

109TH CONGRESS
2^D SESSION

H. R. 5235

To direct the President to enter into an arrangement with the National Academy of Sciences to evaluate certain Federal rules and regulations for potentially harmful impacts on public health, air quality, water quality, plant and animal wildlife, global climate, or the environment; and to direct Federal departments and agencies to create plans to reverse those impacts that are determined to be harmful by the National Academy of Sciences.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Ms. LEE introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, Resources, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the President to enter into an arrangement with the National Academy of Sciences to evaluate certain Federal rules and regulations for potentially harmful impacts on public health, air quality, water quality, plant and animal wildlife, global climate, or the environment; and to direct Federal departments and agencies to create plans to reverse those impacts that are determined to be harmful by the National Academy of Sciences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Environment and Pub-
5 lie Health Restoration Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 (a) GENERAL FINDINGS.—The Congress finds as fol-
8 lows:

9 (1) Our natural environment encompasses a
10 wide variety of habitats and ecosystems that nurture
11 and sustain a diversity of species, including the
12 human race.

13 (2) The abundance of natural resources in our
14 environment forms the basis for our economy and
15 has greatly contributed to human development
16 throughout history.

17 (3) The accelerated pace of human development
18 over the last several hundred years has significantly
19 impacted our natural environment and its resources,
20 the health and diversity of plant and animal wildlife,
21 the availability of critical habitats, the quality of our
22 air and our water, and our global climate.

23 (4) The intervention of the Federal Government
24 is necessary to minimize and mitigate human impact
25 on the environment for the benefit of public health,

1 maintain air quality and water quality, sustain the
2 diversity of plants and animals, combat global cli-
3 mate change, and protect the environment.

4 (5) Laws and regulations in the United States
5 have been created and promulgated to minimize and
6 mitigate human impact on the environment for the
7 benefit of public health, maintain air quality and
8 water quality, sustain wildlife, and protect the envi-
9 ronment.

10 (6) Such laws include the Antiquities Act of
11 1906 (16 U.S.C. 431 et seq.) initiated by President
12 Theodore Roosevelt to create the national park sys-
13 tem, the National Environmental Policy Act of 1969
14 (42 U.S.C. 4321 et seq.), the Clean Air Act (42
15 U.S.C. 7401 et seq.), the Federal Water Pollution
16 Control Act Amendments of 1972 (Public Law 92–
17 500), the Clean Water Act of 1977 (Public Law 95–
18 217), the Comprehensive Environmental Response,
19 Compensation, and Liability Act of 1980 (Public
20 Law 96–510), the Endangered Species Act of 1973
21 (Public Law 93–205), and the National Forest Man-
22 agement Act of 1976 (Public Law 94–588).

23 (7) Attempts to repeal or weaken key environ-
24 mental safeguards pose dangers to the public health,

1 air quality, water quality, wildlife, and the environ-
2 ment.

3 (b) FINDINGS ON CHANGES AND PROPOSED CHANGE
4 IN LAW.—The Congress finds that, since 2001, the fol-
5 lowing changes and proposed changes to existing law or
6 regulations have or will negatively impact the environment
7 and public health:

8 (1) CLEAN WATER.—

9 (A) On May 9, 2002, the Environmental
10 Protection Agency and the United States Army
11 Corps of Engineers put forth a final rule that
12 reconciled section 404 regulations of the Clean
13 Water Act by redefining the term “fill mate-
14 rial” and amending the definition of the term
15 “discharge of fill material”, reversing a 25-
16 year-old Clean Water Act regulation. The new
17 rule fails to restrict the dumping of hardrock
18 mining waste, construction debris, and other in-
19 dustrial wastes into rivers, streams, lakes, and
20 wetlands. The rule further allows destructive
21 mountaintop removal coal mining companies to
22 dump waste into streams and lakes, polluting
23 the surrounding natural habitat and poisoning
24 plants and animals that depend on those water
25 sources.

1 (B) On February 12, 2003, the Environ-
2 mental Protection Agency published the rule
3 “National Pollutant Discharge Elimination Sys-
4 tem Permit Regulation and Effluent Limitation
5 Guidelines and Standards for Concentrated
6 Animal Feeding Operations”—new livestock
7 waste regulations that aimed to control factory
8 farm pollution but which would severely under-
9 mine existing Clean Water Act protections. This
10 regulation allows large-scale animal factories to
11 foul the Nation’s waters with animal waste, al-
12 lows livestock owners to draft their own pollu-
13 tion-management plans and avoid groundwater
14 monitoring, legalizes the discharge of contami-
15 nated runoff water rich in nitrogen, phos-
16 phorus, bacteria, and metals, and ensures that
17 large factory farms are not held liable for the
18 environmental damage they cause.

19 (C) On March 19, 2003, the Environ-
20 mental Protection Agency published a new rule
21 regarding the Total Maximum Daily Load pro-
22 gram of the Clean Water Act, which regulates
23 the maximum amount of a particular pollutant
24 that can be present in a body of water and still
25 meet water quality standards. The new rule

1 withdrew the existing regulation put forth on
2 July 13, 2000, and halted momentum in clean-
3 ing up polluted waterways throughout the coun-
4 try. By abandoning the existing rule, the Envi-
5 ronmental Protection Agency is undermining
6 the effectiveness of clean-up plans and is allow-
7 ing States to avoid cleaning polluted waters en-
8 tirely by dropping them from their clean-up
9 lists. Waterways play a crucial role in the lives
10 of Americans and are critical to the livelihood
11 of fish and wildlife. By dropping the July 2000
12 rule, cleanup of existing polluted rivers, shore-
13 lines, and lakes will be delayed, harming more
14 fish and wildlife and worsening the quality of
15 drinking water.

16 (2) FORESTS AND LAND MANAGEMENT.—

17 (A) On December 3, 2003, the President
18 signed the Healthy Forests Restoration Act of
19 2003 (Public law 108–148). Although the law
20 attempts to reduce the risk of catastrophic for-
21 est fires, it provides a boon to timber companies
22 by accelerating the aggressive thinning of
23 backcountry forests that are far from at-risk
24 communities. The law allows for increased log-
25 ging of large, fire-resistant trees that are not in

1 close proximity of homes and communities; it
2 undermines critical protections for endangered
3 species by exempting Federal land management
4 agencies from consulting with the United States
5 Fish and Wildlife Service before approving any
6 action that could harm endangered plants or
7 wildlife; and it limits public participation by re-
8 ducing the number of environmental project re-
9 views and exempting projects designed to re-
10 duce hazardous fuels from analysis.

11 (B) On January 5, 2005, the Department
12 of Agriculture published a new national forest
13 system land and resource management planning
14 rule in the Federal Register that replaced the
15 existing rule published on November 9, 2000.
16 The revised rule opens 155 national forests and
17 20 grasslands (over 192 million acres of public
18 lands) to logging, grazing, drilling, and other
19 commercial activities. The new rule reverses
20 more than 20 years of protection for wildlife
21 and national forests by removing the overall
22 goal of ensuring ecological sustainability in
23 managing the national forest system, weakening
24 the National Forest Management Act of 1976,
25 and effectively ending the review of forest man-

1 agement plans under the National Environ-
2 mental Policy Act of 1969.

3 (C) On May 13, 2005, the Department of
4 Agriculture published the Protection of Inven-
5 toried Roadless Areas rule, replacing the origi-
6 nal Roadless Area Conservation Rule issued in
7 January 2001. The new rule gives State Gov-
8 ernors 18 months to petition the Federal Gov-
9 ernment to either restore the previous rule for
10 their States, or submit a new management and
11 development plan for national forest areas
12 inventoried under the rule. As a result of the
13 new rule, 58.5 million acres of wild national
14 forests are now vulnerable to logging, road
15 building, and other development that may frag-
16 ment natural habitats and negatively impact
17 fish and wildlife.

18 (3) CLEAN AIR.—

19 (A) On February 14, 2002, the President
20 announced the Clear Skies Initiative, a limited
21 market based cap and trade system designed to
22 cut down on harmful air pollutants. The legisla-
23 tive proposal was later submitted to the Con-
24 gress on July 29, 2002, and has since been in-
25 troduced in various forms through the last

1 three Congresses. The Clear Skies Initiative
2 would weaken existing emission reduction tar-
3 gets for sulfur dioxide, mercury, and nitrogen
4 oxides under the Clean Air Act by allowing
5 three times more toxic mercury emissions, 50
6 percent more sulfur emissions, and hundreds of
7 thousands more tons of nitrogen oxides.

8 (B) On October 27, 2003, the Environ-
9 mental Protection Agency published the rule
10 “Prevention of Significant Deterioration (PSD)
11 and Non-Attainment New Source Review
12 (NSR): Equipment Replacement Provision of
13 the Routine Maintenance, Repair and Replace-
14 ment Exclusion”, which was slightly clarified on
15 June 6, 2005. The new rule significantly under-
16 mines the New Source Review Permitting Pro-
17 gram, a key tool of the Clean Air Act which re-
18 quires owners of industrial facilities to install
19 modern pollution control mechanisms whenever
20 existing equipment is expanded, improved, re-
21 placed, or significantly repaired. In clarifying
22 the definition of “routine maintenance,” the
23 new rule exempts more than 17,000 older power
24 plants, oil refineries, and factories across the
25 country from having to install pollution controls

1 when replacing equipment or carrying out up-
2 grades, even if such activities increase air pollu-
3 tion. Ultimately the new rule undermines the
4 effectiveness of the Clean Air Act and fails to
5 hold the oldest and dirtiest industrial facilities
6 accountable for reducing the amount of pollu-
7 tion they produce, allowing them to continue to
8 emit harmful toxic pollutants that will have a
9 detrimental impact on public health and the en-
10 vironment.

11 (C) On March 29, 2005, the Environ-
12 mental Protection Agency formally revised and
13 reversed the regulatory finding that it issued in
14 December 2000 pursuant to section
15 112(n)(1)(A) of the Clean Air Act, removing
16 coal- and oil-fired electric utility steam gener-
17 ating units from the Clean Air Act section
18 112(c) source category list. The new rule re-
19 vokes a decision in 2000 which determined that
20 as the largest domestic source of mercury emis-
21 sions it is “necessary and appropriate” to re-
22 quire power plants which use coal- and oil-fired
23 utility units to apply technology that would re-
24 duce their mercury emissions as those emissions
25 pose a significant public health and environ-

1 mental hazard. By reversing its previous intent
2 to regulate these power plants and reduce the
3 emissions of a serious hazardous air pollutant,
4 the Environmental Protection Agency is poten-
5 tially exposing millions of people to continued
6 mercury pollution.

7 (D) On May 18, 2005, the Environmental
8 Protection Agency issued a new rule entitled
9 “Standards of Performance for New and Exist-
10 ing Stationary Sources: Electric Utility Steam
11 Generating Units”, also known as the Clean Air
12 Mercury Rule, which implements a cap-and-
13 trade approach that is intended to reduce mer-
14 cury emissions from coal-fired power plants.
15 The new rule subverts a previous Environ-
16 mental Protection Agency finding that required
17 power plants to implement maximum achievable
18 controls on mercury emissions by 2008, a deci-
19 sion that would have resulted in a 90 percent
20 cut within 3 years, and further replaces an ex-
21 isting target of achieving an overall 70 percent
22 reduction in emissions by 2018 in favor of a 50
23 percent reduction by 2020. By delaying the reg-
24 ulation of mercury emissions and reducing the
25 overall targets for reduction the Environmental

1 Protection Agency further exposes millions of
2 people to continued mercury pollution.

3 **SEC. 3. STATEMENT OF POLICY.**

4 It is the policy of the United States Government to
5 work in conjunction with States, territories, tribal govern-
6 ments, international organizations, and foreign govern-
7 ments in order to act as a steward of the environment
8 for the benefit of public health, maintain air quality and
9 water quality, sustain the diversity of plant and animal
10 species, combat global climate change, and protect the en-
11 vironment for future generations to enjoy.

12 **SEC. 4. STUDY AND REPORT ON PUBLIC HEALTH OR ENVI-
13 RONMENTAL IMPACT OF REVISED RULES,
14 REGULATIONS, LAWS, OR PROPOSED LAWS.**

15 (a) STUDY.—Not later than 30 days after the date
16 of enactment of this Act, the President shall enter into
17 an arrangement under which the National Academy of
18 Sciences will conduct a study to determine the impact on
19 public health, air quality, water quality, wildlife, and the
20 environment of the following regulations, laws, and pro-
21 posed laws:

22 (1) CLEAN WATER.—

23 (A) Final Revisions to the Clean Water
24 Act Regulatory Definitions of “Fill Material”
25 and “Discharge of Fill Material”, finalized and

1 published in the Federal Register on May 9,
2 2002 (67 FR 31129), amending title 40, Code
3 of Federal Regulations, part 232.

4 (B) National Pollutant Discharge Elimination System Permit Regulation and Effluent
5 Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, finalized
6 and published in the Federal Register on February 12, 2003 (68 FR 7176), amending title
7 40, Code of Federal Regulations, parts 9, 122,
8 123, and 412.

9 (C) A March 19, 2003, rule published in
10 the Federal Register (68 FR 13608) withdrawing a July 13, 2000, rule revising the
11 Total Maximum Daily Load program of the
12 Clean Water Act (65 FR 43586), amending
13 title 40, Code of Federal Regulations, parts 9,
14 122, 123, 124, and 130.

15 (2) FORESTS AND LAND MANAGEMENT.—

16 (A) Healthy Forests Restoration Act of
17 2003, signed into law on December 3, 2003
18 (Public Law 108–148).

19 (B) National Forest System Land and Resource Management Planning Rule, finalized
20 and published in the Federal Register on Janu-
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1 ary 5, 2005 (70 FR 1022–23), replacing the
2 rule announced on November 9, 2000, amend-
3 ing title 36, Code of Federal Regulations, parts
4 217 and 219.

5 (C) Protection of Inventoried Roadless
6 Areas, finalized and published in the Federal
7 Register on May 13, 2005 (70 FR 25654),
8 amending subpart B of title 36, Code of Fed-
9 eral Regulations, part 294.

10 (3) CLEAN AIR.—

11 (A) Clear Skies Initiative, announced by
12 the President on February 14, 2002, and intro-
13 duced as legislation in each subsequent Con-
14 gress.

15 (B) Prevention of Significant Deterioration
16 (PSD) and Non-Attainment New Source Re-
17 view (NSR): Equipment Replacement Provision
18 of the Routine Maintenance, Repair and Re-
19 placement Exclusion, finalized and published in
20 the Federal Register on October 27, 2003 (68
21 FR 61248), and altered slightly on June 6,
22 2005.

23 (C) A rule revoking a 2000 decision that
24 it is “necessary and appropriate” to require
25 that each power plant apply technology to re-

1 duce mercury emissions finalized and published
2 in the Federal Register on March 29, 2005 (70
3 FR 15994), which amended title 40, Code of
4 Federal Regulations, part 63.

5 (D) Standards of Performance for New
6 and Existing Stationary Sources: Electric Util-
7 ity Steam Generating Units, finalized and pub-
8 lished in the Federal Register on May 18, 2005
9 (70 FR 28606), which amended title 40, Code
10 of Federal Regulations, parts 60, 72, and 75.

11 (b) METHOD.—In conducting the study under sub-
12 section (a), the National Academy of Sciences may utilize
13 and compare existing scientific studies regarding the regu-
14 lations, laws, and proposed laws listed in subsection (a).

15 (c) REPORT.—Under the arrangement entered into
16 under subsection (a), not later than 270 days after the
17 date on which such arrangement is entered into, the Na-
18 tional Academy of Sciences shall make publicly available
19 and shall submit to the Congress and to the head of each
20 department and agency of the Federal Government that
21 issued, implements, or would implement a regulation, law,
22 or proposed law listed in subsection (a), a report con-
23 taining—

24 (1) a description of the impact of all such regu-
25 lations, laws, and proposed laws on public health, air

1 quality, water quality, wildlife, and the environment,
2 compared to the impact of preexisting regulations,
3 or laws in effect, including—

4 (A) any negative impacts to air quality or
5 water quality;

6 (B) any negative impacts to wildlife;

7 (C) any delays in hazardous waste cleanup
8 that are projected to be hazardous to public
9 health; and

10 (D) any other negative impact on public
11 health or the environment; and

12 (2) any recommendations that the National
13 Academy of Sciences considers appropriate to main-
14 tain, restore, or improve in whole or in part protec-
15 tions for public health, air quality, water quality,
16 wildlife, and the environment for each of the regula-
17 tions, laws, and proposed laws listed in subsection
18 (a), which may include recommendations for the
19 adoption of any regulation or law in place or pro-
20 posed prior to January 1, 2001.

21 **SEC. 5. DEPARTMENT AND AGENCY REVISION OF EXISTING**
22 **RULES, REGULATIONS, OR LAWS.**

23 Not later than 180 days after the date on which the
24 report is submitted pursuant to section 4(c), the head of
25 each department and agency that has issued or imple-

1 mented a regulation or law listed in section 4(a) shall sub-
2 mit to the Congress a plan describing the steps such de-
3 partment or such agency will take, or has taken, to restore
4 or improve protections for public health and the environ-
5 ment in whole or in part that were in existence prior to
6 the issuance of such regulation or law.

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