed to protect their rights. I should think that any Member of this body ought to defer to the courts before which this issue is now being placed.

Mr. LEAHY. Mr. President, I want to join my colleagues in voicing my strong objection to a rider that I understand may be attached to one of the remaining appropriations bills. The rider would block all or part of an ongoing federal environmental enforcement action. If what I hear is true, I am troubled on several levels. First, I think that it would set a very dangerous precedent for Congress to attempt to squash Federal enforcement actions of any kind. The procedures for testing and appealing the appropriateness and reach of enforcement actions through the court system and under the Administrative Procedures Act are well established. These procedures do not include a back door, last minute ''Hail Mary pass'' by Congress using a rider to an appropriations bill as the vehicle. In this instance, someone does not like an environmental enforcement action. If we do it here, will we attach something to appropriations bill to stop antitrust enforcement actions? How about price fixing cases? Where would this type of meddling cease?

What we may be seeing with the filing by EPA and DOJ is an enforcement action that has hit the bull's eye dead-on. And now utilities who may have crossed the line are pulling out all the stops to thwart the action.

Let's not kid ourselves about what is at stake. Many of us have drafted and introduced legislative proposals to address power plant pollution. We have turned up the heat, and the industry has taken notice. Further, the debate over electric utility restructuring is starting up again in the House of Representatives and the Senate. While there are substantial economic benefits possible under restructuring, Congress should also address environmental consequences of deregulation. In order to alert the Senate leadership of this important issue that has so far been ignored in the restructuring debate, I have asked my colleagues to join me in sending a letter to the Senate leadership requesting that the Senate include a provision to eliminate the grandfather loophole for older power plants. My colleagues from Connecticut and New York certainly knows the history of the Clean Air Act more than any of us. Senator LIEBERMAN, how do you see this enforcement action affecting the Clean Air Act loophole?

Mr. LIEBERMAN. I thank my colleague from Vermont. As you have argued in the past, the 1970 Clean Air Act Amendments assumed that one of the major sources of these pollutants—older power plants—would be retired and replaced with cleaner burning plants. Unfortunately, this has not happened. The average power plant in the United States uses technology devised in the 1950's or before. The EPA–DOJ enforcement action is now alleging that many of these generating units have been modified and are no longer entitled to their grandfathered status.

Mr. LEAHY. And, I think we are making a fair statement in saying that these grandfathered power plants will enjoy an important competitive advantage under restructuring because they do not have to meet the same air quality standards as newer plants. Many of these grandfathered plants are currently not running at a high capacity because demand for their power production is limited to the size of their local distribution area. Under restructuring, the entire nation becomes the market for power and production at these grandfathered plants and their emissions will increase. Deregulation of all utilities will drive a national race to capture market share and profit through producing the cheapest power.

Some or all of the rider may apply to plants operated by the Tennessee Valley Authority (TVA). What do we know about TVA's fossil fired power plants in Tennessee, Kentucky, and Alabama? Fifty-eight of 59 units are grandfathered, with the average startup year being 1957, 13 years before the Clean Air Act was passed. The average electricity prices for the TVA states are 6.03 cents in Tennessee, 5.58 cents in Kentucky, and 6.74 cents in Alabama. The average price nationally in 1997 was 8.43 cents. TVA sells some of the cheapest electricity, in part, because it is operating these old, subsidized grandfathered plants. In a deregulated national market, will TVA be competitive? The answer is yes.

TVA-wide in 1997 the 59 units emitted 98.5 million tons of CO2, nearly 5% of the U.S. total for power plants. If the TVA plants were all in one state that state would rank sixth in CO2 emissions. In 1997, the TVA plants emitted 808,500 tons of acid rain producing SO2. If the TVA plants were all in one state that state would rank fifth in SO2 emissions. Unfortunately we do not have comparable data for ozone producing nitrogen oxide emissions or for emissions of toxic mercury, but I think my point on emissions is made. We should not be looking for a way to unfairly exempt TVA or other grandfathered plants from environmental regulations, rather we need to be looking for the best ways to bring these old plants up to date with current technology.

Again, I want to thank my colleagues for their conviction on objecting to this rider. Congress needs to close the grandfather loophole, not attempt backdoor ways to thwart the will of the prior Congresses that enacted the Clean Air Act of 1970, and the amendments to it in 1977 and 1990.

Mr. LAUTENBERG. Mr. President, I would like to join my colleagues in expressing concern about the language that would interfere with enforcement actions against several power companies. Here we have an excellent example of why we should not be addressing complex, controversial matters in last-minute amendments to spending bills. The proponents of the language assert that they have no interest in interfering with the EPA–DOJ enforcement actions. In fact, the language they have been circulating would wreak havoc on the enforcement actions. The proponents assert that they are interested merely in allowing routine maintenance to occur, but in fact their language makes no mention of routine maintenance. The proponents assert that their language would have no impact on the environment, but in fact their language would allow increases in actual emissions. They also raise the specter of drastic effects to the power industry, which we have not seen in other industries that faced similar enforcement actions.

At the very least, we should all agree that this issue is sufficiently complicated and controversial, and its impacts on public health profound enough, that it deserves to be worked out in the authorizing process. It is for problems like this that we have authorizing committees, such as the Environment and Public Works Committee on which I sit, and before which I am sure the proponents would find a sympathetic audience. It is in the daylight of the authorizing process, where we can hear from expert witnesses, where we can have public markups, and where we take the time to untangle and properly resolve these types of issues, that we should address this issue.

TEN-YEAR ANNIVERSARY OF THE FALL OF THE BERLIN WALL

Mr. KYL. Mr. President, as we work through the final days of the legislation session, we are apt to become mired in the details of our work. We can lose sight of the special opportunity we have, as legislators, to represent our fellow citizens and to conduct the business of a democratic society in the Nation's Capital.

In this spirit, I wish to draw the Senate's attention to a very special anniversary one that I hope can inspire us to bring our efforts renewed appreciation for our blessings—and our duties—as legislators in the greatest democracy in human history.

Ten years ago yesterday, the starkest symbol of human bondage in this century—the Berlin Wall—shook, cracked, and then collapsed. To be sure, it took time for all of it to by physically dismantled. Sections of it still stand, left as symbols all at once of man's capacity for evil and his insatiable drive to be free. But in one magnificent moment 10 years ago, without a shot being fired, people who had only known cold war captivity crossed the line and became free.

They were helped across by many hands: by the American people who