

February 22, 2005

Senator Lincoln Chafee

RE: Statement in opposition to Senate bill 131, "Clear Skies Act of 2005"

Dear Senator Chafee:

On behalf of the Adirondack Mountain Club (ADK) and New York-New Jersey Trail Conference (Trail Conference), I would like to take this opportunity to urge you to oppose Senate bill 131, known as the "Clear Skies Act of 2005." Passage of this legislation would set the nation back decades by weakening rather than strengthening the Clean Air Act and will interfere with successful state efforts to reduce air pollution.

United in partnership, ADK and the Trail Conference represent over 100,000 hikers in New York State. New York's wild lands have been particularly impacted by the harmful effects of acid rain and acid deposition. New York is located downwind of approximately sixty coal-fired power plants. Acid rain and acid deposition has and continues to harm human communities, aquatic life and forest ecosystems in the Adirondacks, Catskills and Hudson Highlands.

Since President Richard Nixon signed the original Clean Air Act in 1970, every major amendment to the law has tightened air pollution requirements, resulting in cleaner air. The 1990 amendments signed by President George H.W. Bush reduced air pollution by over ten million tons each year. If enacted, S.131 would mark the first time in the history of the Clean Air Act that Congress weakened the statute, thereby consigning the country to dirtier air and increased levels of acid rain and disease. We urge you to reject this unprecedented assault on a time-honored statute of such paramount importance.

The major deficiencies of S.131 may be summarized as follows:

1. Pollution Cuts Are Not Deep Enough

Current law and Environmental Protection Agency (EPA) regulations achieve the goal of reducing sulfur dioxide and nitrogen oxide emissions more effectively than would Senate bill 131. For example, even EPA's proposed Clean Air Interstate Rule (CAIR) uses EPA's existing authority to achieve faster and deeper emissions cuts, resulting in over ten million tons in additional sulfur dioxide reductions by 2020. S.131 would prevent EPA from obtaining those greater emissions reductions needed to help achieve clean air. Indeed, many of us believe CAIR itself to be inadequate when compared to proper and full enforcement of the current Clean Air Act.

2. Pollution Cuts are Not Quick Enough

The pollution reductions under this bill are inadequate to enable the states like Rhode Island and New York to comply with health-based national air quality standards for ozone and fine particulate matter by 2010, as required by current law. Thus, the bill extends those deadlines until 2015, with the likelihood of further extensions. Our members, particularly those who suffer from asthma and other respiratory diseases, should not be subjected to yet another 5-10 years of unhealthy air.

3. Clear Skies Repeals the States' Most Effective Enforcement Tool – New Source Review

New power plants are required to install modern pollution controls when they are built. New Source Review requires older operating power plants and refineries to install modern pollution control devices when they are modified.

The Department of Justice, along with various state Attorneys General, have achieved significant emission reductions through a number of New Source Review lawsuits. New York and New Jersey have recently obtained sulfur dioxide reductions of 80-90 percent at multiple plants in settling New Source Review cases. Working with the states, the Department of Justice won a pivotal trial decision against Ohio Edison that likewise will lead to steep emission cuts.

S.131 would effectively exempt plants from New Source Review requirements for the next 20 years and thus would deprive the American public of a proven enforcement mechanism.

4. Other Essential Enforcement Tools Also Repealed

In addition to effectively eliminating the regional haze requirements that are so essential in protecting national parks and other sensitive receptor areas, the bill would weaken the New Source Performance Standards program. Perhaps, most importantly, S.131 would severely undermine the interstate transport provisions of existing law that allow downwind states, like New York and Rhode Island, to require emissions reductions from upwind power plants as needed to achieve cleaner air that complies with the health-based air quality standards. If enacted, the legislation would make it more difficult for many states to achieve clean air.

5. Mercury Pollution

At a time when our states have published fish advisories warning residents to limit or even eliminate consumption of certain fish species because of mercury contamination, this bill would allow for mercury emissions substantially in excess of those allowed by current law. Even the weak and delayed mercury emissions cap would never be achieved because of numerous loopholes, including the exemption awarded over half the nation's coal-fired power plants.

6. Emitters of Cancer-Causing Air Pollutants Exempted from Emission Standards

In a little known provision of the S.131, plants in certain industrial sectors – encompassing thousands of pollution sources – that opt into the trading program for sulfur dioxide and nitrogen oxides will be exempt from the Clean Air Act’s requirements for control of hazardous pollutants. Among the hazardous pollutants emitted by these plants are suspected human carcinogens (formaldehyde and acetaldehyde) and other pollutants such as arsenic and benzene. At a time when one-in-two men and one-in-three women will be diagnosed with cancer in their lifetime, Congress should not be allowing greater exposure to carcinogens.

7. Global Warming is Ignored

While we believe that the Clean Air Act already provides the EPA with the authority to regulate carbon dioxide, federal regulatory agencies are not currently regulating carbon emissions. The Senate should act now to address the devastating effects of global warming. The need to cut carbon dioxide emissions is one of the factors that owners of power plants need to address in making future investment decisions. The bill’s failure to impose any limitation on carbon dioxide emissions constitutes a glaring failure to confront an enormous problem.

8. States Rights Are Undermined

This legislation’s “savings” clauses could be read erroneously to prevent states from adopting by regulation more stringent in-state emission caps or from requiring more stringent pollution reductions on individual sources. If enacted, the bill will spawn protracted litigation on this issue.

For the above-mentioned reasons, ADK and the Trail Conference strongly urge you to oppose S.131 “The Clear Skies Act of 2005.”

Thank you for the opportunity to express our views on this very important matter.

Sincerely,

Neil F. Woodworth
Executive Director – Adirondack Mountain Club
Counsel to New York-New Jersey Trail Conference