

Center for American Progress



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Memorandum for: Interested Parties
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Subject: **Protecting the American People: A Progressive Alternative to the Bush Administration**

The recent Sago Mine tragedy in West Virginia exposed government capture by the mining industry. The Mine Safety and Health Administration (MSHA) uncovered repeated and serious safety violations at the mine over the last two years, issuing 273 citations, but never levied a fine of more than \$440 and never threatened closure of the mine.¹ This offered no deterrent to the mine's owner, International Coal Group Inc.—which reported more than \$110 million in net profits last year—and unsafe conditions were allowed to persist. Ultimately, 12 miners died when an explosion left them trapped hundreds of feet underground.

From the beginning, the Bush administration has run MSHA for the benefit of mining companies rather than the safety of miners. Shortly after taking office, President Bush appointed David Lauriski, who had worked in the mining industry for more than 30 years, as administrator of MSHA. Under Lauriski's leadership, MSHA moved to weaken a host of safety standards—including air quality standards meant to protect miners from black lung and respiratory disease—and scale back penalties for safety violations. Last year, Lauriski resigned from his position shortly after the Labor Department's inspector general found that MSHA management had improperly awarded no-bid contracts.²

President Bush has repeatedly stated that his most fundamental responsibility is to protect the American people. Unfortunately, the administration has failed to meet this responsibility. Political cronyism, special-interest influence and conservative ideology are taking a mounting toll. For example, the Federal Emergency Management Agency (FEMA), under the leadership of Michael Brown, who had no previous experience in disaster response, fell down on the job after the flooding of New Orleans, costing many their lives. As head of the Securities and Exchange Commission (SEC), Harvey Pitt, a

¹ Joby Warrick, "Sago Puts Spotlight on Safety Strategy," *Washington Post*, A3, Jan. 8, 2006.

² Department of Labor Office of Inspector General, "Procurements Showed a Pattern of Disregard for Federal and DOL Acquisition Rules and Requirements," 25-05-001-06-001, Oct. 29, 2004 (available at www.house.gov/reform/min/drug_ads/pdfs/pdf_drug_ads_thompson_let.pdf).

former accounting industry executive, ignored clear warning signs of widespread accounting fraud that cheated investors out of billions and culminated in the collapse of Enron. And the Federal Energy Regulatory Commission (FERC) failed to protect California consumers from market manipulation by energy companies—most prominently Enron—which led to rolling blackouts in 2000 and 2001; at the time, FERC was chaired by Nora Mead Brownell, who President Bush appointed to the position at the urging of disgraced Enron CEO Kenneth Lay.³

The Bush administration has also left the American people vulnerable to other potentially disastrous consequences. For example, we are at greater risk of an outbreak of mad cow disease because of the administration's inadequate testing program. Two years after an infected cow was discovered in Washington state, only one in 90 cows are tested for the disease (in comparison, the European Union tests one in four cows and Britain and Japan test every single one). Likewise, Americans remain highly vulnerable to identity theft—a year after data brokers ChoicePoint and LexisNexis lost personal information on tens of thousands of individuals to fraudsters and computer hackers—because the administration and Congress have been unwilling to buck industry opposition to meaningful protections. The story is the same from auto safety to preservation of our natural resources to protections for clean air and water. The administration has consistently put narrow special interests over the broad public interest.

Progressives believe in Abraham Lincoln's vision of government "of the people, by the people, and for the people." Government should strive to protect and improve the public's health, safety and general welfare. This means identifying public risks and vulnerabilities, adopting policies to prevent public harm, providing oversight to ensure laws and standards are followed, and making decisions out in the open, so government is accountable for results. These are straightforward principles of good government, yet they are now being subverted. Below we describe a progressive agenda for reinvigorating the government's protective role and contrast it with the Bush administration's record.

1. Government must be committed to identifying public risks and vulnerabilities.

What Progressives Would Do

Many health, safety and environmental risks are hidden from public view. For example, it is impossible to actually see toxic chemicals causing cancer or polluted air causing childhood asthma. We rely on government agencies, such as the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), to continuously collect and analyze data to bring such risks into focus. When we have a clear picture of our problems, we can set sensible priorities and take preventive action.

³ Marcy Gordon, "Enron Chairman Recommended FERC Appointments," *North County Times*, Feb. 1, 2002.

The Center for American Progress has put forward a plan to harness breakthrough technologies to provide greater sophistication and precision in identifying problem areas.⁴ For example, in real-time, we could measure air pollution at the neighborhood level; assess contamination of our drinking water, a potential terrorist target; monitor chemical exposures in American workplaces; and track the condition of our physical infrastructure, such as roads and bridges. Today, this sort of data is unevenly or sporadically collected and is reported well after the fact (sometimes years), impairing our ability to take action to prevent public harm. We need a coordinated, comprehensive effort to deploy cutting-edge information technologies to enhance government responsiveness.

What the Bush Administration Has Done

The Bush administration has frequently worked to suppress findings of public and environmental harm. Urged on by special interests seeking to hold off regulation, the administration has doctored numerous scientific reports (including several on global warming); stacked scientific advisory committees with industry-friendly panelists (including one on childhood lead poisoning); and undercut monitoring efforts (including the monitoring of workplace ergonomic injuries and hearing loss). In perhaps its most brazen move yet, the administration is currently in the process of severely scaling back collection of data on industrial toxic releases.⁵

At the same time, we have not moved forward with new technologies that could give us a far clearer picture of our problems. For example, the administration has been slow to embrace a newly developed monitoring device that could provide much greater protection for coal miners. This device would be attached to a miner's cap light and take continuous readings of coal dust, which causes black lung disease and other respiratory problems. In September 2003, the Senate passed an amendment, introduced by Sen. Arlen Specter, requiring the administration to redo an MSHA proposal to weaken coal-dust standards if final testing of this technology proved effective. Unfortunately, the administration narrowly prevailed in the House. More than two years later, MSHA is still evaluating the technology and has announced no plans for implementation.

2. Government must implement policies and make necessary investments to prevent harm to the public.

What Progressives Would Do

There are a number of growing threats that must be addressed immediately. If these threats are not dealt with, we could pay a steep price. Terrorists could exploit vulnerabilities in our critical infrastructure—for example, by setting off a chemical explosion at an industrial facility in a densely populated area. Coastal areas, where much of the country's population resides, could be devastated by rising sea levels and extreme

⁴ Center for American Progress, "Moving Government Decisionmaking Into the Information Age," February 2005 (available at <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=315627>).

⁵ 70 Fed. Reg. 57871 (Oct. 4, 2005) (available at <http://www.epa.gov/fedrgstr/EPA-TRI/2005/October/Day-04/tri19709.htm>)

weather linked to global warming. Americans could withdraw from e-commerce as identity theft explodes, undercutting an important new driver of economic growth. Foodborne illnesses such as mad cow disease could spread, killing thousands and sickening millions. And deficiencies in our strategic infrastructure could lead to severe consequences, as seen in the recent failure of our electrical grid and the breaching of the New Orleans levees. Progressives are prepared to face these threats (and others) and take decisive action to protect the American people.⁶ We must set strong standards and make needed investments to safeguard public health, safety and economic well being.

What the Bush Administration Has Done

The Bush administration has been paralyzed by its fealty to big-money special interests, refusing to set strong standards for corporate behavior in any of the areas mentioned above. At the same time, the administration has consistently resisted upgrades to the nation's crumbling public infrastructure—with needed improvements estimated by the American Society of Engineers at over \$1 trillion—to ensure safety and resilience in the face of natural disasters and easily anticipated threats.

Instead of addressing emerging problems, the administration has weakened or thrown out a host of protective standards, threatening gains already achieved. These include standards on clean air and water, energy efficiency, medical privacy, and health claims on food products, just to name a few.⁷ In her book about her time as President Bush's EPA administrator, Christine Todd Whitman lamented the influence exerted by "antiregulatory lobbyists and extreme antigovernment ideologues."⁸

Frequently, ex-industry lawyers and lobbyists have rewritten the rules for the benefit of their former employers or clients. For example, Jeffrey Holmstead, a lawyer for electric utilities, was appointed air administrator at the Environmental Protection Agency, where he spearheaded the rollback of air quality standards for coal-fired power plants. The regulatory language used for this rollback was lifted, sometimes verbatim, from memos provided by Holmstead's former law firm on behalf of former clients in the power industry.⁹ Likewise, the deputy administrator of Interior, J. Steven Griles, who previously worked as an oil-industry lobbyist, pushed to open millions of acres of public land to oil and gas development. Griles resigned in late 2004 to resume his lobbying career after being investigated for questionable dealings with former industry clients. He

⁶ The Center for American Progress has released a series of papers and reports on how to secure our critical infrastructure and reduce our reliance on fossil fuels. See, for example, Lawrence J. Korb and Robert O. Boorstin, "Integrated Power," pages 41-45 on homeland security and pages 59-64 on energy independence (available at

<http://www.americanprogress.org/site/apps/nl/content3.asp?c=biJRJ8OVF&b=681085&ct=936891>).

⁷ The Center for American Progress, in partnership with OMB Watch, documented the Bush administration's rollbacks in a comprehensive report, "Special Interest Takeover," May 2004 (available at <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=81986>).

⁸ Mike Allen and John F. Harris, "It's Her Party and She'll Cry If She Wants To," *Washington Post*, Jan. 2, 2005.

⁹ Tom Hamburger and Alan C. Miller, "Mercury Emissions Rule Geared to Benefit Industry, Staffers Say," *Los Angeles Times*, March 16, 2004; see also Eric Pianin, "Proposed Mercury Rules Bear Industry Mark," *Washington Post*, Jan. 31, 2004.

also actively worked with and supported Jack Abramoff on matters concerning the disgraced lobbyist's Indian clients.¹⁰

3. Government must provide oversight to ensure laws and standards are being followed.

What Progressives Would Do

It is obvious to everyone that we need police to enforce our laws. Police provide safety, catch criminals and generally make communities livable. Inspectors and enforcement officials at agencies such as MSHA and the Securities and Exchange Commission (SEC) are our police for corporate crime. They make sure corporations operate responsibly in compliance with public safeguards.

If government does not enforce the laws, corporations will be tempted to cut corners to pad their bottom line, potentially putting the public at risk. Perversely, when there are no penalties for misbehavior, companies that break the law are rewarded with increased profits, while law-abiding companies are put at a competitive disadvantage.

Progressives believe in providing companies with assistance in understanding and complying with laws and standards. However, compliance assistance must go hand-in-hand with a strong deterrent to corporate crime. This means putting an adequate number of cops on the beat, exercising vigorous oversight, and leveling fines and penalties sufficient to deter lawbreaking.

What the Bush Administration Has Done

The wave of corporate accounting scandals that came to light in 2002—which cost investors billions of dollars—shows what can happen when government shirks its oversight responsibility. President Bush's first choice to head the SEC, Harvey Pitt, a former accounting industry executive, took the job promising a "kinder and gentler" approach. Under Pitt's leadership, the administration proposed to cut the SEC's already inadequate budget and ignored clear warning signs of widespread accounting fraud that culminated in the collapse of Enron and the discovery of abuses at a host of other prominent companies. Ultimately, mounting political pressure forced the administration to accept the Sarbanes-Oxley bill, which aimed to restore teeth to the SEC.

Unfortunately, the administration's permissive approach persists in other areas of corporate governance. Last February, at President Bush's request, Congress narrowly voted for further cuts to MSHA's budget; the agency now has 170 fewer full-time employees than in 2001 to carry out its work to protect miners.¹¹ Criminal referrals for mine safety infractions and penalties for noncompliance have steadily declined during the

¹⁰ Susan Schmidt and James V. Grimaldi, "Abramoff Pleads Guilty to 3 Counts," *Washington Post*, A01, Jan. 4, 2006.

¹¹ Ann McFeatters and Karen MacPherson, "Bush Pledges to Find Cause of 12 Miners' Deaths," *Pittsburgh Post-Gazette*, Jan. 5, 2006.

Bush administration,¹² while the number of guilty pleas and convictions in serious criminal cases has fallen 55 percent since 2001. Civil penalties also offer little deterrence to mine safety violations, as fines are frequently reduced by the Federal Mine Safety and Health Review Commission, which resolves civil disputes between MSHA and mining companies. President Bush appointed Michael Duffy, the former deputy general counsel to the National Mining Association (which represents the interests of the mining industry), as chairman of this commission.

Enforcement has similarly been undermined in other areas. For example, monthly violation notices issued by EPA fell 58 percent in the first several years of the Bush administration¹³; the number of citations for willful violations of workplace safety standards decreased from 607 in FY 1999 to 446 in FY 2004¹⁴; FDA actions against misleading drug promotions plummeted by almost 80 percent after President Bush took office¹⁵; the percentage of meat crossing the border that is inspected by USDA dropped to 6 percent from 17 percent¹⁶; and the Justice Department has diverted resources from enforcing crucial civil rights protections such as the Voting Rights Act, leading nearly 20 percent of the Civil Rights Division's lawyers to leave the agency.¹⁷

4. Government must be accountable for results.

What Progressives Would Do

Our democracy depends on the free flow of information. Government decisions should be made out in the open, and the public should be informed about problems we confront as a nation—so that citizens can participate in policymaking and hold government officials accountable for results.

Progressives believe government should look proactively for ways to engage the public, based on the premise that full and informed debate will produce better decision-making. For example, a forthcoming white paper from the Center for American Progress will advise ways to take advantage of new technologies to create more inclusive and interactive regulatory decision-making.

Government can also engage the public and enhance accountability by widely disseminating data on potential risks, such as foodborne illness, toxic pollution and auto safety defects. The Center for American Progress has recommended ways to package this sort of data, so that problems are easier to spot and government performance is easier to

¹² Joby Warrick, "Sago Puts Spotlight on Safety Strategy," *Washington Post*, A3, Jan. 8, 2006.

¹³ Seth Borenstein, "Pollution Citations Plummet Under Bush," *Philadelphia Inquirer*, Dec. 9, 2003.

¹⁴ AFL-CIO, "Death on the Job: The Toll of Neglect," April 2005 (available at http://www.aflcio.org/issues/safety/memorial/upload/death_on_the_job_2005.pdf).

¹⁵ Alice Dembner, "Bush's FDA Action on Drug Ads Declining," *Boston Globe*, Oct. 19, 2002.

¹⁶ Elizabeth Becker, "Meat Inspections Declining; Impact of Policy is Contested," *New York Times*, July 10, 2003.

¹⁷ Dan Eggen, "Civil Rights Focus Roils Staff at Justice," *Washington Post*, A01, Nov. 13, 2005.

evaluate.¹⁸ When problems are exposed, experience shows the public will become engaged and demand solutions, counteracting the influence of special interests.

What the Bush Administration Has Done

The administration has moved to broadly restrict public access to information that might expose and interfere with its political cronyism. For example, according to a recent article in *The Washington Post* on the West Virginia mining tragedy, “MSHA halted the release of notes from mine inspections, which the agency had routinely released under the Freedom of Information Act for a quarter century. It also shifted many routine accident investigations into closed-door proceedings, in some cases denying entry even to union officials and lawyers representing injured mineworkers, say union officials and former agency employees.”¹⁹

Similarly, the National Highway Traffic Safety Administration (NHTSA) decided to withhold “early warning” data about auto safety defects—including warranty claim information, auto dealer reports, consumer complaints, and data on child restraint systems and tires—because it claimed the data could result in “substantial competitive harm” to the auto industry.²⁰ Congress had required reporting of this information in the aftermath of the widespread failure of Firestone tires in 2000, which contributed to more than 200 traffic fatalities.

The administration has also regularly withheld information from Congress. In the most high profile example, the administration steadfastly refused to hand over documents related to Vice President Cheney’s secret energy task force, whose recommendations conspicuously reflected the interests of oil, gas and coal companies. Likewise, the EPA withheld analysis showing that the administration’s industry-backed plan for power-plant emissions, the “Clear Skies Initiative,” is far less effective than alternative bipartisan legislation.²¹ Instead of debating honestly, the administration has consistently tried to protect itself politically by concealing information that might suggest the need for stronger public protections.

¹⁸ Center for American Progress, “Moving Government Decisionmaking Into the Information Age,” February 2005 (available at <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=315627>).

¹⁹ Joby Warrick, “Sago Puts Spotlight On Safety Strategy:U.S. Mine Agency Issues Citations, but Penalties Are Light,” *Washington Post*, Jan. 8, 2006.

²⁰ 68 Fed. Reg. 44209 (July 28, 2003)

²¹ Guy Gugliotta and Eric Pianin, “EPA Withholds Air Pollution Analysis,” *Washington Post*, July 1, 2003.