



A Record of Rollbacks

The Clinton administration finished with a flurry, completing a host of significant health, safety, and environmental standards in its final months. This included new energy efficiency standards, restrictions on logging and hard rock mining, ergonomics rules to protect workers, and safeguards for medical privacy, among others.

Industry lobbyists misleadingly denounced this last-minute output as “midnight regulation.” Undoubtedly, the Clinton administration was hurrying to wrap up work before the president’s term expired. Yet as required by law, all of these actions were subjected to extensive analysis, as well as public notice and comment, and took years to complete. For example, the ergonomics rulemaking actually began during the first Bush administration under then-Labor Secretary Elizabeth Dole, and was finalized only after numerous studies demonstrated the seriousness of the problem.

Nonetheless, corporate interests found a receptive ear in the new Bush administration. On President Bush’s first day in office, White House Chief of Staff Andrew Card issued a memorandum that forbade federal agencies from publishing new standards and ordered a 60-day stay of just-completed standards. Although likely illegal,¹ this allowed the administration to repeal or weaken Clinton actions before they could take effect.²

At the same time, Vice President Cheney convened an industry-dominated energy task force, which, among other things, compelled the administration to nix action on global warming, gut restrictions on power-plant pollution, and open public lands to mining and drilling.

This service to large-scale campaign contributors has extended to other areas as well, leading to a procession of rollbacks over the last three and a half years. From giveaways to the timber industry to the slashing of overtime pay to the repeal of food labeling requirements, the Bush administration has consistently put narrow corporate interests over the broader public interest.

Backing Off Power Plants & Undoing Clean Air Standards

Immediately after taking office, President Bush established a task force led by Vice President Cheney to develop a national energy plan. This task force – formally called the National Energy Policy Development Group – was composed of high-ranking administration officials, including Energy Secretary Spencer Abraham, and regularly met in secret with executives and lobbyists from the oil, gas, coal, and nuclear energy industries. According to documents turned over to the Natural Resources Defense Council as a result of litigation, corporate representatives contacted or met with the task force more than 700 times from January to September 2001.

This backdoor channel paid off generously for the energy industry, which contributed more than \$48.3 million (75 percent of its total contributions) to Republican candidates and party committees in 1999-2000, including \$2.9 million directly to the Bush-Cheney campaign.

The administration quickly backtracked on global warming, moved to undo clean air standards for the oldest, dirtiest power plants, and then proposed its Orwellian “Clear Skies Initiative” on power-plant pollution, which turned out to be just another rollback in disguise. When Congress balked at this industry-backed plan, the administration went forward anyway and issued new standards on mercury emissions, lifted from Clear Skies, which roll back a determination that mercury is a “hazardous pollutant” requiring the strongest possible controls.

Meanwhile, the administration significantly weakened energy efficiency standards that if implemented would negate the need to build new power plants and save consumers billions in utility bills. In the Bush administration, unfortunately, saving money for the power industry is the priority.

Global Warming

On March 14, 2001, President Bush reversed his campaign pledge to regulate carbon dioxide emissions by electric power plants, and two weeks later, the United States withdrew from

the Kyoto Protocol, agreed to by the Clinton administration in December of 1999.

Under Kyoto, more than 160 countries committed to take steps to cut worldwide greenhouse gas emissions below 1990 levels by 2012, with the United States and 38 other industrialized countries promising a reduction of 7 percent below 1990 levels. In renegeing on the treaty, the Bush administration rested its case on a number of dubious claims:³

- First, it wrongly claimed that the Senate unanimously rejected Kyoto in a test vote. In fact, the vote in question was on a resolution that expressed broad, uncontroversial views over ongoing treaty negotiations, drawing the support of avowed Kyoto supporters.
- Second, it argued that Kyoto would impose an unbearable financial burden on the U.S. economy. In fact, a detailed 2000 study by the Department of Energy estimated costs at less than 1 percent of gross domestic product – echoing a 1998 study by the White House Council of Economic Advisers – and found that new energy efficiency measures could actually increase economic performance over the long run. The Bush administration made no effort to further analyze costs, relying instead on overblown estimates by industry.
- Third, it claimed that Kyoto should be invalidated for letting developing countries off the hook. In fact, Kyoto was developed in accordance with a 1992 United Nations treaty on climate change – signed by the president’s father and ratified by the Senate – that required all countries, including developing countries, to establish programs to reduce greenhouse gas emissions. In keeping with this earlier treaty, Kyoto provides incentives for developing countries to reduce emissions while setting mandatory targets for developed countries, which account for more than 75 percent of all greenhouse gas pollution and are far

better financially positioned to tackle the problem. In India, for instance, the average person uses less electricity in a year than the average American uses in two weeks, and nearly half the population lives on less than a dollar a day.

In June 2002, the last of the European Union nations and Japan ratified the Kyoto

Protocol, committing to move forward even without U.S. participation. This hurdle was cleared after these countries reached agreement Nov. 10, 2001, on legal and technical implementation, which among other things refined a market-based system for international emissions trading (ironically modeled on the successful U.S. acid rain program).⁴ The Bush

Foxes In the Henhouse

Donald Evans, secretary of Commerce

As Commerce secretary, Evans has worked to block action on carbon dioxide emissions – arguing that we first need to do more research⁵ – and strip state authority to veto offshore oil drilling.⁶ Previously, Evans spent 25 years at Tom Brown Inc., a Denver-based independent oil and natural gas producer, eventually becoming chairman and CEO. He also sat on the board of TMBR/Sharp Drilling, an affiliated oil and gas drilling operation.⁷ Evans was campaign manager and chief fundraiser for President Bush's last three campaigns, raising more money from the oil and gas industry for the 2000 presidential race than the ten-year total of any other federal candidate in history.⁸

Samuel Bodman, III, deputy secretary of Commerce

Bodman has led administration efforts to stall greenhouse gas controls from his position as chair of the federal Interagency Working Group on Climate Change Science and Technology, which took the lead in devising the administration's "Climate Change Strategic Plan." The National Academy of Sciences has criticized this plan for lacking tangible goals and agency responsibilities, and failing to build on prior science to assist policymakers.⁹

Previously, from 1988-2001, Bodman was CEO/president of Cabot Corp., a major Boston-based chemical producer. Cabot operates a "grandfathered" facility (built before 1972 and therefore allowed to evade major air pollution controls) that is one of the top

polluters in Texas,¹⁰ and was cited in a 2002 United Nations report for illegally exploiting Congolese natural resources during the country's civil war¹¹ (charges Cabot denies). In October 2003, Bodman was nominated to be deputy secretary of the Treasury Department.

Carl Michael Smith, Department of Energy's assistant secretary for fossil energy

Smith is the primary policy adviser to the secretary of Energy on federal coal, petroleum and natural gas programs, including research and development efforts, and alternative energy initiatives. Among other things, he is assisting on a study – partly funded by Anadarko Petroleum, ConocoPhillips, and Total oil companies¹² – to determine when it's environmentally safe for oil companies to transport heavy equipment over arctic tundra.¹³

Previously, Smith was a lawyer for oil and gas companies and served as Oklahoma's secretary of energy from 1995 to 2001. Before that, he operated Red Rock Exploration, Inc., an independent oil and gas exploration company in Oklahoma, and was a long-standing member of the Oklahoma Independent Petroleum Association – serving on its board of directors from 1981 to 1995 and as president in 1994.

In a January 2002 speech to the Independent Oil and Gas Association of West Virginia, Smith said his role as assistant energy secretary would be to figure out "how best to utilize taxpayer dollars to the benefit of industry."¹⁴ He was sworn in Feb. 5, 2002.

International Exemptions for Pesticide Use

The Bush administration has been trying to shirk responsibility under another international treaty, the Montreal Protocol, which seeks the elimination of the ozone-depleting pesticide methyl bromide by 2005. In February 2003, EPA asked the United Nations for 54 exemptions from this agreement to increase limits on methyl bromide and extend the phase-out to 2007. For instance, one of the more dubious exemptions would allow golf courses to use 734,400 pounds of the toxic chemical from 2005 to 2007 to resurface greens.¹⁵

This request ignores other safer pesticides and crop management techniques that are available to replace methyl bromide, and threatens to reverse significant progress over the last decade to curb its use. The U.N.'s Ozone Secretariat failed to reach agreement in November 2003 on whether to grant these exemptions to the United States – the largest producer and consumer of the pesticide, accounting for about 25 percent of worldwide use.

Fox In the Henhouse

Jean-Marie Peltier, EPA's counselor to the administrator on agriculture policy

Peltier supported extending the methyl-bromide ban even before she became EPA's point person for agricultural issues. Prior to her nomination, she spent most of her career representing various agricultural interests as president of the California Citrus Quality Council, where she sought to hold off regulation of pesticide use.¹⁶

administration declined to participate in these talks and offered no alternative plan to Kyoto.

A Free Pass for Coal-Fired Power Plants

In writing the Clean Air Act, Congress exempted older coal-fired power plants from compliance with new clean air standards because it was generally thought they

would be phased out – an assumption that unfortunately turned out to be wrong. Of fossil-fuel units operating in 2000, pre-1972 plants emitted 59 percent of the sulfur dioxide (6.34 million tons) and 47 percent of the nitrogen oxides (2.35 million tons), even though they generate only 42 percent of the total electricity, according to the General Accounting Office.¹⁷

When these facilities undergo major upgrades, operators must install modern anti-pollution equipment required of a "new source" under EPA's New Source Review program. However, in 1999, the Clinton administration uncovered evidence that this requirement was being widely violated, and responded by launching a host of lawsuits to compel compliance.

This litigation was still ongoing when President Bush took office, but utilities had high hopes that the new administration would let them off the hook. In March 2001, a lobbyist for utility-giant Southern Co. – which was being sued by the Justice Department for illegally upgrading 10 of its plants – e-mailed a Department of Energy official suggesting changes to New Source Review (NSR) for inclusion in the administration's energy plan.¹⁸

The Cheney task force responded by calling for a review of the program, along with the Justice Department's ongoing NSR enforcement actions, which included the litigation against Southern Co., the leading polluter among utilities.¹⁹ At the time, the administration pointed to the California energy crisis as the reason for the review. Yet this effort persisted even when it became clear that California's power shortages were the result of market manipulation by energy companies, not environmental regulation.

By March 2002, the administration had settled on changes to NSR that would limit new government lawsuits and relax clean air requirements. The 1999 lawsuits were to be carried forward, but Justice Department officials "clearly indicated a lack of enthusiasm," according to the Washington Post.²⁰

Not surprisingly, momentum on these cases slowed, and most remain unresolved. In

the final weeks of the Clinton administration, for instance, Cinergy Corp. of Cincinnati agreed in principle to pay fines and install millions worth of new pollution-control equipment to reduce sulfur dioxide emissions at its affiliated plants by 35 percent by 2013.²¹ However, following President Bush's inauguration, the company backed away from this settlement in the hopes of striking a sweeter deal, and more than three years later, the case is still in limbo.

Meanwhile, the administration pressed forward with regulatory changes to permit the very abuses the Clinton lawsuits were designed to reign in. In particular, NSR allows plants to carry out "routine maintenance" without triggering an obligation to install new pollution controls; however, plants have frequently exploited this exemption to perform more extensive upgrades. For instance, in August 2003, a U.S. District Court judge found that FirstEnergy's Ohio Edison Co. illegally made \$136.4 million worth of upgrades – which

it called "routine" – without adding the necessary scrubbers.²²

This widespread avoidance of NSR requirements and resulting air pollution has caused "thousands of premature human deaths, and many thousand additional cases of acute illness and chronic disease," according to a congressionally commissioned report by the National Academy of Public Administration (NAPA), which recommended that "the oldest and dirtiest facilities be given a firm deadline to install cleaner equipment or close down."²³

Yet instead of tightening the "routine maintenance" loophole, the Bush administration expanded it – a move sharply criticized by NAPA. Specifically, this new standard, completed in September 2003, creates a yearly allowance for maintenance costs, allowing plants to make upgrades that increase emissions without triggering NSR. Anti-pollution controls must be added only if upgrades exceed 20 percent of the value of all equipment used to produce electricity, an extremely high threshold.

Money Talks

"This appears to be the biggest rollback of the Clean Air Act in history," Sen. James Jeffords (I-VT) said, speaking of the expansion of the "routine maintenance" loophole. "It is clear by [this] action that this administration is intent on undoing more than 25 years of progress on clean air. The question is why?"²⁴

The answer appears to be rooted in the administration's cozy relationship with electric utilities, which gave over \$26 million to Republicans during the 2000 and 2002 election cycles – more than double what they gave Democrats – and nearly \$6 million to President Bush and the Republican National Committee for the 2000 and 2004 campaigns.²⁵

In May 1999, Thomas Kuhn, president of the Edison Electric Institute, sent a letter imploring industry colleagues to put his tracking number on their checks to "ensure that our industry is credited and that your progress is listed among the other business/industry

sectors."²⁶ Kuhn, along with FirstEnergy President Anthony Alexander and TXU Chairman Erle Nye, earned Pioneer status for their efforts, meaning they had each bundled more than \$100,000 for the Bush campaign.²⁷ All three – as well as representatives from Southern Co. and Dominion Energy – were given spots on the Bush transition team for the Department of Energy.

Pioneer and industry lobbyist Haley Barbour (now governor of Mississippi) also met with Vice President Cheney and Department of Energy officials on behalf of Southern Co. and the Electric Reliability Coordinating Council during development of the administration's energy plan. Just weeks before the Cheney task force issued its final report, Barbour donated \$250,000 to an event held by the Republican National Committee – \$150,000 of which came from Southern Co.,²⁸ which at the time was being sued by the government for violating clean air standards.

Needless to say, this change severely undercut the Clinton-initiated lawsuits, forcing the Justice Department to backpedal in the middle of a case against a Baldwin, Ill., plant owned by Dynegy Midwest Generation Inc. "In light of EPA's change of position as to its interpretation of the Clean Air Act," the Justice Department stated, "the United States does not rely on any prior statements it has made to this Court that a very narrow construction of the 'routine maintenance' exemption is required by the Clean Air Act itself."²⁹

This problem was foreseen back at the beginning of the Bush administration by then-EPA Administrator Christine Todd Whitman. In a memo to Vice President Cheney (which was leaked to the Environmental Integrity Project), she wrote, "As we discussed, the real issue for industry is the enforcement cases. We will pay a terrible political price if we undercut or walk away from the enforcement cases; it will be hard to refute the charge that we are deciding not to enforce the Clean Air Act... We will be subject to unnecessary political damage if we make specific commitments on things like 'routine maintenance'... Settlements will likely slow down or stop."

Yet the White House ignored Whitman's advice and ordered the NSR changes ahead. Fortunately, a day before Christmas 2003, a federal appeals court stepped in and temporarily blocked implementation pending the outcome of litigation.³⁰ In doing so, the court concluded that the plaintiffs – which include 12 attorneys general from mostly northeastern states, as well as a number of cities and environmental groups – had "demonstrated the irreparable harm [of the action] and likelihood of success on the merits" of their case.

"This is enormous," New York Attorney General Eliot Spitzer said. "The courts have agreed with us that the Bush administration cannot by administrative fiat eviscerate a statute (the Clean Air Act) that is critically important to protecting the quality of the air that we breathe... The regs were taking us down a path of dirty air, more asthma and more death."³¹

Indeed, a study published March 6, 2002, in the Journal of the American Medical Association suggested that long-term exposure to air pollution from coal-fired power plants increases the risk of lung cancer by at least 12 percent.³² Unfortunately, such evidence seems to hold little sway over the Bush administration, which has demonstrated more concern for costs to the power industry than protecting public health.

More Breaks for Power Plants

In addition to the definitional expansion of "routine maintenance," the administration, on New Year's Eve 2002, quietly granted even more ways to avoid installing pollution controls.³³ Specifically, this includes:

- **A 10-year free pass to pollute.** Plants are now exempt from updating pollution controls when they upgrade if those controls were considered sufficient up to 10 years ago. In other words, plants can modify a piece of equipment, potentially generating hundreds of tons of new pollution, and avoid NSR's clean air requirements, so long as their pollution controls were installed in the last 10 years.
- **Weak emissions targets.** Facilities can now avoid pollution-control upgrades by meeting weak plant-wide emissions targets, which are based on the average pollution emitted over any 24-month period within the last 10 years. This means that a plant can use any decreases in pollution made over the last decade as credit to offset increases made today. For example, if a plant reduced its emissions by 700 tons nine years ago, it can make upgrades that generate 700 tons in new pollution without having to install any pollution controls. There is no built-in expectation that pollution should decrease over time.
- **Smoke and mirrors compliance.** NSR requires cleanup action if changes at a facility result in significant pollution increases (e.g., 40 tons per year). This

Foxes In the Henhouse

Jeffrey Holmstead, EPA's assistant administrator for air and radiation

Holmstead was in charge of the rule changes to relax power-plant emissions standards. Previously, he worked as an attorney for the law firm Latham & Watkins, where he represented numerous corporate interests seeking to block regulation, including Cinergy, American Electric Power, and the Alliance for Constructive Air Policy, an industry front group that seeks to weaken the Clean Air Act.³⁴ EPA's rule changes governing power plant emissions (i.e., New Source Review and mercury) mirror memos provided by Latham & Watkins, sometimes using language verbatim.³⁵

In addition, Holmstead's former chief of staff, John Pemberton, left the administration in 2003 to work for Southern Co. just a week after EPA finalized its New Source Review rollback.

Vicky Bailey, Department of Energy's assistant secretary for international affairs and domestic policy

Bailey helped craft the Bush energy plan, which suggested the weakening of power-plant emissions standards. Previously, she served as president of PSI Energy, a subsidiary of Cinergy, which, once President Bush took office, backed out of a legal settlement to install modern pollution controls.

Francis S Blake, former deputy secretary of Energy

Blake, who previously was a senior executive at General Electric, played a key role in crafting the administration's "Clear Skies Initiative," consulting with more than 60 people outside government on the policy, all but one of which came from the energy industry.³⁶ Blake left the administration in March 2002 to become executive vice president of Home Depot.

threshold is determined by measuring increases against the plant's "pollution baseline." Previously, chemical plants and oil refineries calculated their pollution baselines by the amount of emissions just prior to the changes. Under the new standards, however, such facilities (excluding electric utilities) can set their baselines based on the highest amount of emissions released over a two-year period within the last 10 years. A high baseline – based not on actual pollution today, but potentially pollution 10 years ago – inevitably means fewer obligations to install new pollution-control equipment when plants are modified.

A Political Smokescreen (The "Clear Skies Initiative")

To cover its tracks, the administration created a political smokescreen in the form of its "Clear Skies Initiative," which is still being debated by Congress. Unveiled Feb. 14, 2002, Clear Skies proposed new targets for power-plant emissions of mercury, sulfur dioxide, and nitrogen oxides that actually offer fewer benefits than simply implementing and enforcing current law. In fact, despite its pleasant sounding name, Clear Skies would allow three times more toxic mercury, 50 percent more sulfur, and hundreds of thousands more tons of smog-forming nitrogen oxides.³⁷

As for carbon dioxide, the plan proposed "incentives" (instead of regulation) to encourage power plants – which account for 40 percent of U.S. carbon dioxide emissions – to "voluntarily reduce greenhouse gases." Unfortunately, these incentives actually retreated from previous efforts to promote energy efficiency. For instance, the administration recommended \$7.1 billion in tax incentives for alternative energy sources over 10 years, which is \$2.2 billion less than President Clinton requested, and proposed to cut \$52 million from federal research and development for energy efficiency.³⁸ The question of regulation was put off until 2012 – conveniently long after the president will

have left office – when global warming will be reexamined to see “if sound science justifies further policy action,” ignoring the already overwhelming evidence.

Not surprisingly, the power industry’s trade association, the Edison Electric Institute, has aggressively lobbied Congress to approve the Clear Skies Initiative.³⁹ “The industry outreach effort will be a major undertaking and will have many components,” Thomas Kuhn, EEI’s president, wrote to company officials⁴⁰ in announcing a special web site⁴¹ designed to generate messages of support to members of Congress. (Kuhn is a personal friend of President Bush and one of his leading Pioneer fundraisers.)

Nonetheless, Clear Skies remains stalled in the Senate where a competing bill by Sen. Thomas Carper (D-DE) has drawn a number of Republican co-sponsors, including Sens. Lamar Alexander (TN), Lincoln Chafee (RI), and Judd Gregg (NH). Unlike Clear Skies, Carper’s bill would set limits for carbon dioxide emissions and mandate faster and steeper reductions in mercury, sulfur, and nitrogen oxides. An EPA analysis – which the administration attempted to hide – found that this approach would be more effective and carry only marginally higher costs, but the president continues to stand by Clear Skies and resist any controls on carbon dioxide.

Instead, the administration has promoted policies that actually exacerbate the problem, following the industry-friendly blueprint issued by the Cheney task force on May 17, 2001. Specifically, this has meant weaker environmental standards, more mining and drilling on public lands, and virtually no effort to promote energy efficiency.

Mercury Emissions

U.S. power plants spew nearly 50 tons of mercury each year, accounting for 40 percent of all industrial mercury emissions. These emissions, which currently are unregulated, contaminate lakes, rivers, coastlines and other water bodies, and “bioaccumulate” in the food chain. Predator fish, such as swordfish and tuna, have the highest levels of mercury.

Fox In the Henhouse

Michael Leavitt, EPA Administrator

During his more than 10 years as governor of Utah, Leavitt touted an environmental philosophy he called “Enlibra,” defined as a move toward balance. In practice, however, many of his decisions tilted decidedly against environmental protection. For example, Leavitt sought to build a highway near Salt Lake City, with part of it running through the wetlands of Great Salt Lake, and later worked out a backroom deal with Interior Secretary Gale Norton that stripped away protections for 2.5 million acres of pristine Utah public land (see below for more discussion). “Governor Leavitt’s appointment to head the EPA puts an anti-environmental politician in charge of regulating industries that pollute the nation’s air and water,” said Earthjustice’s Denver attorney Jim Angell. “We know from his history on environmental issues in Utah that his preferred method is to exclude the broader public from the process when he wants to make decisions that could harm the environment.”⁴²

Human beings are exposed to mercury primarily by eating fish.

The Centers for Disease Control has found that 8 percent of women of childbearing age have levels of mercury in their blood that could endanger their offspring; mercury exposure is linked to a number of neurological diseases, including learning and attention disabilities – which are on the rise – and mental retardation. In 2001, the Food and Drug Administration recommended that pregnant women and women who may become pregnant avoid eating shark, swordfish, king mackerel, and tilefish, and in 2004 the agency warned against eating tuna.

On Dec. 17, 2003, EPA Administrator Mike Leavitt traveled to St. Louis, Mo., a key battleground state in the upcoming presidential election, to sign a proposed regulation that mirrors the Clear Skies Initiative’s plan for mercury emissions. The administration is touting this proposal as a demonstration of President Bush’s

commitment to the environment, but unfortunately it's just another rollback in disguise.⁴³ Indeed, major portions of the proposal were taken, sometimes verbatim, from documents prepared by utility-industry lawyers at Latham & Watkins, the former law firm of EPA Air Administrator Jeffrey Holmstead, who oversaw development of the proposal, and West Associates, a lobbying group representing 20 power and transmission companies in California and other Western states.⁴⁴

This decision bypassed EPA's technical experts and ignored analytical requirements and a request by a 21-member federal advisory committee for evaluations comparing different regulatory options. "We were cut off without any warning or explanation," said John A. Paul, the committee's Republican co-chair and Ohio environmental regulator, who voted for President Bush in 2000; instead, the administration chose a process "that would support the conclusion they wanted to reach." Indeed, Holmstead explained to EPA staff that additional analysis was not being done partly because of "White House concern."⁴⁵

"There is a politicization of the work of the agency that I have not seen before," said Bruce Buckheit, who retired from EPA in December 2003 as director of EPA's Air Enforcement Division after two decades of service, adding, "A political agenda is driving the agency's output, rather than analysis and science."⁴⁶

As a result, EPA's move toward a much stronger mercury standard has been derailed. In 1990, President George H.W. Bush signed an amendment to the Clean Air Act requiring EPA to study emissions from power plants and identify "hazardous" pollution. In 2000, after 10 years of study, EPA finally concluded that mercury is a hazardous pollutant. Under the law, this determination required EPA to set limits for mercury (as with other hazardous pollutants) based on the maximum amount of reduction that is technologically feasible.

EPA staff reached a preliminary determination that requiring "maximum achievable control technology" (MACT) for mercury would cut emissions by 90 percent within three years – from 50 tons to 5 tons annually. Agency experts also concluded that

Mercury From Chlorine Plants

Chlorine plants release an estimated 100 tons of mercury a year⁴⁷ – double that from coal-fired power plants. However, the Bush administration has given them a free pass, and lifted requirements to control these emissions.

There are just nine chlorine plants in the United States that still use outdated mercury technology.⁴⁸ These plants extract chlorine from salt by conducting electrical charges in 50-foot long vats filled with thousands of pounds of mercury. During this process, the mercury evaporates into the air, and subsequently must be replaced. In 2002, the nine plants purchased 130 tons of mercury for their vats.

Reported mercury releases, however, are far smaller than the purchased amount; in 2000, for instance, plants could not account for 65 tons of mercury. Yet instead

of addressing this problem, the Bush EPA has thrown up its hands and declined to put in place new controls. "The fate of all the mercury consumed at mercury cell chlor-alkali plants remains somewhat of an enigma," the agency concluded in a rule issued in December 2003. The problem, according to EPA, is that evaporated mercury escapes through open doors and ceiling vents, rather than smokestacks, which makes it impossible to measure.

This action lifted requirements from a 1975 standard, which specified that evaporated mercury could be routed through smokestacks, and required plants to keep their emissions below 2,300 grams per day.⁴⁹ Currently, plants are far exceeding this amount, losing more than 17,000 grams of mercury every day. Thanks to the Bush administration, there are now no limits on these releases.

reductions of 80 percent would cost industry less than 1 percent of annual revenues. The Bush administration, however, refused to allow further analysis to develop cleanup options – apparently in service to the utility and coal industries, which want much smaller cuts stretched over a much longer period.

Instead, the administration's plan would revoke the 2000 determination that mercury emissions from power plants are "hazardous" (an action that appears to be illegal⁵⁰). In doing so, the administration would put in place a "cap and trade" program that would allow utilities to buy and sell emissions credits and "bank" unused allowances for later use. The administration contends this would achieve a 70 percent reduction in mercury emissions by 2018. However, contrary to public representations, EPA calculations actually show reductions of only 38 percent to

46 percent by 2020, leaving annual emissions between 26 and 30 tons.⁵¹The reason is that many companies are expected to store emission credits for later use, allowing for emissions in excess of the 15-ton annual "cap" established for 2018.

Making matters worse, such emissions trading would create "hot spots" of mercury contamination in water bodies near power plants that buy credits instead of reducing pollution, as pointed out by EPA's Children's Health Advisory Committee, which concluded that the Bush proposal "does not sufficiently protect our nation's children."

Sen. Olympia Snowe (R-ME) concurred, saying, "These changes roll back critical standards for mercury and could impact the health and well-being of millions of Americans, particularly women and children... The revised plan fails to acknowledge the

Snowmobiles & Dirty Air in Yellowstone

As with the power industry, Vice President Cheney has close ties to the snowmobile industry – stemming from his days as a Wyoming congressman – and has used his office to block standards that would reduce air pollution. Specifically, Cheney's office ordered EPA to water down a proposal to cut snowmobile emissions (detailed on page 51), and later the administration rescinded a Clinton-era plan to phase out snowmobile use in Yellowstone and Grand Teton National Parks.

Fortunately, on Dec. 16, 2003, U.S. District Judge Emmet Sullivan reinstated the phase-out and strongly rebuked the Bush administration, calling the rollback "completely politically driven and result oriented."⁵² Sullivan pointed out that this action ran counter to scientific evidence, noting one study that found Yellowstone at times had carbon monoxide levels as high as Los Angeles.

The phase-out, which was supported by a 99-1 margin in public comments to the National Park Service,⁵³ requires a 50 percent reduction in snowmobiles in the 2003-04 season – allowing for 490 snowmobiles per day in Yellowstone and 50 per day in Grand

Teton – and a total ban for the 2004-05 season. The Bush administration had sought to allow nearly 1,000 snowmobiles per day in Yellowstone.

The administration contended that new standards for cleaner and quieter engines would negate the vehicles' adverse health and environmental impacts. However, Sullivan cited scientific analysis by the Park Service that concluded there would still be significant harm to the health of park wildlife, visitors, and employees. Compared to an outright snowmobile ban, the Bush plan would have allowed twice as much carbon monoxide pollution and five times the nitrogen oxide emissions.

"Our duty is to take care of our national parks as fully as possible so that we pass them in good health to our grandchildren," said Denis Galvin, who served as deputy director of the Park Service under Presidents Reagan and Clinton and during the first year of the current Bush administration. "Had we let that principle slip in Yellowstone to the benefit of the snowmobile industry, it would have set a terrible precedent in all our national parks."⁵⁴

dangers mercury emissions pose, as well as the fact that once in the environment, such emissions can remain for centuries. Simply put, we have the technology to sharply reduce mercury emissions.”⁵⁵

Energy Efficiency

On Aug. 14, 2003, on one of the hottest days of the summer, a massive blackout swept through New York, Cleveland, Detroit, parts of New Jersey, and Ontario. With air conditioners blaring, the power supply overloaded and shut down.

Since this disaster, public discussion has focused on problems with our electrical grid and the way our power is supplied. However, demand is also a crucial part of the story. If we can reduce our need for electricity, we can reduce the risk of blackouts.

The Clinton administration, in its final weeks, moved in this direction by requiring that most new air conditioners and heat pumps be made 30 percent more energy efficient by 2006.⁵⁶ At the urging of manufacturers, the Bush administration immediately lowered this requirement to 20 percent, but a federal appeals court threw out this rollback, finding that it violated the National Appliance Energy Conservation Act, which prohibits such backsliding.⁵⁷

“In rejecting the Bush administration’s attempt to turn back the clock on energy efficiency, the court has boosted efforts to reduce consumers’ energy bills and protect California from future power shortages,” said California Attorney General Bill Lockyer.⁵⁸

If the Bush plan had been allowed to move forward, it would have meant an additional 51 million metric tons of carbon emissions (equivalent to that of 34 million cars), \$21 billion extra spent by consumers on utility bills,⁵⁹ and the construction of additional power plants.

According to officials at the Department of Energy, which set the new standard, a 30 percent increase in efficiency would eliminate the need for 39 new electric power plants over the next 30 years, whereas a 20 percent increase would offset the need for 27 new plants.⁶⁰

In comments delivered Oct. 19, 2001,⁶¹ the Environmental Protection Agency criticized DOE for ignoring the “strong rationale” for sticking with the higher efficiency standard and argued that savings to consumers were “significantly underestimated.” “Changes in the electricity market due to utility deregulation has resulted in increased electricity prices overall,” according to EPA. “DOE did not consider this trend in its analysis,” which even so found \$1 billion in “net benefits” to consumers from a 30 percent standard by 2020.⁶²

In addition, manufacturers are well positioned to deliver on this higher standard. “DOE justifies a lower [standard] because the higher efficiency levels would put manufacturers out of business,” EPA stated. “However, according to the Air Conditioning and Refrigeration Institute (ARI) database of model combinations, many manufacturers already produce models that meet the [30 percent standard].”⁶³ This includes “over 7,000 air source heat pump model combinations and over 14,000 center air conditioner model combinations.” Nonetheless, appliance manufacturers lobbied for a 20 percent standard, and the Bush administration obliged. Fortunately, the law was not on the administration’s side.

Bowing to Mining Interests

With regulation of carbon dioxide emissions and tougher standards for aging coal-fired power plants, there would be incentives to shift to alternative energy sources and away from coal – the most unhealthy and environmentally damaging energy source of all. Yet not only did the Cheney task force resist such incentives, it recommended additional policies to cement coal’s dominance. Acting on these recommendations and at the urging of the coal industry, the Bush administration proposed billions of dollars in corporate subsidies and, as described below, relaxed environmental protections for mining.

Following Bush's decision to renege on his campaign pledge to regulate carbon dioxide emissions, the director of the West Virginia Coal Association told industry executives, "You did everything you could to elect a Republican president. You are already seeing in his actions the payback, if you will, his gratitude for what we did."⁶⁴ Not surprisingly, the paybacks didn't stop there.

Money Talks

Mining interests gave \$10.14 million to Republicans during the 2000 and 2002 election cycles⁶⁵ – including \$6.5 million from the coal industry (accounting for nearly 90 percent of the industry's total donations) – and more than \$3 million to President Bush and the RNC in 2000 and 2004.⁶⁶

"We were looking for friends, and we found one in George W. Bush," said industry executive James H. "Buck" Harless,⁶⁷ a Bush Pioneer in both 2000 and 2004.⁶⁸ Harless is chairman of International Industries, a holding company with mining interests, and serves on the board of Massey Energy, an Appalachian coal company that specializes in mountaintop mining and stands to reap substantial profits from the Bush rollbacks.

Jack Gerard, president of the National Mining Association, has also earned 2004 Pioneer status;⁶⁹ previously the NMA's general counsel and vice president were awarded spots on the Bush transition team for, respectively, the departments of Interior and Labor, where they worked to install industry insiders to key agency posts.

Mountaintop Mining

The administration adopted a rule in May 2002⁷⁰ that allows mining companies to dump dirt and rock waste into rivers and streams, clearing the way for new "mountaintop mining" to access lucrative low-sulfur coal. This action changed the definition of allowable "fill material," eliminating the "waste exclusion" that barred dumping for the sole purpose of disposing waste. The Army Corps of Engineers now has authority

to approve such dumping when issuing operating permits under the Clean Water Act.

In a letter to President Bush, eight Republican members of the House took issue with this decision, noting that it "appears to be particularly designed to legalize the practice of mountaintop mining, where coal companies blast the tops off of mountains and the huge volumes of waste that are generated are dumped into nearby valleys, burying miles of streams and killing all associated aquatic life."⁷¹ More than 1,200 miles of Appalachian streams have been buried by these "valley fills," frequently leading to flooding in surrounding communities.

Besides dirt and rock waste, the new rule amazingly opens the door for the dumping of trash as well, stating that "there are very specific circumstances where certain types of material that might otherwise be considered trash or garbage may be appropriate for use in a particular project to create a structure or infrastructure in waters of the U.S."

Just days after this rollback was finalized, a federal district court judge ruled that it is illegal for mountaintop mining operations to dump into waterways,⁷² saying the administration's decision addresses "political, economical, and environmental concerns to effect fundamental changes in the Clean Water Act for the benefit of one industry" – the mining industry. The administration appealed the ruling, and on Jan. 29, 2003, the Fourth Circuit Court in Richmond, Va. – known as the most conservative court in the country – reversed the lower court, allowing implementation to move forward and clearing the way for mining companies to dump in the nation's rivers and streams.⁷³

More Breaks for Mountaintop Mining

The Bush administration unveiled a proposal⁷⁴ Jan. 7, 2004, that would gut a prohibition against the dumping of mining waste within 100 feet of streams, further easing the way for new mountaintop mining, which generates large amounts of dirt and rock waste.

Fox In the Henhouse

Mike Parker, former assistant secretary of the Army for Civil Works (Army Corps of Engineers)

Parker, who resigned in March 2002, approved the definitional change of “fill material” to make it easier to dump mining waste. Previously, he represented Mississippi’s fourth congressional district, earning 0 out of 100 on the League of Conservation Voters scorecard for three straight years during his tenure.⁷⁵ Parker once questioned the validity of the Corps’ environmental mission (specifically in reference to fish protection efforts in Washington and the Florida Everglades) during a March 1998 hearing before the House Subcommittee on Energy and Water Development.⁷⁶

Sold as a “clarification,” this proposal would create new waivers for the so-called “buffer zone” rule, which was adopted during the Reagan administration. Specifically, companies could receive permits to conduct surface mining activities near streams provided that they, “to the extent possible,” “prevent additional contributions of suspended solids” and “minimize disturbances and adverse impacts on fish, wildlife, and other related environmental values of the stream.”

Put another way, this means that mining companies could be permitted to dump directly into streams and cause environmental damage, so long as they have made a satisfactory effort, as judged by government permitting officials, to minimize that damage “to the extent possible.”

The current standard allows for a waiver of the buffer-zone rule only if mining activities “will not cause or contribute to the violation” of water quality standards, “and will not adversely affect the water quantity and quality or other environmental resources of the stream.” Unlike the administration’s “clarification,” this is clear, simple, and objective.

“Only the Bush administration, which calls more air pollution ‘Clear Skies’ and

clear cutting trees ‘Healthy Forests,’ would call this decision to allow coal companies to destroy more streams a ‘clarification,’” said Joan Mulhern, senior legislative counsel for Earthjustice. “It is a lie and it is an insult to the people of Appalachia and anyone who cares about the fate of America’s environment.”⁷⁷

More Dumping of Mining Waste

On Oct. 7, 2003, the Bush administration overturned a Clinton-era policy that restricted the amount of public land mining companies can use for dumping waste.

In 1997, John Leshy, then solicitor of the Department of Interior, issued an opinion that limited each 20-acre mining claim to one five-acre “mill site” for dumping and other support operations. The deputy solicitor of the Bush DOI issued a new opinion concluding there is no limit to the number of five-acre mill sites,⁷⁸ and the administration adopted a rule for implementation.

Fox In the Henhouse

William Myers, former solicitor of the Interior Department

Myers was forced to recuse himself from the “mill site” decision. Of course, his deputy still resolved it in favor of mining companies. Beginning in 1997, Myers represented coal companies, cattle grazers, and timber companies at the Boise law firm of Holland & Hart. During his time at Interior, between 2001 and 2003, he had at least 11 meetings with Holland & Hart lawyers and their clients, drawing the attention of the Office of Government Ethics, which cleared him of violating criminal statutes.⁷⁹ Prior to Holland & Hart, Myers served as a lawyer and lobbyist for the National Cattlemen’s Beef Association (NCBA); executive director of the Public Lands Council, an arm of NCBA, which pushes to open public land to livestock grazing; and corporate counsel to the Cattlemen Advocating Through Litigation Fund.⁸⁰ In May 2003, Myers was nominated to be a federal judge on the Ninth Circuit Court of Appeals.

The administration's reversal "puts clean water and community health at increased risk, with an open invitation to dump massive quantities of toxic mining waste on unlimited amounts of our public lands," responded Steve D'Esposito of the Mineral Policy Center.⁸¹

Hard-Rock Mining

On Oct. 30, 2001, the Bush administration weakened⁸² environmental and land use protections for hard-rock mining (which includes gold, silver, copper, and other minerals, but not coal) that were issued shortly before President Clinton left office. This stripped the Interior Department of its new authority to block proposed mines on federal land that could result in "substantial irreparable harm," and locked in a sweetheart arrangement for mining interests, which urged the rollback.

The Congressional Budget Office estimates that there are \$650 million in annual sales of hard-rock minerals from federal land, with net profits totaling \$97.5 million.⁸³ Yet the little-changed General Mining Law of 1872, which was signed into law by

Fox In the Henhouse

Rebecca W Watson, assistant Interior secretary for land and minerals management

Watson oversees mining on public land and enforcement of mining laws. Previously, she spent almost her entire legal career defending the mining and timber industries, and worked on behalf of a number of anti-environmental organizations, including the Mountain States Legal Foundation, the Rocky Mountain Mineral Law Foundation, and Defenders of Property Rights. In the past, she has represented Redstone Gas Partners (coal bed methane), Seven-Up Pete Joint Ventures (open pit gold mining), Plum Creek Timber Company (the second largest private timberland owner in the United States), and the Western Environmental Trade Association, an industry trade group.⁸⁴

President Ulysses S. Grant, provides for no environmental protections and demands no federal royalties, leaving mining operations unaccountable for their pollution.

Shortly after issuing the rule, in May 2002, EPA revealed that the hard-rock

Giveaways to Mining Interests

While relaxing environmental standards, the Bush administration has also moved to open more public land to mining interests, including:

- **Arizona's Gila Mountains.** The administration is close to allowing one of the nation's largest open-pit mines at the foothills of the Gila Mountains. The Bureau of Land Management completed analysis in December 2003 that found the proposed copper mine, which would cover 3,360 acres, would have no ecological impact.⁸⁵ This trusts the mining company's pledge to use impermeable plastic to prevent the leaking of toxic materials into the Gila River and ignores the possibility of other potential environmental damage.
- **Alabama forest.** Early in 2004, the Forest Service opened more than 90 percent of

the national forests in Alabama to drilling and mining without subjecting the plan to normal environmental analysis and review.⁸⁶

- **Oregon's Siskiyou National Forest.** In May 2002, the administration lifted a ban on mining in and around Oregon's Siskiyou National Forest. The Clinton administration initiated this mining freeze – which was set to expire eight months after the Bush repeal – to study the area for consideration as a national monument.
- **The Florida Everglades.** In spring 2001, the administration approved permits for mining companies across more than 5,000 acres of land in the Florida Everglades despite objections from career staff at the EPA and Department of Interior.

mining industry was the largest toxic polluter for the second straight year, producing 3.4 billion pounds of toxic pollutants in 2000.⁸⁷ Such mining has polluted 40 percent of Western watersheds, according to EPA, leaving taxpayers to foot the bill for hundreds of millions of dollars in cleanup costs.

In November 2003, a federal judge instructed the administration to rewrite part of its rule, finding that taxpayers must receive fair market value for mining on public lands that lack valid mining claims, a widespread practice in the western United States.⁸⁸ The judge also criticized the Bush administration's overall interpretation of federal law on hard-rock mining, but stopped short of striking down the rules, stating that he did not have legal grounds to do so.

Drilling on Public Lands

As with coal, the Cheney task force focused on expanding the supply of oil and gas rather than reducing demand through greater efficiency and alternative energy sources. This of course has benefited oil and

gas interests, but it completely ignores the enormity of the problem.

The United States consumes about 19.6 million barrels of oil a day, accounting for a quarter of the world's supply. Domestic supply cannot come close to meeting this demand even if we dramatically increase drilling on public lands, as the Bush administration is doing. The only way to significantly reduce dependence on Middle Eastern oil is to reduce demand. For instance, the United States could save 51 billion barrels of oil over the next 50 years just by increasing fuel efficiency standards for new vehicles to 39 miles per gallon (which the administration has steadfastly resisted).

By contrast, drilling in Alaska's Arctic National Wildlife Refuge – the centerpiece of the administration's plan – would likely produce only 3.2 billion barrels, according to the U.S. Geological Survey, not even enough to satisfy six months' demand. This oil would not begin to reach the market for another 10 years, and it would take 50 years to extract the full amount. For this pittance, the administration is willing to disturb hundreds of acres of pristine wildlife habitat, which would be interspersed with sprawling oil

Money Talks

The oil and gas industry donated nearly \$18 million to the Bush campaign and the Republican National Committee during the 2000 and 2004 election cycles,⁸⁹ earning extensive contact with the Cheney energy task force.

The American Gas Association had contact with the task force at least eight times, while the American Petroleum Institute – which has seven Rangers and Pioneers (individuals who bundle more than \$200,000 and \$100,000 respectively) among its membership – met with the task force at least six times.⁹⁰ In May 2001, at the conclusion of the task force's work, the administration issued Executive Order 13211, which requires federal agencies to give special consideration to energy interests in devising new regulation. This order mirrored

a draft proposal submitted by the American Petroleum Institute, borrowing words almost verbatim for a key section.⁹¹

Of course, the oil and gas industry had a seat at the table even before Bush took office. At least a dozen industry officials were named to the Bush transition teams at EPA and the departments of Energy and Interior,⁹² whose team included Bruce Benson of Benson Mineral Group, a 2000 Pioneer and 2004 Ranger.⁹³

In 2000, the oil and gas industry produced 41 Pioneers, including Ken Lay, former CEO of Enron, which still ranks as President Bush's third largest donor in federal elections. Lay's former secretary, Nancy Kinder (whose husband Richard is a former Enron president), has already earned Ranger status for 2004.

facilities and pipelines. Fortunately, on March 19, 2003, the Senate voted 52-48 against the plan (which must receive congressional blessing), though the administration continues to press its case.

The administration's plan to allow new drilling off California's coast was also blocked, this time by a federal appeals court,⁹⁴ but in most other cases, drilling has been able to move forward unimpeded. In a memo to field personnel, Bureau of Land Management officials said their "No. 1 priority" was to grant new leases for oil, gas and coal mining on public lands.⁹⁵ Not surprisingly, the number of such leases increased 51 percent during the first year of the Bush administration⁹⁶ – from 2.6 million acres in 2000 to 4 million acres in 2001, according to BLM data – and new projects continue to be approved. As described below, this endangers some of the nation's most precious public lands.

The Powder River Basin

The administration has targeted Wyoming and Montana's Powder River Basin for a massive coal-bed methane project – which will require millions of gallons of high-saline groundwater to be pumped out, potentially contaminating rivers and streams, in order to access natural gas trapped in coal deposits.

Besides endangering the basin's diverse wildlife, high salt content also makes water unsuitable for irrigation purposes, and local farmers and ranchers have opposed the project. In May 2002, EPA gave the project – the largest drilling operation ever on federal lands⁹⁷ – its worst possible rating, declaring it "environmentally unsatisfactory."⁹⁸

Nonetheless, the administration was undeterred, and in April 2003, the Bureau of Land Management granted its approval. Shortly thereafter, on May 1, 2003, a coalition of landowners, environmental groups and others filed suit in Montana federal court to block the proposal. This challenge is still pending.

Fox In the Henhouse

J Steven Griles, deputy secretary of Interior

Griles previously worked as a lobbyist for the coal and oil industry, representing Yates Petroleum, which pushed to open New Mexico's Otera Mesa, as well as a number of firms seeking to drill in the Powder River Basin. When EPA objected to the Powder River project, he shot back a memo saying the agency's criticism "will create, at best, misimpressions, and possibly impede the ability to move forward in a constructive manner."⁹⁹ On its face, this violated Griles' August 2001 recusal agreement, in which he committed to remove himself from any decision within a year of his confirmation that affected former clients.¹⁰⁰ However, Department of Interior lawyers – led by Solicitor William Myers, a former coal-industry lawyer (as discussed on page 23) – determined he did nothing wrong, but nonetheless made Griles sign a second recusal agreement disqualifying himself from coal-bed methane issues.

Griles also served in the Reagan administration as assistant secretary of the

Office of Surface Mining. During this time, OSM's budget was slashed, and enforcement of mining regulations fell drastically.¹⁰¹ Following Griles' nomination to Interior, the National Mining Association called him "an ally of the industry," adding, "This will hopefully be a breath of fresh air."¹⁰²

Griles' annual salary as deputy secretary is about \$154,700. However, he is also receiving \$284,000 a year (as part of a \$1.1 million payout for his "client base") from his former employer, National Environmental Strategies (NES), a lobbying firm that represents the same companies Griles is in charge of regulating,¹⁰³ including Chevron, Shell and Texaco. When Griles' appointment calendar – obtained under the Freedom of Information Act – revealed scores of meetings with former clients, several prominent environmental organizations, including Defenders of Wildlife and Friends of the Earth, called for a criminal investigation and launched litigation to compel information about his yearly allowance from NES.¹⁰⁴

New Mexico's Otero Mesa

In January 2004, BLM announced that it would allow oil and gas development in New Mexico's Otero Mesa and Nutt grasslands, which comprise more than three million acres of Chihuahuan Desert between Carlsbad, N.M., and El Paso, Tex. BLM's plan, which is opposed by New Mexico Gov. Bill Richardson, would open 90 percent of this fragile and biologically rich desert ecosystem.

This action stands to benefit one company in particular: the Harvey Yates Company (and more specifically, as subsidiary Yates Petroleum), owned by the powerful Yates family, which has close ties to President Bush.¹⁰⁵ Over the last four years, Yates family members and employees contributed more than \$250,000 to President Bush and the Republican Party. In October 2002, company president George Yates hosted a fundraiser with Vice President Cheney at the Yates family home in Roswell, N.M.

Alaska's North Slope

In November 2003, Interior unveiled a plan to open up 8.8 million acres of public land on Alaska's North Slope, including areas considered environmentally sensitive, to new oil and gas development.¹⁰⁶ This land is part of the 23.5-million-acre National Petroleum Reserve-Alaska (NPR-A), the largest remaining block of unprotected land in the nation, and includes areas that are important for the protection of migratory birds, whales, and other wildlife.¹⁰⁷

In opening this area, the administration empowered BLM to modify or waive environmental safeguards on a case-by-case basis for economic reasons, and weakened lease requirements by replacing strict standards with vague guidelines to be set and monitored by industry.¹⁰⁸

A 2003 study by the National Academy of Sciences reported that 25 years of drilling on the North Slope had caused significant environmental damage (including reduced bird and caribou populations, as well as polluted air and water), and warned of possible dangers to human health. Nonetheless, the Bush administration has refused to consider these problems.

Fox In the Henhouse

Cameron Toohey, Interior's special assistant for Alaska

Toohey oversees the Interior Department's operations in Alaska. He previously served as executive director of Artic Power, an Anchorage-based lobbying group whose sole focus was the opening of the Arctic National Wildlife Refuge to drilling. Nonetheless, Interior Secretary Gale Norton claimed that rather than being an industry lobbyist, Toohey is a "representative of the public, a voice of Alaska citizens."¹⁰⁹

"What makes this even worse is that BLM has failed to study the effects of oil activities on the environment as it promised to do," said Cindy Shogan, executive director of the Alaska Wilderness League. "It even dismantled its Research and Monitoring Team."¹¹⁰

Padre Island National Seashore

In November 2002, BLM issued a permit to allow drilling on Padre Island National Seashore – the longest remaining undeveloped barrier island in the world and the first national park opened to drilling by the administration. Located off the coast of Texas, Padre Island is a nesting area for the endangered Kemp's Ridley sea turtle, the rarest of all sea turtles.

Utah Parks and Scenic Area

In November 2003, the Bush administration initiated a Utah fire sale, announcing plans to sell oil and gas leases that by June 2004 will cover 46,000 acres of pristine public land.

This land is practically being given away, with leases selling for an average of \$20 an acre for the first year, and a subsequent payment of \$2 a year afterward (expected to produce annual government revenues of just \$80 per acre).

"This epitomizes how the administration favors the interests of the oil and gas industry over every other public value of the land,"

Fox In the Henhouse

Kathleen Burton Clarke, director of Interior's Bureau of Land Management

As director of BLM, Clarke has approved extensive new drilling in Utah (among other areas), where she previously headed the state's Department of Natural Resources. In Utah, Clarke similarly "sided with energy companies to allow drilling in areas that are winter ranges for elk and made it easier for the firms to petition to remove species from state protective listings," according to the Sierra Club.¹¹¹

said Jan Houlihan, vice president of the Environmental Working Group (EWG).¹¹² At risk are dozens of sensitive wildlife populations, including the Mexican spotted owl, the golden eagle, and the peregrine falcon, as well as land that partially rings Dinosaur National Monument, according to a report by EWG.¹¹³

In 1999, BLM identified this land as having wilderness characteristics and restricted new

development; however, as discussed in detail below, the Department of Interior reached a legal settlement with then Utah governor (and now EPA administrator) Mike Leavitt that lifted this protection.

Over the Bush administration's first two years, BLM also approved oil exploration at Canyons of the Ancients National Monument; the entryway to Deadhorse Point State Park, Utah's most popular state park; and near Arches National Park, despite objections from EPA, the U.S. Geological Survey, and the U.S. Fish and Wildlife Service. Environmentalists launched a legal challenge to this last project and a district court preliminarily enjoined it, finding that the administration – in what has become a pattern – failed to adequately consider environmental impacts.¹¹⁴

No New Wilderness Area

As part of a sweeping legal settlement, Interior Secretary Gale Norton lifted protection from more than 200 million acres of public land, including the red rock canyons and mesas of southern Utah, California's Case

Fox In the Henhouse

Gale Norton, secretary of Interior

Norton has worked her entire career to open public land to private industry, regardless of the environmental impact. As Colorado's attorney general, Norton argued before the U.S. Supreme Court that the Endangered Species Act is unconstitutional (a view the Court rejected). Likewise, as lead attorney for the Mountain States Legal Foundation, she and her mentor, former Reagan Interior secretary James Watt, filed a Supreme Court brief calling the Surface Mining Act unconstitutional.¹¹⁵ Now as Interior secretary, Norton is responsible for carrying out both of these laws.

Norton also worked as a lobbyist for the National Lead Company (now NL Industries) – a defendant in lawsuits involving 75 toxic waste sites and lead paint poisoning in children – and served an array of anti-environmental organizations. Besides the Mountain States Legal Foundation, this

includes Defenders of Property Rights (board member), the Washington Legal Foundation (board member), and the National Council of Republicans for Environmental Advocacy (CREA), which she founded. All of these organizations push to roll back laws and standards that protect health, wildlife, habitat, and public lands, usually with the support of corporate donations. For instance, CREA receives substantial funding from the American Chemistry Council (formerly the Chemical Manufacturers Association) and the National Mining Association.

Norton herself received significant backing from energy interests in her failed 1996 bid for Colorado's Republican nomination for the U.S. Senate; more than a third of the \$800,000 she raised came from energy interests, including \$28,570 from oil and gas companies, even though the Republican Party establishment rallied around her opponent.¹¹⁶

Mountain and its sequoia forests, New Mexico's Otero Mesa, and caribou habitat in Alaska. This land was being set aside for study and possible designation as wilderness area, but is now available for drilling, mining, logging or road-building.

Since passage of the Wilderness Act in 1964, 106 million acres have been designated as wilderness area, which by law can be visited, but not developed. If the administration gets its way, there will be no new designations.

On April 11, 2003, Norton reached agreement with then Utah governor Mike Leavitt – now head of EPA – that said the Bureau of Land Management could not review new land for designation as wilderness area (and put it off limits in the meantime) because such reviews were to have concluded in 1991, at the close of a study period mandated by Congress; any land that was set aside after 1991 had to be opened for development. This radical interpretation overturns years of precedent and not surprisingly serves the interests of the oil and gas industry.

Leavitt had sued Interior on behalf of the state of Utah to open up 2.5 million acres, which the Clinton administration had set aside. However, Norton used the case as an opportunity to end reviews – and protection – of all other potential wilderness areas, leaving them vulnerable to development as well.

Clearing the Way for Logging

The plundering of public land has also extended to timber. On Sept. 5, 2002, President Bush unveiled a proposal to allow increased commercial logging of large old-growth trees in national forests. Misleadingly named the "Healthy Forests Initiative," this plan was sold as a solution to the runaway forest fires that have plagued the West in recent years – even though old-growth trees are not the source of the problem.

Over the years, the Forest Service has allowed small trees and underbrush to build

up through a variety of misguided policies, including the practice of extinguishing low-intensity fires, while permitting timber companies to harvest the largest, most fire-resistant trees. These small trees and underbrush are what fuel catastrophic fires.

Yet instead of seriously dealing with this problem, the administration instead exploited it for the benefit of the timber industry, which gave \$3.4 million to the Bush-Cheney campaign and the Republican National Committee during the 2000 and 2002 election cycles.

For starters, the Bush plan set forth a goods-for-services arrangement that allows the Forest Service and the Bureau of Land Management to permit timber companies to cut large trees in exchange for removing commercially worthless small trees and underbrush – a potentially devastating and unnecessary tradeoff that could make the problem worse. According to a November 2000 report by the Forest Service, "timber harvest can sometimes elevate fire hazard by increasing dead-ground fuel, removing larger fire-resistant trees, and leaving an understory of ladder fuels." Nonetheless, Congress authorized this approach in February 2003.

Even more problematic, the president's plan moved to block the public from challenging timber projects in court and exempt logging from the National Environmental Policy Act (NEPA)¹¹⁷ – known as the Magna Carta of environmental protection – which directs federal agencies to assess the environmental impacts of their decisions and provide opportunity for public input.

At the time, the administration argued that NEPA was interfering with fire prevention by delaying necessary action. However, a May 2003 report by the General Accounting Office found no evidence to back this up, concluding that more than 95 percent of thinning projects move forward expeditiously. The House unfortunately ignored this finding and shortly thereafter embraced the president's plan.

The Senate was more skeptical, but eventually followed suit with its own forest-thinning legislation on Oct. 30, 2003, shortly

after a new wave of devastating fires in southern California. This legislation was less extreme than the president's original plan and the version previously passed by the House, but still put forests at significant risk. It emerged from conference committee with the House largely intact, and President Bush signed it Dec. 3.

Like the original House legislation, the new law contains measures to short-circuit environmental reviews and limit legal challenges and administrative appeals of timber projects. Moreover, it changes the way that federal courts are to consider legal challenges to forest-thinning projects; judges must weigh the consequences of inaction and risk of fire rather than placing priority on minimizing environmental damage.

Again, none of this provides any assurance that the actual problem will be addressed. Because of vague definitions in the statute, there is no guarantee that resources will be spent on proven methods to protect at-risk residential communities. (The Senate rejected an amendment by Sen. Barbara Boxer (D-CA) to address this problem.) Meanwhile, President Bush has also pressed forward with the Healthy Forests Initiative administratively. As discussed below, this has meant restricting public involvement in forest management decisions, lifting protections for endangered species, and opening precious public land to logging.

Forest Management

Plans are prepared every 15 years to guide management and commercial use of each of the country's 155 national forests. A day before Thanksgiving 2002, the Forest Service proposed to lift NEPA protections for preparing these plans,¹¹⁸ elevating the importance of commercial activity while lifting obligations for scientific monitoring and maintaining wildlife populations. Under the proposal (which still must be finalized), local forest supervisors would have more leeway to include new logging and other commercial activity (including drilling and mining) as part of their forest plans; they would no longer

Fox In the Henhouse

Mark Rey, USDA's undersecretary for natural resources and environment

Rey oversees the Forest Service, where he has pushed to open Alaska's Tongass National Forest to logging, triple logging projects in the Sierra Nevada range, and restrict public participation in forest management. Rey spent nearly 20 years (1976-1994) working for various big-timber organizations, including the National Forest Products Association, the American Paper Institute, and the American Forest Resources Alliance.¹¹⁹ He also served as vice president of forest resources for the American Forest & Paper Association, the country's leading advocate for logging in our national forests.¹²⁰

have to evaluate environmental impacts or solicit public input.

In proposing this action, the administration argued that NEPA reviews would still be conducted for individual forest projects. Yet subsequently, the administration has lifted NEPA protections for individual projects as well.

Environmental Review & Public Input

On June 4, 2003, in the name of preventing wildfires, the Forest Service ended environmental review and public input for logging projects of up to 1,000 acres that the administration deems a fire threat.¹²¹ This action was taken even though the government already has the necessary authority to clear small trees and underbrush – the fuel for wildfires – and forest area abutting communities. Instead, the exemption seems aimed at easing access to medium-sized and large trees that are far away from people and pose no risk. As stated earlier, logging of this sort can actually increase fire risk.

In promulgating this action, the administration exploited its authority to grant "categorical exclusions" from NEPA, which are supposed to be invoked only for activities that do not damage the environment.

The Forest Service has also granted categorical exclusions from NEPA for the

logging of up to 4,200 acres of burned forest (previously these so-called post-fire rehabilitation projects had to undergo NEPA review if they covered more than 10 acres), as well as smaller scale timber projects and logging of insect-infested or diseased trees.¹²² This latter exclusion specifically applies to the harvesting of up to 50 acres of live trees (if judged to benefit forest health) and the removal of up to 250 acres of dead, diseased, or insect-infested trees. Given the track record, this raises concern that a large timber project could be segmented into smaller projects to avoid NEPA requirements.

Making matters worse, the administration followed these NEPA exclusions with a rule on Jan. 9, 2004, that rolls back the public's ability to challenge misguided logging projects through administrative appeals.¹²³ "This is not about protecting homes or communities from forest fires," said Amy Mall, senior forest specialist with the Natural Resources Defense Council. "This is about trying to cut the public out from having a say in the management of their public lands. It will make it harder for people to challenge projects that would damage the environment and do nothing to protect homes or communities."

Endangered Species Consultations

Just hours after President Bush signed the forest-thinning legislation, the administration issued new standards that allow federal agencies to conduct fewer consultations under the Endangered Species Act when considering timber sales and other forest-thinning projects.

Previously, when land management agencies, such as the Bureau of Land Management or the U.S. Forest Service, were planning a forest project that could affect a listed species or designated critical habitat, they were required to formally consult with the federal wildlife agency responsible for protecting the species (such as the U.S. Fish and Wildlife Service or the National Marine Fisheries Service).

The new standards allow the land management agencies to make their own determinations as to whether projects will

have an adverse effect on endangered species. BLM, the Forest Service, and other agencies will continue to conduct formal consultations with wildlife agencies in cases where a forest project is found likely to have an adverse impact.

"This change creates the classic example of the 'fox guarding the henhouse' by having the agencies most focused on logging make these important decisions without any input from the agencies responsible for wildlife protection," according to the Defenders of Wildlife, which released a report blasting the administration's efforts to undermine the Endangered Species Act.¹²⁴

Roadless No More

While the administration has weakened forest protections, it has also moved to open protected areas to commercial logging. For timber companies, the number one target was the Clinton-era "roadless rule," which protected 58.5 million acres of pristine Forest Service lands from virtually all logging and road building.

Upon taking office, the Bush administration immediately delayed the rule's effective date and then later refused to defend the rule against legal challenges despite public sentiment; the Forest Service has received two million comments supporting the measure,¹²⁵ a record amount of comments on a federal environmental action.¹²⁶

On July 14, 2003, a federal district court judge in Wyoming struck down the roadless rule, concluding that the Clinton administration, in a rush to issue the rule before leaving office, failed to allow the public a sufficient opportunity to comment – even though the Forest Service held 187 public meetings on the issue, drawing about 16,000 people.

"The roadless rule is probably the best conservation measure of this generation," said Jim Angell, an attorney at Earthjustice, which is appealing the ruling along with other environmental organizations. "We believe the court of appeals will agree with us and reverse the lower court."¹²⁷ Unfortunately, the

administration declined to join Earthjustice in this appeal – even though just three months earlier it had promised to uphold the roadless rule.¹²⁸

Previously, in May 2001, a federal judge in Idaho struck down the rule, but it was reinstated on appeal later that December. Environmental organizations carried forward this appeal, again with the administration sitting on the sidelines.

Alaska's Tongass National Forest

Even if environmentalists ultimately prevail in court to preserve the roadless rule, Alaska's Tongass National Forest will still be on the chopping block.

The Tongass is the largest national forest in the United States and the world's largest intact temperate rainforest, covering 16.8 million acres, of which 9 million are roadless.¹²⁹

On July 15, 2003, the Bush administration temporarily exempted the Tongass from the roadless rule – a move agreed to in a backdoor legal settlement between the Forest Service and the state of Alaska. This allowed timber sales to continue while the agency developed permanent standards for the area.

The administration subsequently released final plans just before Christmas that removed protection for all 9 million acres of roadless area, and specifically put as much as 2.5 million acres at risk of logging (the Forest Service contends its plan covers 300,000 acres) despite overwhelming public sentiment. Of more than 250,000 public comments submitted on the issue, fewer than 2,000 favored removing protection from the Tongass.¹³⁰

Besides making bad environmental policy, this also could have a detrimental impact on Alaska's economy. Fishing accounts for 3,000

More Logging in Protected Areas

The Sierra Nevada range. In January 2004, the Forest Service unveiled a plan to triple logging in California's Sierra Nevada range and allow cutting of mature trees up to 29 inches in diameter, undoing Clinton-era protections. The plan also eases grazing restrictions intended to protect wildlife, including the spotted owl. This action replaces the Sierra Nevada Framework, a plan adopted in January 2001 after more than a decade of debate. That plan limited logging in 11 national forests – comprising 11.5 million acres or 10 percent of California – to protect mature trees over 12 inches in diameter, as well as the wildlife that depends on old-growth forests. Under the Bush plan, logging could increase from 191 million board feet of timber to 450 million board feet.

Giant Sequoia National Monument. In 2000, President Clinton established Giant Sequoia National Monument, protecting some of the world's oldest and largest trees over nearly 328,000 acres. However, citing the threat of forest fire, the Bush

administration decided in early 2004 to resume commercial logging in the area,¹³¹ allowing loggers to take as much as 10 million board feet of lumber per year. This includes sequoias and other mature trees of up to 30 inches in diameter and more than 100 years old.

Northwest Forest. The Bush administration has changed the landmark 1994 Northwest Forest Plan to allow increased logging over 24 million acres of public land in Oregon, Washington, and northern California. First, the Forest Service scrapped a requirement that forest managers survey for rare plants and animals before allowing logging, which will further imperil 57 species at risk of extinction, according to a federal analysis. Then, it lifted protections for endangered or threatened salmon, allowing timber companies to avoid federal scrutiny for pollution in salmon-bearing streams. These actions followed a legal settlement with the timber industry in which the administration agreed to more than double logging in the northwest forest region, including in areas of old-growth forest, threatening endangered species, such as the northern spotted owl.

Rolling Back Standards for Grazing on Public Land

The Bush administration has also moved to open public land to ranchers and their livestock. On Dec. 8, 2003, BLM proposed¹³² to overturn a 1995 Clinton standard that aimed to stop overgrazing, which had caused substantial environmental damage over the previous decades – including erosion, degraded water quality, and reduced wildlife.

As with the president's forest initiative, this plan would cut out the public from land management decisions (BLM would no longer be required to seek outside input before it issues, renews or modifies a grazing permit) while discouraging swift, decisive action to protect the environment.¹³³

Before taking protective action, BLM would have to fulfill burdensome monitoring and data collection requirements, which could take years to complete. For remedies requiring at least a 10 percent reduction in grazing, BLM would have to phase in reductions over five years – no matter the environmental damage being done. BLM could also wait two years before addressing damaging grazing – double the amount of time provided by the current standard.

Making matters worse, the agency would be unable to suspend a grazing permit if a rancher violates federal law (such as harming endangered species or destroying archaeological resources), while ranchers would be granted clear ownership title to permanent rangeland installations (such as wells, fences and pipelines) and could potentially invoke private property rights to halt environmentally protective actions.

In April 2003, a federal district court judge rebuked the Forest Service for allowing overgrazing in New Mexico's Lincoln National Forest, which ravages 90 percent of the streams in the area, according to the agency's own records.¹³⁴ Later, in November 2003, a federal judge revoked a 10-year permit for grazing on 140,000 acres of national forest in Arizona and New Mexico, faulting the Forest Service for ignoring long-term impacts on endangered species.

Such overgrazing has damaged more than 80 percent of western streams, and imperils more than 175 threatened and endangered plants and animals.¹³⁵ With the administration's rule change, the problem is likely to get even worse.

jobs in southeast Alaska, while tourism and recreation produce more than 4,000 jobs in the region, six times as much as the timber industry, according to the Forest Service.¹³⁶ Both depend on a healthy environment.

At the same time, Tongass logging is heavily subsidized by taxpayers, costing tens of millions of dollars every year. In 2002, the Forest Service spent more than \$36 million preparing timber sales and road building in the Tongass while receiving only \$1.2 million in payments from the timber industry, according to agency data.¹³⁷ In September 2003, the Forest Service estimated that several new Tongass logging projects would cost taxpayers \$2 million.

On top of opening the Tongass, the administration previously announced in June 2003 that it would also grant roadless-rule exemptions on a case-by-case basis to the lower 48 states, allowing even more logging in protected areas.

Rewarding Developers

Development destroys tens of thousands of wetlands each year, contributing to flooding, pollution runoff, and loss of habitat for fish and wildlife.¹³⁸ Yet instead of tightening environmental protections, the Bush administration has sought to appease the real estate industry, which forked over more than \$32 million to President Bush and the Republican National Committee in 2000 and 2004.¹³⁹ In 2000, the real estate industry produced 47 Bush Pioneers, and already accounts for 37 Rangers and Pioneers in 2004.¹⁴⁰

Dredging and Filling

On Jan. 14, 2002, the Army Corps of Engineers weakened environmental standards¹⁴¹ to make it easier for developers, mining companies and others to dredge

and fill wetlands. This action, among other things, revoked a requirement for acre-for-acre replacement of destroyed wetlands, lifted protection from seasonal streams, and allowed permits to be issued for commercial development projects that destroy up to three acres of wetlands – reversing a Clinton-era standard from March 2000 that reduced the maximum allowable damage to half an acre. EPA objected that these changes lacked a scientific basis, and the Fish and Wildlife Service drafted comments predicting “tremendous destruction of aquatic and terrestrial habitat.” Unfortunately, Interior Secretary Gale Norton blocked these comments from being delivered.¹⁴²

‘Offsetting’ Wetlands Destruction

In 1989, the president’s father set the goal of “no net loss” of wetlands. This means that to receive a Corps development permit, developers must agree to either restore the affected wetlands or create replacement wetlands. However, in 2001, two separate reports by the National Academy of Sciences¹⁴³ and the General Accounting Office revealed that this policy has substantially failed, as wetlands continue to be destroyed at an alarming rate.

Florida Paybacks

Florida is home to 12 Rangers and Pioneers from the real estate industry, and the Bush administration has returned the favor by opening environmentally fragile wetlands to development.¹⁴⁷

In 2000, President Clinton approved an \$8 billion program to restore the Eastern Everglades, which had been decimated by years of development. The Bush administration is now allowing the same sort of development in the Western Everglades, including by Pioneers Itchko Ezratti and Fred Pezeshkan. All senior EPA career officials in the area have either quit in protest or been relocated.

In one case, EPA biologist Bruce Boler was continually overruled when he denied development permits in the Western

Nonetheless, just after these reports, in October 2001, the Bush administration issued “clarifying” guidelines¹⁴⁴ that further undermined the policy of acre-for-acre replacement of wetlands. Specifically, this action permits the Corps to approve projects based on “mitigation” efforts such as enhancement of existing wetlands, buffer strips along streams, ponds and other waters, or deepening of wetlands for swimming or fishing.¹⁴⁵ Needless to say, this is a much more subjective standard than acre-for-acre replacement, and clears the way for numerical loss of wetlands, which is especially disturbing given the Corps’ track record and the administration’s cozy relationship with the real estate industry.

Isolated Wetlands

On Dec. 16, 2003, the Bush administration abandoned a proposal, sought by developers, to remove federal protection for as much as 20 million acres of wetlands after receiving more than 133,000 comments in opposition from environmentalists, sportsmen, state officials, and others. However, questions still remain about the administration’s sincerity.

In offering the proposal last January,¹⁴⁶ EPA claimed to be responding to a

Everglades, and later resigned when EPA accepted a developer-financed study that concluded wetlands discharge more pollution than they absorb.¹⁴⁸ One of the developers who helped finance this study was Al Hoffman – a 2004 Ranger, 2000 Pioneer, and current finance chairman of the Republican National Committee.

Peter Rummell, a former Disney executive, has similarly benefited from his Pioneer status. As CEO of St. Joe Co., he plans to turn the forests, wetlands and small towns of Northwest Florida into high-priced golfing communities, and has lobbied for a giant new regional airport. President Bush has declared this airport a “high priority” and earmarked \$2 million for its planning; the total cost is expected to be \$200 million, with 80 percent financed by taxpayers.

Lifting Protections for Sewage Treatment

On November 3, 2003, EPA proposed new guidance that would allow water treatment plants to dump partially treated sewage into the ocean and other waterways during routine rainfall. This would significantly expand what's known as the "bypass" regulation, which currently allows dumping of untreated sewage only during extreme weather conditions, such as a hurricane, where there is no feasible alternative. The proposed guidance would allow treatment plants to bypass sewage standards without consideration of feasible alternatives, such as expanded storage tanks.

Standard sewage treatment involves a three-step process: solids removal, biological treatment, and disinfection.¹⁴⁹ Under the administration's proposal, facilities could bypass the second step and "blend" partially treated sewage with fully treated wastewater before discharging it into waterways. However, this second step – biological treatment – is what removes most pathogens, which include bacteria (such as *E. coli*), viruses (such as hepatitis A), protozoa (such as *Cryptosporidium* and *Giardia*), and helminth worms.

Needless to say, this would put the public at substantial risk of illness, ranging from

diarrhea and vomiting to respiratory infections and hepatitis. Already sewage discharges significantly contribute to an estimated 7.1 million mild-to-moderate cases of waterborne disease, and 560,000 moderate-to-severe cases, not to mention numerous beach closures and fish kills.

Making matters worse, the Bush administration has also proposed to slash \$500 million for sewage treatment while curtailing water enforcement and withdrawing a Clinton-era proposal to control sewage overflows (see page 64 for discussion).

"The Bush administration's proposed policy change is upside down," said Nancy Stoner, director of the Natural Resources Defense Council's clean water project. "It should require treatment plants to upgrade their aging sewer systems and help them out with more federal funding. Instead, it cut funding and now is proposing to allow facilities to discharge viruses and bacteria into our water."¹⁵⁰

In doing so, the administration also appears to have violated the Clean Water Act, which requires all wastewater to meet sewage treatment standards. Indeed, EPA has explicitly stated in several enforcement cases that "blending" violates the law. Nonetheless, in what has become a pattern, the Bush administration went forward anyway.

contentious 5-4 decision by the Supreme Court,¹⁵¹ which determined that the Clean Water Act covers only "navigable waters," and cannot be applied to isolated intra-state ponds and wetlands that have been protected only because of the presence of migratory birds. Notably, however, the court's ruling was narrow and did not direct the wholesale policy changes initially pursued by EPA. The administration's change of heart recognizes this.

Nonetheless, the administration has not repealed internal guidance – issued at the same time as the proposal – to staff at EPA and the Army Corps of Engineers that if fully implemented would have the same effect as the proposed rule change.

"In order to fully enforce the Clean Water Act and protect all waters, the Bush administration must not only stop the proposed rulemaking, but must rescind the guidance policy," said Joan Mulhern, senior legislative counsel for Earthjustice.¹⁵² Without federal protection, isolated wetlands – which make up nearly one-fifth of the nation's wetlands – are highly vulnerable because most states do not have programs in place to defend them.

Exempting the Military from Environmental Laws

In November 2003, President Bush signed a \$400 billion defense spending bill that exempts the military and its contractors from compliance

with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

Under these exemptions, the Navy can test sonar systems that could injure whales, dolphins and other protected marine mammals, and federal wildlife officials cannot designate DOD-managed land as “critical habitat.” This land covers more than 25 million acres, home to more than 300 endangered species.¹⁵³

The administration had initially asked Congress to create military exemptions from five major environmental laws,¹⁵⁴ including the Clean Air Act, pointing to the threat of terrorism and the war in Iraq.

In addition, Deputy Defense Secretary Paul Wolfowitz issued a memo in March

2003 instructing the secretaries of the Army, Navy, and Air Force to abandon their “past restraint” in seeking presidential waivers from 10 of the nation’s major environmental laws.¹⁵⁵ Many environmental laws allow exemptions for activities that the president deems “necessary” for reasons “of national security.” However, these exemptions have never been used,¹⁵⁶ and indeed there seems to be little reason.

A June 2002 investigation by the General Accounting Office was unable to corroborate administration claims that environmental laws hinder military preparedness, and in fact found training readiness to be high. Then EPA Administrator Christie Todd Whitman concurred, saying, “I don’t believe there is a

Foxes In the Henhouse

John Paul Woodley, assistant secretary of the Army, Office of Civil Works (Army Corps of Engineers)

On Aug. 22, 2003, President Bush signed the recess appointment of Woodley to head the Army Corps of Engineers. In this position, Woodley is rewriting the Corps’ “master manual,” which sets standards for water levels and environmental quality in the nation’s rivers and seacoasts.

For almost two years prior, Woodley served as the Pentagon’s assistant deputy undersecretary for the environment, where he led the administration’s efforts to exempt military operations from environmental laws.

Before joining the administration, Woodley served as Virginia’s secretary of natural resources from 1998 to 2001, racking up a woeful environmental record.¹⁵⁷ During this time, for instance, Virginia experienced widespread fish loss attributed to Pfiesteria microbes; however, the Virginia DEQ bowed to the poultry industry and, unlike neighboring states, chose not to track sales of chicken manure (on which the microbes thrive) to ensure that it does not enter the state’s waters.

Donald Schregardus, the Navy’s deputy assistant secretary for the environment

Schregardus was initially nominated to head EPA’s Office of Enforcement and Compliance Assistance, but was forced to withdraw his nomination in the face of fierce Senate opposition over his abysmal record as head of the Ohio EPA from 1991 to 1999. Subsequently, the administration appointed him as the Navy’s deputy assistant secretary for the environment, where he is supposed to oversee environmental compliance and site cleanup. This is a new position – created when another position was split in two, perhaps to find a place for Schregardus – and does not require Senate confirmation.

During Schregardus’ tenure at Ohio EPA, the agency reduced enforcement actions, backed a state law exempting polluters from litigation, and openly defied new federal air pollution standards.¹⁵⁸ A federal judge also found that Schregardus had suppressed information about school children exposed to cancer-causing chemicals in Marion, Ohio, and that he had fabricated charges against the government’s lead investigator.¹⁵⁹ Based on Schregardus’ performance, Ohio environmental groups petitioned U.S. EPA to revoke the state’s authority to enforce federal laws.¹⁶⁰

training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation.”¹⁶¹

The administration’s efforts imply that we must sacrifice public health and the environment for security. Yet ironically, Vice President Cheney rejected this sentiment shortly after the Persian Gulf War when he served as secretary of Defense: “Defense and the environment is not an either-or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns. The real choice is whether we are going to build a new environmental ethic into the daily business of defense.”¹⁶² The administration has provided its answer.

Undoing Protections for Workers

As with the environment, special interests hold the trump card over the American worker. The first major piece of legislation signed by President Bush repealed ergonomics standards to prevent repetitive motion injuries on the job. Later, the administration declined to even collect information on the extent of ergonomic injuries, not wanting facts to get in the way of the predetermined decision to do nothing.

Meanwhile, the administration has weakened health protections for miners, extended driving hours for truckers, slashed overtime pay, and allowed wages of migrant workers to stagnate, contrary to the law.

Ergonomic Hazards

In March 2001, at the urging of President Bush, Congress voted largely along party lines to repeal ergonomics standards to prevent injuries caused by repetitive motion on the job – the most pressing health and safety issue confronting the workplace today.

These standards¹⁶³ were issued at the end of the Clinton administration after more than a decade of study. In fact, Elizabeth Dole initiated the process in 1990 as labor

secretary under the president’s father. By 2001, the evidence for action had become overwhelming.

“In 1999, nearly 1 million people took time away from work to treat and recover from work-related musculoskeletal pain or impairment of function in the lower back or upper extremities,” according to a January 2001 report from the National Academy of Sciences. “Conservative estimates of the economic burden imposed, as measured by compensation costs, lost wages and lost productivity, are between \$45 [billion] and \$54 billion annually.” (These injuries disproportionately affect women, who make up 44 percent of the workforce but suffer 64 percent of the repetitive motion injuries that result in lost work time.¹⁶⁴)

To address this problem, the Clinton standard required employers to establish programs – tailored to their particular workplace – to address ergonomic hazards where employees have suffered work-related musculoskeletal disorders (MSDs). This programmatic approach included five basic elements – management leadership and employee participation, job hazard analysis and control, training, medical management, and program evaluation – modeled after ergonomics programs implemented by many employers in a variety of industries, including auto assembly, garment and textile, health care and communications.

According to OSHA, this standard would have produced \$9.1 billion in annual benefits – a conservative estimate that does not include most productivity improvements, the benefits of early detection, or cost savings to workers – and prevented more than 4.6 million injuries over 10 years, an average of 460,000 injuries a year.

Unfortunately, the Bush administration ignored these findings and instead bowed to business interests, which made repeal of the ergonomics standards a top priority. Major opponents of the standards, including UPS, FedEx, Anheuser Busch, the U.S. Chamber of Commerce and others, contributed more than \$11 million to Republican lawmakers during the 2000 election cycle.¹⁶⁵

Foxes In the Henhouse

Elaine Chao, secretary of Labor

Chao has led the administration's efforts to block ergonomic protections and slash overtime pay. Previously, she was a Bank of America executive, a scholar at the Heritage Foundation – a conservative think tank that has strongly opposed worker protections – and served on numerous corporate boards,¹⁶⁶ where she amassed a small fortune in stocks and options. (She also served as director of the Peace Corps.). During 2000, Chao reported earning at least \$480,000, of which \$38,000 came from serving on the board of Northwest Airlines.¹⁶⁷ As a result, she was forced to recuse herself from President Bush's decision in March 2001 to stop a strike by Northwest airline mechanics.¹⁶⁸

Of course, Chao was not Bush's first choice for Labor secretary. That was Linda Chavez, a strong opponent of affirmative action, bilingual education, and minimum wage increases. Chavez withdrew her nomination, which faced substantial opposition from Senate Democrats, when it was discovered that she had been housing an illegal Guatemalan immigrant as a domestic. Chavez testified in December 1993 against Clinton nominee Zoe Baird for employing an illegal alien and failing to pay her Social Security.

John Henshaw, assistant Labor secretary for occupational, safety and health

As head of the Occupational Safety and Health Administration, Henshaw has declined to issue a single significant health or safety standard, and approved the rollback of reporting requirements for ergonomic-related injuries and hearing loss. Henshaw previously worked for chemical manufacturing giant Monsanto and one of its spin-offs, Solutia. Over the last 20 years, Monsanto has compiled a lengthy rap sheet of environmental contamination and worker neglect.¹⁶⁹

Gary Visscher, deputy assistant secretary for occupational safety and health

Visscher served as a commissioner on the Occupational Safety and Health Review Commission (OSHRC) during the

Clinton administration and was a longtime congressional aide before that. During his tenure at OSHRC, Visscher was known to be the commission's lone Republican and, in October 2000, issued a dissenting opinion in the landmark ergonomics case against Beverly Enterprises, one of the nation's largest nursing home operators. In this case, OSHRC concluded that Beverly violated the "general duty" clause of the Occupational Safety and Health Act by failing to address repetitive-motion injuries at five Pennsylvania facilities. Visscher resigned his OSHRC post in November 2000 and was named vice president for employee relations at the American Iron and Steel Institute, which fought to overturn the Clinton-era ergonomics standards.

Eugene Scalia, former Labor Department Solicitor

In the face of intense Senate opposition to Scalia's nomination, President Bush installed him through a recess appointment, and Scalia eventually resigned in January 2003 after his appointment lapsed. At the law firm Gibson, Dunn & Crutcher, Scalia specialized in representing management in labor disputes and consistently downplayed the importance of worker safety.

In particular Scalia was a leader in the anti-ergonomics movement, referring to repetitive-stress injuries as "junk science," "quackery," "strange," and a "psychosocial issue," implying that those who suffer are faking the symptoms.¹⁷⁰ He represented a number of corporate interests seeking to hold off ergonomics protections – including the United Parcel Service, Anheuser-Busch, the Rubber Manufacturers Association, and the American Trucking Associations – and traveled to California, North Carolina, and Washington state to help fend off state-level ergonomics initiatives.

"The Bush administration could not possibly have found anyone who is more vehemently against regulation and enforcement of ergonomic hazards than Eugene Scalia," said Peg Seminario, health and safety director at the AFL-CIO.

Shortly after taking office, President Bush met with Republican congressional leaders and encouraged them to vote down the ergonomics standards¹⁷¹ through the little-used Congressional Review Act, which gives Congress 60 legislative days to reject executive branch regulations. The White House also issued a formal statement in support of congressional repeal just before the vote. This approach allowed the administration to forgo administrative action and avoid likely legal challenges.

In signing the repeal, President Bush vowed that his administration would pursue a “comprehensive approach” to address ergonomics injuries, implying that the problem was with the particulars of the Clinton standards, not standards per se. Yet more than a year later, on April 5, 2002, the Department of Labor released its feeble “replacement plan”¹⁷² – a voluntary initiative that was nothing more than a smokescreen to mask the administration’s unwillingness to address the problem. As part of this plan, DOL has subsequently unveiled unenforceable industry-specific guidelines for nursing homes, grocery stores, and poultry plants, with more promised. (Only the nursing home guidelines have been finalized.)

Shortly before releasing these guidelines, Labor Secretary Elaine Chao committed “to help workers by reducing ergonomic injuries in the shortest possible time frame.” Since then, however, millions of workers have suffered ergonomic injuries, with no relief in sight. Special interests – which have fought tooth and nail against any meaningful action for more than a decade – are still running the show.

Recording of Ergonomic Injuries & Hearing Loss

In January 2001, the Clinton administration issued revised standards for recording workplace injuries and illnesses.¹⁷³ The National Association of Manufacturers immediately sued the Occupational Safety and Health Administration in an effort to invalidate the standards – which were scheduled to go into effect in January 2002 – raising particular objections over recording requirements

for musculoskeletal disorders (ergonomic injuries) and hearing loss.

At first, the Bush OSHA responded by staying these provisions for one year. In July 2002, it then weakened the requirements for recording hearing loss.¹⁷⁴ Under the Clinton standard, employers were obligated to note when a worker had lost 10 decibels of hearing; the Bush administration raised this threshold to 25 decibels.¹⁷⁵ By OSHA’s own estimate, this means that 135,000 fewer cases will be recorded each year, depriving employers, workers, unions, and the government of a valuable tool for identifying and preventing work-related hearing loss.

On Dec. 17, 2002, OSHA again delayed the recording requirements for both hearing loss and ergonomic injuries by another year¹⁷⁶ (until January 2004), and on June 30, 2003, OSHA issued its final determination that employers do not have to note when workers report ergonomic injuries.¹⁷⁷

Coal Dust

In March 2003, the Bush administration proposed to weaken coal dust standards meant to protect miners from black lung disease and other respiratory problems.

Specifically, this proposal would permit dust levels to increase fourfold, from 2 milligrams per cubic meter to 8 milligrams. The National Institute of Occupational Safety and Health has found that miners are still contracting black lung at the 2 milligram standard. However, according to the Bush Mine Safety and Health Administration, protection could be ensured if miners are required to wear cumbersome respirators – an apparent violation of the Coal Mine Health and Safety Act, which directs that respirators should be available but “shall not be substituted for environmental control measures in the active workings.”¹⁷⁸

Moreover, the proposal would do away with the requirement that mine operators sample dust during 30 shifts per year, and instead give exclusive responsibility for testing to MSHA. Done right, this could be a good thing given that operators have

Foxes In the Henhouse

David D Lauriski, head of the Mine Safety and Health Administration

Why would MSHA propose to weaken standards for coal dust and particulate matter? The answer appears to lie with Lauriski, who spent more than 30 years in the coal mining industry. While manager of Energy West Mining Co., he wrote a paper in 1997 arguing that dust standards should be loosened, and signed a document asking MSHA to allow respirators in lieu of dust control.¹⁷⁹ Lauriski also served as chairman of the Utah Board of Oil, Gas, and Mining, and as a board member of the Utah Mining Association.

Lauriski has also been accused of undermining an investigation into a spill by Martin County Coal – a subsidiary of coal-industry giant Massey Energy – that sent an estimated 306 million gallons of water and black coal slurry into Kentucky's Big Sandy River and its tributaries – 28 times the amount spilled in 1989 by the Exxon Valdez.¹⁸⁰ In protest, Jack Spadaro – the former superintendent of the National Mine Health and Safety Academy in Berkley, W.V. – resigned in 2001 from his position on the team investigating the incident.¹⁸¹ Spadaro also accused Lauriski of rewarding no-bid contracts to former business associates, prompting an ongoing investigation at the Department of Labor.

John Caylor, MSHA's deputy assistant secretary

Caylor, Lauriski's deputy, previously worked for Cyprus Minerals, Amax Mining, and Magma Copper. Spadaro also complained to the Labor Department's inspector general that Caylor steered a \$300,000 sole-source, no-bid contract to a company, Jerry Silver and Associates, headed by a close friend.¹⁸² Spadaro alleges that Caylor threatened to fire him for making this charge.

John Correll, Labor's deputy assistant secretary

Correll previously worked for Amax Mining and Peabody Coal. Spadaro also charges that Correll threatened to fire him for blowing the whistle on MSHA's no-bid contracts.¹⁸³

frequently been caught cheating on dust compliance. However, the proposal does not specify the frequency of testing, and the United Mine Workers of America estimates that testing would fall 90 percent to as little as three times a year.¹⁸⁴

A newly developed monitoring device could provide much greater protection. It would be attached to a miner's cap light and take continuous readings that could be downloaded at the end of each shift. In September 2003, the Senate passed an appropriations amendment, introduced by Sen. Arlen Specter (R-PA), requiring the administration to redo its proposal if final testing of this technology proved successful.¹⁸⁵ However, the administration prevailed in the House – which narrowly defeated a similar amendment (212-210) several months earlier – and the new monitoring device appears likely to stay on the shelf.

Diesel Matter & Miners

The administration has also taken steps to weaken protections for miners exposed to diesel particulate matter (DPM), a long-recognized cause of lung cancer.

At the end of the Clinton administration, in January 2001, the Mine Safety and Health Administration published a final standard for metal and non-metal mines to reduce exposure to DPM. Specifically, this standard directed mines to reduce the concentration of carbon to 400 micrograms per cubic meter of air by July 2002, and then to 160 micrograms by January 2006.¹⁸⁶

However, just as the interim limit was to kick in, MSHA announced – without ever soliciting public input – that it would not issue citations for noncompliance for one year, until July 19, 2003.¹⁸⁷ As this date approached, MSHA again chose to undercut the standard, issuing a compliance guide that allowed mine operators to substitute the use of personal protective equipment (PPE), such as masks, for compliance with the interim limit.¹⁸⁸

The following month, on Aug. 14, MSHA proposed a new standard that echoed this compliance guide and indicated that the final limit would be revisited "in the near future."¹⁸⁹

Driving Hours for Truckers

On April 28, 2003, the administration issued new standards that it says will “improve highway safety” but actually extend the amount of time truckers can stay behind the wheel each day.¹⁹⁰

The new “hours of service” rules allow truckers to drive for 11 straight hours instead of 10 (while requiring a 10-hour break period, up from 8). Moreover, there is no requirement for on-board electronic devices to verify how much time truckers actually spend on the road, rendering the hour limits unenforceable.

Trucking companies backed the change, while safety advocates and the Teamsters union, which represents truckers, opposed it. “Decades of research, both on commercial drivers and shift workers, has shown that increasing the length of time a worker must spend performing certain tasks correspondingly reduces alertness and performance,” according to Parents Against Tired Truckers (PATT), which points out that 5,082 people were killed in collisions involving a large truck in 2001, accounting for one out of eight traffic fatalities.¹⁹¹

Ironically, the Department of Transportation was forced to update the standards – which have been unchanged since 1939 – after losing a lawsuit brought by Teamster members, Public Citizen, and PATT, which sought to reduce the amount of time behind the wheel.

Overtime Pay

On April 23, 2004, the Department of Labor altered overtime rules in a way that could strip millions of their right to time-and-a-half pay for hours worked beyond 40 in a single week.¹⁹² However, several weeks later, the Senate voted to block this plan, and the House seemed like it might do the same.

The previous year, in the face of a presidential veto threat, the House voted with the Senate in support of an appropriations amendment blocking the administration’s overtime rollback (then just a proposal). Unfortunately, in November 2003, congressional negotiators dropped this amendment after GOP leaders threatened to cut \$4.7 billion from

social, health care, and education programs.¹⁹³ The administration moved to soften its original proposal in response to this congressional opposition, but the general thrust of the final action remains the same.

The old standard, which remains in effect until late August 2004, excludes workers from overtime pay if they meet three conditions. First, the employee must make more than \$155 a week (or \$170 for professionals) – a pay rate that has been unchanged since 1975. Second, the employee must make a salary, not an hourly wage. And third, the employee must perform work that is primarily “administrative,” “professional,” or “executive” in nature.

On the positive side, the Bush administration’s plan raises the pay rate to \$450 a week, equivalent to an annual salary of \$23,660. However, this modest increase is not indexed for inflation and thus will protect fewer workers over time.

At the same time, the administration is also dramatically increasing the number of workers who qualify as administrative, professional, or executive. For example, the new rule would lower education levels required to be considered administrative or professional – cooks and funeral embalmers, among others, would be considered exempt learned professionals – while low-level working supervisors would be considered “executives.” This includes, for instance, an employee who supervises two employees, but spends 90 percent of his time frying French fries and flipping burgers.¹⁹⁴

Wages for Migrant Workers

The administration delayed publication of minimum wage standards for temporary foreign workers, allowing tens of thousands of farm workers – the vast majority of Mexican descent – to be underpaid for several years.

Workers in the H-2A guest worker program, which permits employers to hire temporary foreign farm workers, are paid based on standards established annually by the Department of Labor. However, Labor Secretary Elaine Chao delayed publication of

the standards for the administration's first two years, allowing employers to pay the 2000 wage rate.¹⁹⁵

In a case brought by the United Farmworkers of America and others, a court subsequently found that this delay violated the Department of Labor's own rules¹⁹⁶ – forcing Chao to issue new wage rates, which were published in February 2003.

Stripping Patient Protections

The Bush administration has stripped away protections for medical patients at the urging of HMOs, hospitals, and nursing homes, which combined contributed more than \$5.5 million to President Bush's campaign efforts in 2000 and 2004.¹⁹⁷ In one of its most far-reaching actions in any area, the administration significantly weakened medical privacy protections – potentially allowing personal records to be used for drug marketing – and later relaxed standards for nursing home and emergency room care.

Medical Privacy Safeguards

On Aug. 14, 2002, the Bush administration weakened medical privacy protections¹⁹⁸ issued at the end of the Clinton administration. As a result, personal records can be shared without patient consent between doctors, pharmacies, pharmaceutical companies, employers, insurance companies, and the government – frequently for purposes other than health care, such as drug marketing.

The Clinton standards¹⁹⁹ (which the Bush administration immediately suspended upon taking office) sought to put an end to this by requiring health care providers to obtain written patient consent before sharing medical records. However, the Bush revisions revoked this obligation and instead merely require that patients be informed of privacy practices. This shifts control of sensitive medical records from the patient to the provider and again allows such information to be sold to pharmaceutical companies for marketing purposes regardless of the patient's wishes.

During the 2000 campaign, President Bush expressed support for strong medical privacy protections and the principle that a “company cannot use my information without my permission to do so.”²⁰⁰ In this case, however, that principle has not been honored.

Making matters worse, the Bush revisions also permit drug companies to pay pharmacists to recommend that patients switch from one drug to another without divulging details of the financial arrangement. By contrast, the Clinton standards mandated full disclosure of financial support behind marketing activities, and allowed patients to opt out of promotional mailings (though marketing based on medical records was still permitted). Patients will now be left in the dark and have no way to halt the flow of record-based marketing.

In devising these changes, the Bush administration convened advisory panels stacked heavily in favor of industry for a three-day discussion in August 2001. “Almost 100 percent of the invited speakers were from the health care industry – people who wanted to see changes that made it easier for industry to get information,” according to Robin Kaigh, a New York lawyer and medical-privacy specialist, who was in attendance.²⁰¹

Among others, this included representatives from the Health Insurance Association of America, Kaiser Permanente (the nation's largest nonprofit HMO), the National Association of Chain Drug Stores, and the American Pharmaceutical Association. During the 2000 election, these interests gave generously to President Bush's campaign; insurance companies contributed \$1.7 million, HMOs gave more than \$260,000, and drug companies gave nearly \$500,000 – making Bush the top recipient from all three industries.

The Department of Health and Human Services received more than 50,000 public comments on the medical privacy standards, the overwhelming majority urging strong privacy protections. In the end, however, the administration once again sided with its wealthy campaign contributors.

Nursing Home Care

On Sept. 26, 2003, the Bush administration eased nursing home standards to allow workers with just one day of training help residents eat and drink.²⁰² Previously, only licensed health care professionals or certified nurse aides were permitted to perform such duties.

These “feeding assistants” will be required to complete just eight hours of training – compared to 75 hours of training required for nurse aides – and they do not need to be trained by licensed professionals. In fact, the rules merely state that feeding assistants must attend a state-approved training course, over which the federal government will not have oversight.

Feeding assistants will not be required to complete any kind of test or demonstration of competence and will be permitted to feed residents in their rooms without any direct supervision. The proposed standards, issued in March 2002, would have required feeding assistants to work under the direct supervision of a nurse who was “immediately available to give help.” The final standards, however, indicate that feeding assistants will be expected to call a supervisory nurse on the resident call system when there is an emergency or a need for help.

“These regulations will allow workers who are virtually untrained to work virtually unsupervised with people who are frail, suffering from multiple medical conditions, and unable to feed themselves,” said Donna Lenoff of the National Citizens’ Coalition for Nursing Home Reform. “Read these regulations carefully. They would permit a 16-year-old on a wing without a single licensed nurse to perform the Heimlich maneuver on your 90-year-old grandmother if she choked. If she continued to choke or went into cardiac arrest? These regulations say this 16-year-old with eight hours of training in nursing care should ring the call bell for a nurse.”²⁰³

Nursing homes have lauded the rule changes, claiming they will help free up nurses and nurse aides to perform more complex tasks. But the new standards may

actually exacerbate staffing problems by encouraging nursing homes to hire low-paid feeding assistants instead of nurses’ aides.

Sen. Charles Grassley (R-IA) and Rep. Henry Waxman (D-CA) sent a letter to HHS Secretary Tommy Thompson urging him to reconsider the new standards. “Feeding an elderly resident who may be uncommunicative and may have difficulty chewing or swallowing is a complicated task that should be performed only by skilled and properly trained and supervised personnel,” the congressmen wrote.²⁰⁴

Emergency Room Standards

On Sept. 9, 2003, the Bush administration eased emergency room standards in ways that may make it more difficult to receive medical care.²⁰⁵

In particular, the new measures give hospitals greater discretion in developing “on-call” lists for staffing emergency rooms. Doctors are now permitted to be on-call simultaneously at more than one hospital and can perform elective surgeries while on-call.

The change also makes it easier to deny patients emergency room care. Previously, patients were entitled to emergency care at all hospital departments, including those not at the main hospital. Now, an “off-campus” facility is only required to provide emergency care to everyone if it is licensed as an emergency department; if it is “held out” as a place for emergency care; or if emergency treatment counted for one-third of its outpatient visits in the previous calendar year.

In making this change, the new standards narrow the definition of “hospital property” where individuals are entitled to care. The new definition excludes areas or structures of the hospital’s main building that are not part of the hospital, such as physician offices, rural health clinics, and skilled nursing facilities. As one commenter pointed out, this is worrisome in that individuals seeking medical care may be confused or agitated and have trouble determining whether a particular area is devoted to emergency care. In some cases individuals may actually be physically

unable to proceed to the proper emergency treatment area.

"This really speaks volumes about the administration's priorities that it focused on limiting emergency room care and has dismally failed to make any progress in expanding coverage for the growing number of people who are uninsured," said Ron Pollack, executive director of Families USA.²⁰⁶

Undoing Food Labeling Protections

Food labeling requirements allow American consumers to make informed decisions about what they put into their bodies. However, food manufacturers in many cases would prefer to keep the public in the dark. Not surprisingly, the Bush administration has responded, moving to weaken labeling requirements for health claims, olestra, country of origin, and "dolphin-safe" tuna.

Health Claims on Food Labels

In July 2003, the administration relaxed restrictions for making claims about the health benefits of food products.²⁰⁷ This action allows food manufacturers to petition FDA for approval of health claims based on preliminary scientific information – in apparent violation of the Nutrition Labeling and Education Act of 1990, which demands that health claims be supported by "significant scientific agreement." The FDA will even allow a manufacturer to claim health benefits when evidence suggests the claim is likely false, so long as there is an accompanying disclaimer.

For implementation, the agency offered the possibility of using an A-through-D scale to rate health claims, with "A" indicating significant scientific agreement backing the assertion. Those claims ranked at levels B-through-D would be considered qualified health claims and would be accompanied by disclaimer language. According to the agency, the lowest level claim, "D," would be qualified by such statements as, "Very limited and preliminary scientific research suggests that...

FDA concludes that there is little scientific evidence supporting this claim."²⁰⁸

"The FDA's new plan is a dereliction of its duty to enforce the law that Congress enacted," said Peter Lurie, deputy director of the Health Research Group at Public Citizen, which along with Center for Science in the Public Interest is challenging the change in court. "The FDA is essentially saying that unproven or misleading claims are okay, as long as the food label also says that the claims might not be true. The agency's scheme is another in a growing list of Bush administration actions that put business's financial interests ahead of consumer health."²⁰⁹

Olestra Labeling Requirements

In August 2003, the Food and Drug Administration lifted requirements that food containing olestra, a zero-calorie fat substitute, bear a statement informing consumers that the additive might cause gastrointestinal problems.²¹⁰

FDA approved olestra for use in 1996 but required foods containing the fat substitute to be labeled with the following statement in a boxed format: "THIS PRODUCT CONTAINS OLESTRA. Olestra may cause abdominal cramping and loose stools. Olestra inhibits the absorption of some vitamins and other nutrients. Vitamins A, D, E, and K have been added."

The administration's move benefits Procter & Gamble, the main manufacturer of the additive, which gave more than \$153,000 to Republicans in the 2002 election cycle. Consumers, however, will be left in the dark, which is particularly alarming considering that more than 20,000 people have filed adverse-reaction reports related to olestra – more than the FDA has received for all other additives combined.²¹¹ FDA will continue to require food manufacturers to add vitamins A, D, E and K to products containing olestra to compensate for the additive's effects on these nutrients.

Country-of-Origin Labeling

At the urging of the Bush administration, Congress voted to block implementation of standards that require meat and meat

products to bear a label indicating their country of origin.

These country-of-origin labeling (COOL) requirements, which were mandated by the 2002 farm bill, were conceived to help consumers identify American-made products, and gained further credence after the discovery of mad cow disease in Canada.

Rep. Henry Bonilla (R-TX), motivated by opposition from the meat industry,²¹² tacked on a provision to the FY 2004 agriculture appropriations bill prohibiting the use of funds until 2006 to implement country-of-origin labeling for meat and meat products. (This restriction does not affect COOL requirements for other foods such as seafood, produce and peanuts.) Rep. Dennis Rehberg (R-MT) offered an amendment to strip Bonilla's rider from the bill, but it failed by a vote of 193 to 208, and President Bush signed it into law in January 2004. The meat industry now has two years to try to permanently kill COOL.

Fox In the Henhouse

Chuck Lambert, USDA's deputy undersecretary for marketing and regulatory programs

Before arriving at USDA in December 2002, Lambert spent 15 years at the National Cattlemen's Beef Association, the lobbying group for the cattle industry.²¹³ He is now responsible for regulating the meat packing industry, which convinced the administration to oppose country-of-origin labeling.

Dolphin-Safe Tuna

At the end of 2002, the Commerce Department decided to allow countries, such as Mexico, to label their tuna "dolphin safe" even if dolphins were chased and encircled in nets in order to catch fish swimming beneath them.

More than seven million dolphins have been killed by this fishing technique since the 1950s, according to Earth Island Institute, one of several environmental groups suing to reinstate the old standard – under which imported tuna cannot be labeled "dolphin

safe" if caught by using nets on dolphins. On April 10, 2003, these groups won a preliminary injunction against the Bush action that is still in place.²¹⁴

At the time of the administration's decision, Commerce Secretary Don Evans made the legal determination that dolphins had suffered "no significant adverse impacts" from tuna fishing. However, documents turned over to Earth Island Institute during litigation show that the administration knew this wasn't true.²¹⁵ "A determination of 'no significant adverse impact' is not supported by the science," read one internal Commerce Department document just weeks before the decision. Indeed, Commerce Department scientists found that depleted dolphin populations, likely caused by tuna fishing, were not recovering, but the administration ignored these conclusions.

Relaxing Media Ownership Rules

On June 2, 2003, the Federal Communications Commission issued controversial rules that permitted media conglomerates to own television stations reaching up to 45 percent of the national audience – up from 35 percent – and acquire up to three TV stations, eight radio stations, and a daily newspaper in the same market.

"These new rules, if implemented, would allow media corporations to consolidate control over more outlets than ever before, especially for lower income people who can't afford satellite cable and the Internet," said Pete Tridish of the Prometheus Radio Project, a group suing to overturn the FCC's changes – which were suspended by a federal appeals court pending judicial review.

Congress also registered similar concerns, and on Sept. 16, 2003, the Senate passed a "resolution of disapproval," 55 to 40, to block the rules. Michael Powell, President Bush's appointment to chair the FCC, responded by complaining about "a concerted grassroots effort to attack the commission from the outside in."²¹⁶ Later, both the House and

Senate approved an amendment to the 2004 omnibus spending bill that would have kept in place the 35 percent standard for national media ownership.

In the end, however, congressional negotiators caved to White House pressure

and reached a compromise to raise the cap to 39 percent, conveniently allowing News Corp. (which owns Fox) and Viacom (which owns CBS) to keep their existing stations. The White House had previously threatened to veto any legislation blocking the FCC standards.

Money Talks

Media conglomerates have given \$7.6 million to Bush campaign efforts in 2000 and 2004, and produced 17 Rangers and Pioneers.²¹⁷ This investment has been especially rewarding for Univision Chairman and CEO Jerry Perenchio, a 2004 Pioneer.

In September 2003, the FCC's 3-2 Republican majority approved the \$3 billion merger of Univision and Hispanic Broadcasting, giving Univision control over 80 percent of the Spanish-language radio and television market.

Hispanic Broadcasting – whose largest shareholder, Clear Channel, has produced \$119,582 for President Bush – hired Bush Pioneers Haley Barbour and Lanny Griffith to lobby on behalf of the deal. Previously, during the 2000 presidential campaign, Hispanic

Broadcasting's largest individual shareholder, McHenry Tichenor, lent his private jet to Bush so often that Democrats nicknamed it "Bush Air."²¹⁸

Comcast, the country's largest cable and broadband Internet provider, will also need FCC approval if its \$47.8 billion bid to acquire Walt Disney Corp. is successful. Previously, in November 2002, the FCC approved Comcast's \$51 billion merger with AT&T Broadband.

The bid for Disney was made possible when a federal court struck down a regulation that prevented companies from owning TV stations and cable systems in the same market, and the FCC declined to appeal the ruling. Should the deal go through, Comcast Cable President Stephen Burke – a 2004 Bush Ranger – would be Disney's new CEO.