May 28,2001

Mr. John Morrall III
Office of Information and Regulatory Affairs
NEOB, Room 10235
1725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Morrall:

I am writing on behalf of the members of the Natural Resources Defense Council (NRDC) to offer comments on the Office of Management and Budget (OMB) draft report to Congress on the Costs and Benefits of Federal Regulations (hereafter the draft OMB report). NRDC is a national, non-profit organization of scientists, lawyers, economists, and other environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 500,000 members nationwide, and four national offices in New York, Washington, Los Angeles, and San Francisco.

The draft OMB report attempts to analyze the costs and benefits to society of various kinds of regulations, and sets out an agenda for using cost-benefit analysis and risk assessment (hereafter referred to simply as cost-benefit analysis unless further distinction needs to be made) in federal regulatory decision making. However, the draft OMB report fails to come to **grips** with some of the critical issues of the day related to the use of cost-benefit analysis, with the result that the report comes to several mistaken conclusions. These comments are meant to point the way to a more productive approach in the use of cost-benefit analysis that NRDC hopes OMB will adopt in the final report.

OVERVIEW

Advocates of cost-benefit analysis assert it can be a useful tool for organizing information in a decision making process. However, even in the best of circumstances, a cost-benefit test is inappropriate to use as the criterion for environmental decision making because of the extent of its limitations and the nature of its inherent biases. The most significant bias is its ingrained tendency to overestimate costs and undervalue benefits. Fortunately in the environmental field, superior and proven alternatives exist for decisional criteria such as setting standards that are based on the protection of health or the use of available technology.

If done poorly, cost-benefit analysis can actually distort decision making by structuring information in a way that seems scientific, but in fact is unreliable and misleading. Therefore, in every case of its application cost-benefit analysis needs to be accompanied by an explicit and systematic effort to compensate for its limitations and inherent biases.

Otherwise, policy makers will be left with a false impression that the cost-benefit test has "scientifically" laid out all the answers fairly and completely, when many of the key issues are simply omitted and methodological deficiencies disguised.

What is worse, the inherent biases in cost-benefit analysis can be amplified by the choice of certain methodologies that load the analytical dice against protective decisions. There *is* an asymmetry in the susceptibility of this tool to this kind of misuse, insofar as the means for tilting the outcome mostly favor inflating the cost estimate or reducing the measure of benefits. In other words, by its very nature cost-benefit analysis can more easily be misused in arguing against environmental protections than in favor of them. When such tilted cost-benefit approaches are selected to serve preconceived ideological positions or are controlled by special interests to fight public protections, the process goes from being misleading to dishonest.

The OMB draft report is a disappointing failure to address these basic issues regarding the use of cost-benefit analysis. Furthermore, the draft report fails to set out an agenda for addressing these issues over time. NRDC requests that the OMB use this report to put cost-benefit analysis in its proper place as a useful informational tool, but not as the decisional criterion in environmental decision making. However, we have little expectation that the Office of Information and Regulatory Affairs (OIRA) is actually open-minded on this subject. We therefore hope that the office will at least recognize the limitations on the use of this tool, acknowledge the nature of its biases, and commence a policy process to develop ways of systematically compensating for these biases in the use of this tool.

The OMB draft report has three important conceptual parts, each of which will be examined in turn by these comments. First, it reviews estimates for the costs and benefits of government regulations and draws several conclusions about the meaning of these totals and comparisons. Second, the draft report sets out an agenda for changing the use of cost-benefit analysis in the regulatory impact analyses performed by federal agencies. Finally, it invites the submission of suggestions for rules and guidance documents that can be changed or eliminated.

COMPARISONS OF TOTAL COSTS AND BENEFITS

The draft OMB report purports to summarize the aggregate costs and benefits to society of federal regulations. The total ranges that are provided are $512 billion to $617 billion in costs compared to $308 billion to over **$2** trillion in benefits. The value of these aggregates even for informational purposes is highly dubious. Nevertheless, a number of points should be made about them.

First, the draft OMB report adds together into a single total the costs and benefits of three very different kinds of regulations – process regulations (mostly paperwork related to tax collection), economic regulations, and social regulations. To OMB's credit, it provides separate discussions of each of these kinds of regulation in Appendix C. However, what emerges from that discussion is that the process and economic regulations – and the methodologies for calculating them – are so different in kind from social regulations

(such as environmental protection) that to add them together is worse than mixing apples and oranges, as the adage goes.

OMB estimates that the total costs of process regulations and economic regulations are **$340** billion a year. Yet, OMB estimates that total benefits from these regulations are zero. It is hard to imagine that OMB is really saying that there is no value in the ability of society to act collectively through federal tax collection on issues like national defense. It is even questionable to contend that income transfers have no net benefits, since the reason why we have a progressive income tax and income support programs is to promote greater equity, which presumably has a value of some sort.

The claim that economic regulations have no benefits whatsoever is likewise surprising. This claim is based on the notion that economic regulations by their nature interfere with economic efficiency and thus could produce no social benefits (except in the case of natural monopolies). On the face of it, there certainly could be economic regulations that have no or even negative "net" benefits, but it is hard to believe that there are no economic regulations that have any benefits whatsoever.

The point of this discussion is not to comment on the value of benefits of issues beyond NRDC's purview, but to argue against aggregating the estimates of the costs and benefits of those regulations with the costs and benefits of social regulations. The methodologies and implications of these different kinds of regulations are so disparate that they are not really comparable enough to be added together. Any such total will be misleading to policy makers and members of the public, and could be misused by vested interests to create confusion about the overall value of social regulations.

In fact, the net benefits of social regulations as presented by this report are quite positive. The range of annual net benefits (total benefits minus total costs) associated with social regulation range from **$3**1 billion to $1,828 billion, despite all the biases in cost-benefit analysis against stating the true value of regulation. If anything, this aggregate comparison shows that society is not as over-regulated as critics assert. In fact, it seems as if society should be able to selectively move along these aggregate marginal cost and benefit curves through additional social regulations and still yield additional net benefits to society.

Therefore, NRDC requests that OMB stop reporting the aggregate costs and benefits of social regulations along with those of tax compliance and economic regulations. Instead OMB should develop a standard format by which these costs and benefits can be reported separately.

Finally, it should be noted that the aggregate estimates for social regulations that OMB depends on in this report are often out-of-date and unreliable. In particular the Hahn-Hird study, published in 1991, relies on a 1990 Paul Portney article that incorporates data from a 1982 book by Rick Freeman. Given the early date of the original source study, many major cases of beneficial regulations, such as the phasedown of lead in gasoline, are excluded from its estimates.

OMB'S REPORT SHOULD COMPLY WITH DATA QUALITY ACT

In the near future OMB will be finalizing its guidelines for ensuring the quality of the data its disseminates to the public, pursuant to the Data Quality Act (DQA). OMB should indicate in the final report how it intends to come into compliance with its own DQA guidelines. It is most unlikely that the kind of data that OMB has disseminated in this draft report would qualify under these guidelines; thus, they would be subject to challenges under that act in the future.

ISSUES FOR FUTURE ACTION

The draft report catalogues a number of areas in which OMB intends to change the way in which federal agencies perform their cost-benefit analysis and risk assessments in their regulatory impact analyses used to appraise proposed rules. This process will be chaired jointly by the OIRA Administrator and a member of the Council of Economic Advisors. It is troubling that the Office of Science and Technology Policy (OSTP), which has historically provided scientific expertise and leadership in the White House on the issue of risk assessment, has been excluded from the joint chairmanship of this process. (For example see the OSTP paper, *Science, **Risk,** and Public Policy*, March 1995).

These comments will examine these areas more specifically in respect to OMB's intentions. However, it must be noted first that OMB has excluded from these areas the most important question that should be considered in the use of cost-benefit analysis: namely, what if anything can be done to compensate for its limitations and biases?

The limitations on the use of cost-benefit analysis are extensive and in fact quite well known. They have been thoroughly documented in *Pricing the Priceless: Cost-Benefit **Analysis** of Environmental Protection*, a recent report by Lisa Heinzerling and Frank Ackerman (Georgetown Law Institute, 2002).

When combined together, these limitations, because of their extent and the difficulty of ever resolving them satisfactorily, provide a fatal objection to the use of cost-benefit analysis as decisional criterion. However, to the extent that cost-benefit analysis is use for informational purpose, it would be desirable for policy research to find ways to reduce these limitations in the future.

Overstatement of costs

A great concern about cost-benefit analysis is the extent to which it has inherent biases that overstate costs and undervalue benefits. On the cost side, the most serious source of overstatement of costs is the static assumption about technology, which ignores the ability of improved technology to lower costs over time.

Again and again, dire predictions by industry about the effects of environmental protection on the economy have been shown after the fact to be greatly inflated. Even government predictions tend to be overstated in large part due to the failure to account for technological progress. The eventual cost of the acid rain control program required by

the Clean Air Act Amendments of 1990, far below the estimates of either industry or government, is a well-documented case in point. (See Heinzerling and Ackerman on this point.)

The prowess of technology to lower costs over time is really driven by the efficiency of a market economy in responding to a new constraint, in this case a regulatory requirement that internalizes an externality. It is at least ironic that many advocates of the use of cost-benefit tests as decisional criteria in decision making also have great faith in the reliance on free market behavior; and yet they have little regard for efficient, cost-minimizing progress by the market to respond to these internalized externalities.

To the extent that cost-benefit analysis will continue to be produced for decision makers, it needs to move beyond assertions of faith or cultivated blind spots to a more scientific and systematic treatment of the role of technology in lowering costs over time. Therefore, NRDC requests that OMB conduct a review of past estimates of the costs of environmental compliance and compare them to actual costs, and then devise a protocol for adjusting static cost estimates by more accurately adjusting for costs. Additional research can refine this concept over time, but the inclusion of a standard concept for making this adjustment could help to address the overstatement of costs that tends to systematically occur even in government estimates.

Undervaluing of Benefits

One of the most troubling aspects of cost-benefit analysis is not simply its tendency to misstate costs and benefits but to systematically overstate the costs while understating the benefits. This bias stems from the fact that in the search for a "net benefits" answer to the cost-benefit test the ruling practice is to first quantify all costs and benefits, and then to reduce them to a common denominator in the form of dollars. Therefore any term that does not lead itself to quantification, and then monetization, tends to fall out of the equation entirely. This tendency is not limited to unsophisticated practitioners of the art. The OMB draft report is filled with examples of uncorrected versions ***of*** such cost-benefit analysis.

Because the costs of regulations are usually the expense of compliance, costs do not generally suffer from this effect of "dropping out" of the net benefits equation, whereas benefits by their nature are often difficult to quantify, much less monetize. This asymmetrical bias is obvious and well documented. Even when we cannot precisely state certain kinds of benefits in monetary terms, we know the value to society is not *nothing*. Yet the OMB cost-benefit report does not seriously address this critical issue. OMB must undertake an effort to rigorously correct this deficiency. To fail to do so undermines the value of cost-benefit analysis as an informational tool and brings the administration's motives into question in their use of it.

There are numerous reasons why the many different kinds of benefits that exist are difficult to either quantify or monetize. This difficulty is serious in the case of estimation the benefits of reducing pollution, but it especially skews our ability to sensibly estimate the benefits of protecting natural resources. Values like the preventing the degradation to

landscapes, extinction of species, or loss of wilderness are notoriously problematic when it comes to assigning dollar values to them. It may be a fundamentally flawed concept to even try in some cases. However, to the extent that cost-benefit analysis is going to continue to be performed, OMB must develop a better approach for presenting these benefits in the analysis.

Therefore, NRDC requests that OMB lead a policy process to examine the inherent undercounting of benefits in cost-benefit analysis and to develop a protocol by which decision makers can systematically compensate for this deficiency in their use of the tool for informational purposes. However, OMB must not allow work in correcting this deficiency to delay approval of pending rulemakings, but should instead allow decisions to be made based on more valid decisional criteria such as technology standards or health-based standards, as the relevant statute may specify.

OMB's Analytic Issues for Refinement

In the draft report, OMB has identified a number of cutting-edge issues regarding the use of cost-benefit analysis and **risk** assessment to which it intends to give special attention in the future. OMB should be commended for recognizing that there are serious challenges in the use of cost-benefit analysis that should be carefully addressed. However, it is very discouraging that none of the fundamental problems with cost-benefit analysis like those noted in these comments are on the list of issues to be examined. Indeed, it is distressing that several of the proposed items on the OMB list of issues would amplify the worst tendencies of cost-benefit analysis and bias its objectivity against public protections even more.

Discounting Lives

NRDC and many others have profound ethical, pragmatic, policy, and legal concerns about OMB's approach to discounting the value of future lives lost. In particular, OMB should revise the way in which it views the practice of discounting the value of lives that are lost in the future from exposures to hazards in the present. The discounting of future lives (especially if insupportably high discount rates such as seven percent are applied) amounts to an incredible vanishing act where the calculations of such values are concerned.

The obliteration of the value of protecting future lives becomes exaggerated in the extreme when policies with extended timelines like nuclear waste disposal or climate change are involved. The inevitable conclusion seems to be that anything the present generation does that gravely effects future generations does not matter because the value of the affected future lives just does not amount to much. For a discussion of the implications of discounting on decision making on climate policy see Richard Newell and William Pizer, *Discounting the Benefits of Climate Change Mitigation: How Much **do** Uncertain Rates Increase Valuations?,* prepared for the Pew Center on Global Climate Change (December 2001).

There are many significant technical and profound ethical issues involved in discounting the value of lives even in the present generation. Citizens for Sensible Safeguards (CSS) has analyzed these issues in their past comments on the OMB cost-benefit report, as well as on issues related to the use of the concept of willing-to-accept versus willing-to-pay as a measure of benefits. NRDC endorses these views presented by CSS and offers some additional observations.

Discounting of future benefits is a practice that makes sense when the analysis is limited to comparing streams of dollars on the cost and benefit side of the equation in order to provide a standard comparison of values overtime. However, life as a "good" does not operate over time like money as a good does. The loss of life is a qualitative change unlike the diminution of value in economic commodities. Furthermore, life can not be invested in a bank account like money to yield a higher value over time. Therefore, it is fallacious to simply analogize the practice of discounting future revenue streams to considerations about the value of life.

The use of latency to discount the loss of future lives is subject to the same kind of criticisms that discounting is generally. If the discount rate is zero, the question of latency can be mooted. However, if a high discount rate is applied, then the question of latency is quite significant. In that case it does not seem reasonable that the value ascribed to an individual's life following a fatal exposure to a pollutant should be zero until the year he or she dies, and then the final value fully discounted by the intervening period of time.

This problem is compounded by uncertainty about exposure paths and latency periods for some kinds of carcinogens and the tendency of some cost-benefit analysis practitioners to assume unrealistically long latency periods like 30 years. Overall, the combining of such assumptions about latency with high discount rates produces a powerful and unjustified bias against regulating the release of toxics into the environment.

Not surprisingly, a substantial body of research related to society's time preferences support the view that individuals discount the value of futures lives by a rate far below the seven percent rate recommended by OMB in Circular A-94. In fact, given the low level of interest rates for the last several years, it would be surprising if up-to-date research on social time preference did not provide a robust endorsement of the view that the discount rate for the loss of future lives should extremely small if not zero. Therefore, as a way of helping to correcting the systematic biases in cost-benefit analysis, NRDC requests that OMB recommend the use of a discount rate of zero for the value of future lives, at least until the technical and ethical issues related to this practice are satisfactorily resolved.

Quality Adiusted Life-Years

The use of quality adjusted life-years (QALYs) is another way by which the benefits from saving lives can be unsuitably reduced in cost-benefit analysis. QALYs assume that the value of life can be subdivided into numerical time units, which can be added, subtracted, or multiplied; and that the value of those individual units (e.g. years) can be

further adjusted by how good the quality of life is for an individual during that unit of time.

The purpose of advocating the use of this technique by OMB seems to be to reduce the net benefits calculated for actions that save the lives of the elderly. After all, by this estimation people that are old have a lower quality of life compared to younger people and small total of QALYs remaining. Adopting the use of QALYs could introduce another systematic bias against public protection into the use of cost-benefit analysis.

Like discounting future lives, the use of QALYs suffers from the same presumption that treats the value of a human life simply like another commodity in the economy and fails to recognize that the point at which one dies is qualitatively different than any other moment in ones life. Furthermore, the research on QALYs does not clearly support the position that the elderly feel as if their life is not worth as much measured from year-to-year, as it was when they were younger. Indeed, the fact that the supply of years remaining to individuals as they near the end of their life is smaller, and that their ability-to-pay may be greater **than** when they were younger, could have supply and demand effects that would increase their estimates of the average value of these final years.

NRDC therefore requests that OMB refrain from considering the use of QALYs in cost-benefit analysis, at least until much better empirical research and theoretical conceptualization is available on this subject.

CONSIDERATION OF SPECIFIC REGULATIONS

NRDC questions the process whereby OMB solicits changes to rules and guidance documents through the publication of this report. Last year this process resulted in the development of an OMB list that would have weakened numerous public protections, including many of the most significant environmental issues of the day. Yet to this day, it is unclear what the criteria was that OMB used to select the rules it considered being a high priority for changing. OMB should make the criteria explicit for how it selects rules for alteration or elimination and allow public comment on these criteria before using them in any future report.

NRDC doubts that this process, due to its *ad hoc* nature, can ever be made sufficiently transparent to ensure that special interests will not enjoy special access in influencing the decisions that are made. In fact there already exists a framework under the Administrative Procedure Act by which public interest groups can make their views known on individual rules as **part** of a rulemaking process – and NRDC will continue to convey its views to the administration as part of these legal procedures.

Therefore, NRDC is not submitting suggestions for individual rules as part of these comments. However, we have attached a copy of a recent report we released about our views on a number of rulemaking decisions by the administration. This report, *Rewriting the Rules: The Bush Administration's Assault on the Environment,* can be treated as a guide to our views on any environmental rule that OMB may be considering for weakening or elimination.

In addition, we would like to provide a few comments on some major issues that we believe OMB is involved in, based on the list from last year's report. These cases indicate ways in which cost-benefit test can be misused in the regulatory review process and the need for the kind of reforms that these comments have requested elsewhere.

Arsenic

Last year the Bush administration held up implementation of a rule limiting arsenic in drinking water to 10 parts per billion (ppb) that had been approved by the Clinton administration. Eventually, following yet another National Academy of Science (NAS) recommendation to lower the old limit (50 ppb), and finding that EPA had underestimated the cancer risks by about tenfold, the Bush administration relented and agreed to the 10 ppb standard. However, an OMB report from last year (December 2001) once again identified the arsenic standard as a rule that OMB would be reconsidering. Because the new standard needs to go though years of implementation, placing the arsenic standard on the OMB watch list raises considerable concerns.

In the Environmental Protection Agency's original regulatory impact analysis, the agency identified about $180 to $205 million in costs from the proposed rule versus about $140 to $198 million in monetized benefits from avoided deaths from certain kinds of cancer. However, since the agency documented many additional benefits that it could not monetize – including reduced numbers of fatal and non-fatal cancers of the skin, kidney, nasal passage, liver, and prostate, and reduced occurrence of many other diseases including cardiovascular disease, pulmonary effects, immunological effects, neurological effects, and endocrine effects – the agency reasonably concluded that the benefits justified the costs. Moreover, these old monetized benefit estimates were based upon EPA's previous cancer risk figures that NAS said in its September 2001 report were about tenfold too low. In other words, use of the best available science would indicate that the monetizeable benefits may have been about ten times higher than EPA had estimated.

A now well-known example of the abuse of cost-benefit analysis occurred during the arsenic debate with the release of a paper by Robert Hahn and Jason Burnett of the American Enterprise Institute-Brookings Joint Center for Regulatory Studies (January 2001). The paper, ***EPA's Arsenic Rule: The Benefits of the Standard*** *Do Not Justify the Costs,* used a series of slanted techniques to reduce EPA's level of benefits from $170 million to $23 million as its "best estimate." These techniques were so biased in reducing benefit estimates that the authors not only concluded that the 10 ppb standard was too strict, but that the old standard of 50 ppb may also be too strict, a position rejected by the NAS and Bush administration.

First, the Hahn-Bumett analysis almost completely disregards benefits that were noted by EPA but not monetized, with the exception of an arbitrary value estimated for the value of avoiding death from other forms of cancer. As is too often the case, benefits that are difficult to quantify or are qualitative in nature are beaten down to zero. The unquantified benefits identified by EPA include 49 health effects associated with arsenic,

including cardiovascular, hematological, pulmonary, immunological, neurological, and reproductive effects. Among the qualitative factors, **EPA** notes (1) prolonged suffering from cancer-related illnesses, **(2)** a "premium" for involuntary exposure, and (3) the loss of consumer confidence and the risk aversion of the general population.

Second, the Hahn-Burnett analysis massively discounts the value of lives lost in the future following a cancer latency period, calculated with little factual basis at a rate of seven percent annually for 30 years. This technique alone reduces the estimated value of a statistical life saved from $6.1 million to $1.1 million, reducing the total estimate of monetized benefits by more than four-fifths. This case study reveals in a very stark manner how the combination of economically unsound discount rates and unscientific assumptions about latency periods can conspire to demolish the benefit estimates for the most sensible public policies.

Finally, the Hahn-Burnett analysis made a set of claims about the dose-response relationship of arsenic to cancer that lowered the final estimate even more. These scientifically unsound claims are contrary to the recommendations of EPA's own Science Advisory Board. It is also worth noting that since the Hahn-Burnett analysis was issued, the National Academy of Sciences' September 2001 report on arsenic in drinking water not only rejected the dose-response arguments relied upon by Hahn and Burnett (as had a previous NAS panel), it also found that the benefits estimates relied upon by Hahn and Burnett understated cancer risks by about tenfold.

The main techniques used to slant the Hahn-Burnett analysis have the same kind of general biases in cost-benefit analysis that NRDC is requesting OMB to address in its final report. In addition, NRDC requests that OMB examine the Hahn-Burnett analysis specifically in its final report and show whether and how the administration's decision to retain the 10 ppb standard avoided the kind of biases included in the Hahn-Burnett analysis,

This request is more than just an academic exercise. Administrator Graham has a long professional association with Robert Hahn and was serving on the Council of Academic Advisors to the AEI-Brookings Center when this paper was published. This association, combined with OIRA's recommendation in the 2001 OMB report to reconsider the arsenic rule, continues to cast doubt on the future of the rule under this administration.

An explanation by OMB of how the administration rejected the approach of the Hahn-Burnett analysis in deciding to support the 10 ppb standard could be useful in addressing issues like use of discounting, treatment of latency, and accounting for nonquantified benefits. If, as implied by the administration's adoption of the more protective arsenic standard, OMB has concluded that the Hahn-Burnett methodology is flawed, it will be helpful for OMB to provide a more detailed rationale for its conclusion. A detailed discussion of the arsenic decision will help dispel suspicion that the administration simply set aside the use of biased techniques in this one instance due to political considerations.

Water Quality

Another instance where cost-benefit analysis could be used to undermine public protections is the rule to regulate sanitary sewer overflows. **A** draft rule to address this issue was prepared at the end of the Clinton administration but never published by the Bush administration. The rule is still being held up by the administration in part because the cost-benefit analysis is being reworked. This situation has become a classic case of the cost-benefit analysis apparently being used to delay progress on this rule with endless procedural red tape. Even when this rule is completed, it may be reworked in a way that will provide fewer protections than it should.

By contrast, when the administration decided to weaken existing restrictions regarding disposal of mining wastes and other industrial wastes into waterways, it shortcut its own procedures to expedite this rollback. First, the administration did not conduct a complete environmental impact statement (EIS) to fully examine the serious implications of changing the rule. Second, the Office of Information and Regulatory Affairs (OIRA) waived the rule through in less than 48 hours, without a thorough review of the rule under the provisions of Executive Order 12866, including a proper regulatory impact analysis.

Ostensibly, the reason OIRA waived review of the rule was because it did not have a significant impact on the economy of $100 million a year or more, and therefore did not require a regulatory impact analysis under E.O. 12866. However, the rule plainly had a potential impact on the economy of at least $100 million a year, as any adequate EIS would have confirmed. Please see attached letter from NRDC and other environmental groups on the subject.

The legal argument used to justify short-circuiting the proper procedures was that the rule merely codified current practice, and therefore there was no real change to the economy. If the rule was just codifying existing practice, then why bother with the rule? The reason is because current practice consisted of illegally issuing permits, which was vulnerable to legal challenge without changes to the rule. However, the baseline for measuring the significance of a rule change should not be from practices that are illegal, but from what the practices would be **if** legal. To conclude otherwise would reward bad behavior on the **part** of agencies. This could even encourage them to operate illegally and then **ask** for a rule change to cover this behavior, arguing that would not have to be subject to any cost-benefit analysis since the proposal is just "current practice."

The implications of the administration's weakening of water quality protections go beyond these two contrasting cases. It appears as if the administration might use review procedures like cost-benefit analysis to delay for lengthy periods the issuance of rules that could increase protections, but is willing to rush through changes to rules without adequate reviews as long as the effect is to weaken protections. To help dispel this impression, NRDC requests that the administration propose in a timely manner **a** meaningful rule to regulate sanitary sewer oveflows, and that the administration rework the rule on disposal of mining wastes and other solid industrial wastes following a complete EIS and a thorough regulatory impact analysis under E.O. 12866.

Forest Policy

The Roadless Area Conservation Rule protecting 58.5 million acres of roadless areas in National Forests, first adopted by the Clinton administration and then reaffirmed by the Bush administration, offers another case in which the cost-benefit analysis can understate the value of the rule. In fact, the draft OMB report presents a misleading comparison of the costs and benefits of the rule in its summary in Table 7.

As part of the extensive rulemaking process for the roadless rule, the U.S. Forest Service documented extensive benefits related to some of the most important conservation objectives of the nation. They included healthy watersheds, safe drinking water, flood protection, clean air, high quality soil, fish and wildlife protection, recreational opportunities, research uses, natural and beautiful landscapes, cultural properties, traditional uses, sacred sites, and unique, local characteristics.

However, the draft OMB report presents benefits for the roadless rule of only $219,000 (from reduced road maintenance) compared to annual losses of millions of dollars a year to the economy. The draft report disguises the extent of benefits that are not monetized by reducing them to a single, vague phrase ("a variety of other nonquantified benefits"), even while elaborating on the supposed costs to the economy. This biased presentation tracks the one provided last year by the Mercatus Center, an industry-financed group.

One of the important implications of this unbalanced presentation is that it provides another case in which benefits that are not fully monetized are unjustifiably neglected. In its final report, OMB should offer a more fair and complete of the costs and benefits of this rule and devise a way by which such benefits can be accurately presented in other cases.

SUMMARY OF MAJOR RECOMMENDATIONS

NRDC requests that the OMB use this report to put cost-benefit analysis in its proper place as a sometimes useful informational tool, but not as the decisional criteria in environmental decision making. We further request that the office recognize the limitations on the use of this tool, acknowledge the nature of its biases, and commence a policy process to develop ways of systematically compensating for these biases in the use of this tool. A list of 10 specific recommendations follows.

(1) NRDC requests that OMB stop reporting the aggregate costs and benefits of social regulations along with those of tax compliance and economic regulations. Instead OMB should develop a standard format by which these costs and benefits can be reported separately.

(2) OMB should indicate in the final report how it intends to come into compliance with its own DQA guidelines.

(3) NRDC requests that OMB conduct a review of past estimates of the costs of environmental compliance and compare them to actual costs, and then devise a protocol for adjusting static cost estimates by more accurately adjusting for costs.

(4) NRDC requests that OMB lead a policy process to examine the inherent undercounting of benefits in cost-benefit analysis and to develop a protocol by which decision makers can systematically compensate for this deficiency in their use of the tool for informational purposes.

(5) As a way of helping to correcting the systematic biases in cost-benefit analysis, NRDC requests that OMB recommend the use of a discount rate of zero for the value of future lives, at least until the technical and ethical issues related to this practice are satisfactorily resolved.

(6) NRDC requests that OMB refrain from considering the use of QALYs in cost-benefit analysis, at least until much better empirical research and theoretical conceptualization is available on this subject.

(7) OMB should make the criteria explicit for how it use this report to select rules for alteration or elimination and allow public comment on these criteria before using them in this or any future report.

(8) NRDC requests that OMB examine the Hahn-Burnett analysis specifically in its final report and show whether and how the administration's decision to retain the 10 ppb standard avoided the kind of biases included in the Hahn-Burnett analysis, and how the administration's decision on the standard was based upon estimated benefits consistent with the September 2001 National Academy of Sciences report on arsenic.

(9) NRDC requests that the administration apply review procedures in an even-handed and objective way; and start by proposing in a timely manner a meaningful rule to regulate sanitary sewer overflows and by reworking the rule on disposal of mining wastes and other industrial wastes following a complete EIS and a thorough regulatory impact analysis under E.O. 12866.

(10) In its final report, OMB should offer a more fair and complete of the costs and benefits of the roadless area conservation rule and devise a way by which such benefits can be accurately presented in this and other cases.

Sincerely,

Wesley P. Warren
Senior Fellow for Environmental Economics
Natural Resources Defense Council

Two Attachments:

REWRITING THE RULES

The Bush Administration's Assault on the Environment

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ABOUT NRDC

The Natural Resources Defense Council is a national nonprofit environmental organization with more than 500,000 members. Since 1970, our lawyers, scientists, and other environmental specialists have been working to protect the world's natural resources and improve the quality of the human environment. NRDC has offices in New York City; Washington, D.C.; Los Angeles; and San Francisco.

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EXECUTIVE SUMMARY

As this is written on the eve of Earth Day 2002, our nation's environmental landscape is changing for the worse. Agencies throughout the Bush administration are taking explicit directions from big corporate polluters, allowing these corporations to rewrite the agency rules that give life to America's environmental laws.

These policy changes will harm every American. The landmark environmental laws passed since 1970 are collectively among the most popular and successful laws ever enacted. These laws, and the regulatory safeguards they spawned, have profoundly improved the quality of life in America. They have reduced smog in our cities, stemmed the flood of sewage and toxins into our waterways, reduced lead in our children's blood, rescued threatened wildlife like the bald eagle from the brink of extinction, revolutionized hazardous waste disposal, protected our wetlands, and preserved many of our remaining unspoiled forests and wild lands.

Now, however, these safeguards face the gravest assaults since the Newt Gingrich Congress of 1995, and perhaps ever. As documented in detail in this report, the Bush administration is moving to quietly subvert the federal agency rules that translate congressional mandates into specific regulations.

The agency rules now under siege are the vital link that makes our environmental laws work.

The pages that follow document a staggering array of more than 100 different environmentally destructive Bush administration actions. These assaults strike at the heart of the nation's most important environmental programs from clean air and clean water to forest and wetlands protection. The Bush administration offensive documented in this report includes not only independent actions by the Environmental Protection Agency (EPA), the Interior Department, the Army Corps of Engineers, the Forest Service, and the Department of Energy, but also a highly centralized effort coordinated by the White House Office of Management and Budget (OMB) to identify and target environmental regulations that industry finds most objectionable.

The agency rules now under siege are the vital link that makes our environmental laws work. In sabotaging them, even while leaving the statutes themselves unchanged, federal agencies threaten to render these laws mere words on paper, irrelevant to what polluters and developers do in the real world.

It is not news that the Bush administration has an anti-environmental tilt. In fact, **the** early months of this presidency were defined in part by overwhelming public disapproval of the administration's positions on arsenic in drinking water, drilling in the Arctic National Wildlife Refuge, and carbon dioxide pollution from power plants. Since September 11, however, the environmental assault has quietly intensified, bolstered by a growing critical mass of presidential appointees at key federal agencies actively pursuing an anti-environment agenda, emboldened by the president's surge in popularity, and unchecked by news media distracted by the war on terrorism.

Below are samples of some of the administration's most troubling actions since September 11. A more comprehensive treatment is included in the report that follows.

Clean Air. A fundamental requirement of the Clean Air Act is that older electric power plants and other smokestack industries must install state-of-the-art cleanup

equipment when facilities are expanded or modernized. Coupled with the strict standards for new industrial facilities and power plants, this "new source review" requirement is intended to ensure long-term air quality improvement as older pollution sources are rebuilt or replaced.

In May 2000, apparently prompted by a request from one of the nation's largest polluters, the Southern Company, the Bush administration included in its energy plan a call for a review of this key Clean Air Act program and its enforcement against oil refiners and utilities, including Southern. (The Southern Company communication was made public in late March in response to a successful NRDC lawsuit under the Freedom of Information Act.) Now the EPA is poised to give Southern Company, and other big polluters, exactly what they have long sought, carving massive new loopholes in this crucial air quality program. These changes would allow hundreds of the nation's oldest and dirtiest facilities to drastically increase air pollution, resulting in more premature deaths, more respiratory problems, more urban smog, more acidified lakes and rivers, and more haze in our national parks and wilderness areas.

Wetlands. For more than a decade, the cornerstone of America's approach to wetlands protection has been a policy that calls for "no net loss" of wetlands—a policy that originated with the first Bush administration. With no public notice or opportunity for comment, the U.S. Army Corps of Engineers moved to reverse this long-standing policy by issuing a new guidance, dramatically weakening standards for wetlands "mitigation." Mitigation is a controversial practice that has allowed the destruction of existing wetlands in exchange for the creation of new wetlands. But the new standards allow wetlands to be traded off for *dry* upland areas and will likely mean the loss of thousands of acres of wetlands annually that provide vital flood protection, natural cleansing, and fish and wildlife habitat.

The stunning reversal of the "no net loss" policy is only one component of a broader Bush administration effort to diminish wetlands protection. Despite the president's Earth Day 2001 pledge to preserve these vital resources, his administration has also relaxed a key provision of the Clean Water Act that regulates development and industrial activity in streams and wetlands—the nationwide permit program. The Corps loosened the permit standards for this program making it far easier for developers and mining companies to destroy more streams and wetlands.

Mining on Public Lands. Mining activities have despoiled 40 percent of Western watersheds, according to the EPA. Instead of addressing this glaring problem, the Bush administration is making it worse. In October, the Interior Department issued new hard-rock mining regulations reversing the limited environmental restrictions that apply to mining gold, silver, copper, and other metals on federal lands. Under the new rules, the agency has renounced the government's authority to deny permits on the grounds that a proposed mine could result in "substantial irreparable harm" to the environment. The new rules also limit corporate liability for irresponsible mining practices, undermining cleanup standards that safeguard ground and surface water.

Raw Sewage in America's Waters. Sewage containing bacteria, fecal matter, and other wastes is responsible each year for beach closures, fish kills, shellfish-bed closures, and human gastrointestinal and respiratory illnesses. According to the EPA, there were

40,000 discharges of untreated sewage into waterways in 2000. Before the Bush administration took office, the EPA issued long-overdue rules minimizing raw sewage discharges into waterways, and requiring public notification of sewage overflows. The proposed rules were the product of a consensus process among the key stakeholders, including the state and local governments that bear the lion's share of the regulatory responsibilities. Even so, the rules were blocked by the regulatory freeze ordered by the Bush administration when it first took office in January 2001. Now, well over a year later, the administration still has not issued the sewage overflow safeguards. Technically, they remain under "internal review" at the EPA, but in practice they are languishing in regulatory limbo. Meanwhile sewage continues to flow into our waters, and Americans are still denied even rudimentary public notice of such contamination in the waters where they swim and fish.

The OMB's Centralized Assault. The full-scale retreat at federal environmental agencies is only part of the story. Over the long term, the most telling indication of this administration's intentions is the role played by the White House itself through the OMB. The Bush administration has given unprecedented new power to the OMB to gut existing environmental rules and bottle up new ones indefinitely. And the OMB has carried this effort a step further by reaching out to polluters and their champions on Capitol Hill to develop a "hit list" of environmental safeguards they plan to weaken (see page 28). The list includes safe drinking water standards, controls on toxics, Clean Air Act requirements, water pollution limits, pollution from factory farms, and forest planning regulations.

The Bush administration would do well to learn from history and reevaluate the wisdom of its anti-environment course. When it comes to the environment, there is ample documentation to show that public concern is steadfast. Indeed, poll after poll confirms that the overwhelming majority of Americans, regardless of political affiliation, favor strengthening rather than weakening environmental safeguards. It is time we moved beyond the seemingly unending battle over attempts to weaken popular environmental laws to address such pressing challenges as global warming and urban sprawl.

The pages that follow offer a comprehensive review of the diverse and far-reaching Bush administration regulatory initiatives to cripple key environmental programs across the federal government. The **report's first section summarizes cases in which** federal agencies have taken final formal action. The second section reviews major administrative assaults targeting key environmental programs that are pending, or in process, as of this writing. The third section of the report provides more detail on the sweeping effort at the OMB to broadly weaken environmental safeguards by twisting the rulemaking process in the interest of industry and at the expense of public health. Finally, the chronology included as Appendix I offers a concise, comprehensive review of the full range of more than 100 anti-environment actions by the Bush administration.

CHAPTER 1

CASUALTIES OF WAR

In an interview at his Texas ranch last August, President Bush sought to defend his environmental record. "My administration's made a lot of very thoughtful and environmentally sensitive decisions," he complained, "but you get no credit for it."

Below are examples of a dozen areas in which the administration has weakened or repealed federal regulations and laws designed to safeguard the environment. These actions, which took place after September 11, are a continuation of the Bush administration's antiregulatory agenda that it began implementing on day one. For a more complete list of the administration's actions to date, see the Bush Environmental Record (Appendix I).

PUBLIC LANDS: OPEN FOR BUSINESS

In accordance with the goals of the Bush administration's national energy plan, released in May 2001, federal agencies have shifted their focus away from balanced resource protection. Instead, they are actively scouring public lands for energy development opportunities, regardless of the legality or environmental consequences.

The Bureau of Land Management (BLM) is leading the charge to open up enormous amounts of public lands to the energy industry, including some of our most fragile and remarkable places. BLM data, released in early March, show that the number of leases for oil, gas, and coal mining on public lands increased by 51 percent—from 2.6 million acres in 2000 to 4 million acres in 2001.

On January 31, the BLM approved oil exploration on the Dome Plateau, a scenic 36-square-mile area near Arches National Park in southern Utah's Redrock Canyon Country. The project involves crisscrossing the landscape with nearly 50 miles of cable and 50,000-pound heavy-duty "thumper" trucks to conduct seismic testing. NRDC and other organizations challenged the agency's approval of the project on the grounds that the agency ignored the potential severe and long-term impacts to fragile soils, vegetation, and wildlife habitats. On March 22, the Interior Department's independent Office of Hearings and Appeals halted the project, finding that the BLM had not prepared a thorough environmental impact statement, had failed to consider alternatives to the industry's proposal, and had ignored the project's likely impacts on the area's wilderness and other natural resources.

On January 21, the BLM gave preliminary approval to a company to drill eight natural gas wells on federal land near a national monument in Montana. President Clinton designated 387,000 acres along a 149-mile stretch of the Missouri River as the Upper Missouri River Breaks National Monument. During their epic journey across America,

Lewis and Clark explored this remote and still essentially undeveloped area, which contains a unique and spectacular landscape of sandstone cliffs shaped by wind and water into twisting spires and towers.

Last December, the BLM quietly approved 12 leases for oil and gas development in southern Utah's Redrock canyon lands. The agency's action threatens some of Utah's most beautiful and environmentally sensitive areas while ignoring the common-sense alternative of extracting oil and gas from existing, producing fields. NRDC and other environmental groups filed a lawsuit in federal district court in Washington to stop the project. The groups are alleging that the BLM disregarded one of the nation's most basic environmental legal requirements: according to the National Environment Policy Act (NEPA), environmental reviews must be conducted before leases are issued for oil and gas exploration and development.

In addition, on November 8, the BLM proposed to lease oil and gas resources on public lands in Vermillion Basin, a spectacular desert canyon area in northwestern Colorado. If energy development occurs, the wilderness values of these lands could be permanently lost.

All of these actions have emerged because the agency directed its field offices to expand access to public lands for development and to speed up the environmental review process. On August 15, all state directors received a memo requiring them to identify 40 "tasks" to expedite and expand opportunities for energy development on BLM-managed lands. The tasks included finding ways to expedite approval of permits to drill for oil and gas, expanding federal subsidies to oil companies, meeting increased demand for coal leases, and "looking for opportunities" to circumvent NEPA requirements for "all energy proposals."

COAL-BED METHANE GAS: POWDERFUL STUFF

On April 4, Assistant Interior Secretary Rebecca Watson spoke at a conference in Colorado about the BLM's plans to increase gas supplies through coal-bed methane development in the Rocky Mountain region. If the administration gets its way, thousands of oil and gas wells could mar vast stretches of Western landscape.

The BLM is currently considering a proposal to drill as many as 80,000 new oil and gas wells, including more than 50,000 methane gas wells in the Powder River Basin, a unique landscape of craggy mountains, rolling hills, and sweeping plains located in southern Montana and northeastern Wyoming. Bordered by the Bighorn Mountains, the Wyoming portion of the basin alone is home to dozens of bird species, hundreds of thousands of pronghorn antelope and mule deer, twelve thousand elk, and at least 15 other sensitive species, including the white-tailed prairie dog. The coal-bed methane component of the BLM's development plans would be the largest natural-gas project ever allowed by the federal government. Over the next decade, this project would lead to the construction of 17,000 miles of new roads and 20,000 miles of pipelines across sensitive, and largely undeveloped agricultural land in Wyoming alone; over 200,000 acres would be stripped of soil and vegetation.

Coal-bed methane development threatens not just scenic values and wildlife, but also water quality and agriculture as well. Vast amounts of water—an estimated 1.5 trillion gallons—would be pumped out of coal seams and, although contaminated with various toxins, either intentionally dumped or leaked, untreated, into the ground. Eventually the polluted water would make its way into streams and rivers. The BLM is taking public comment on only two proposed development alternatives, both of which would allow the full number of wells requested by industry.

More than 90 percent of lands managed by the BLM are already open for leasing and development. But the administration has put energy companies on notice that they can expect speedier drilling approvals, easier access to oil and gas deposits on federal lands, reduced royalty payments, and fewer environmental restrictions. Speaking at an energy "outreach" conference in Denver in March, Pete Culp, the BLM's assistant director for minerals and resource protection, assured energy executives and others in the audience that his agency would fully comply with the president's national energy objectives, which call for an aggressive expansion of energy development on public lands. Culp outlined a plan that includes suspending seasonal closures designed to protect wildlife, streamlining environmental reviews, and adopting "performance-based" environmental standards instead of making companies comply with existing rules.

More than 90 percent of lands managed by the BLM are already open for leasing and development.

FOREST LANDS: NOT JUST FOR LOGGING ANYMORE

While BLM is leading the effort to replace resource protection with energy production on federal lands throughout the West, other agencies too are racing to permit energy development—even on forest lands that have been off-limits to such activity. Five years ago, the famed Rocky Mountain Front in northwestern Montana was put off limits to oil and gas exploration and development by the supervisor of Lewis and Clark National Forest, a decision heralded by a majority of Big Sky residents and countless citizens across the country. But last month, Agriculture Secretary Ann Veneman told local officials that new technology could ensure adequate protection from the environmental damage caused by drilling, and suggested that the Forest Service might overrule its previous decision.

In yet another victory for the forces of extraction, the Forest Service also approved lead mining exploration in Missouri's Mark Twain National Forest. In February, the agency gave preliminary approval to the Doe Run Company's plan to drill more than 200 holes in the tree-covered hills and winding streams of the Ozarks. About 80 percent of the nation's lead comes from Missouri, and drilling proponents say the industry is essential for the region's economy. But the porous limestone in the southeastern region of the state could lead to massive water pollution. The company expects a favorable final decision on permits for the project from the BLM.

ROADLESS AREAS: CUTTING PROTECTION

Last summer the Bush administration started to weaken the "roadless rule" that protects America's undeveloped national forest lands, but in December, Forest Service Chief Dale Bosworth went even further. "I think there are ways we can change things in the regulations," he said. "We don't need to change environmental laws." On December 20, Bosworth issued new directives that would make it easier for the timber and mining industries to build new roads in national forests. The directives eliminated mandatory environmental reviews and abandoned the requirement of a "compelling need" to build new roads in vast reaches of remote roadless areas. As a result, more old growth trees will be targeted for cutting.

The Tongass National Forest, the world's largest remaining temperate rainforest, will be the most profoundly affected by the administration's new focus on roadless-area logging. The Tongass spans 500 awe-inspiring miles of Alaska's coast and is home to towering groves of ancient trees, the world's largest concentrations of grizzly bears and bald eagles, and wild rivers that teem with salmon. Despite the Bush administration's hollow claims that it wants to protect wild forests, the Forest Service is planning 33 huge timber sales in roadless areas throughout the Tongass. Most of these sales would have been prohibited by the roadless rule.

In addition to activities in Tongass roadless areas, the Forest Service is moving forward with roadless-areas activities, including logging and oil and gas exploration, in wild forests throughout the country. For example, the Forest Service is proposing to open up some 140,000 roadless acres of Los Padres National Forest in California to oil and gas companies, acres that now provide vital habitat. Further north in California, the Forest Service plans to log up to 140 million board feet of burned timber from Tahoe National Forest. The proposed salvage logging project would affect 4,000 acres of Sierra Nevada forest, a quarter of which is in the mountain range's largest remaining unprotected roadless area.

Bosworth's December directives represent another in a series of retreats from the Roadless Area Conservation Rule, issued on January 12,2001, which barred virtually all roadbuilding and logging in 58.5 million acres of roadless areas in national forests. This rule resulted from a three-year process that included more than 600 meetings and generated a record 1.6 million public comments—95 percent of which supported strong protection for roadless national-forest lands. Nearly a million more Americans have written the Forest Service since then to support the roadless rule, but when a federal judge suspended the rule last May, the administration refused to defend it in court or appeal the judge's ruling.

FOREST MANAGEMENT: TIMBER!

In March, the Forest Service proposed logging 60 million to 140 million board feet of burned timber in California's Tahoe National Forest. The salvage logging project would affect 4,000 acres of Sierra Nevada forest. Despite a scientific consensus to the contrary, the Bush administration says the logging would somehow help restore the health of old-

growth stands. Because helicopters, not bulldozers, would be used, the administration also claims that the project would not violate the roadless-area conservation rule signed by President Clinton. But using helicopters to extract timber would add significantly to the operation's cost, and therefore require taking out big, old trees. Dead or alive, those trees play an essential role in maintaining the health of that forest ecosystem.

The administration wants to boost logging on public lands, and its not about to let endangered species stand in the way. On April 8, Forest Service Chief Dale Bosworth instructed regional heads of his agency, the BLM and other federal regulators to recommend changes to the Northwest Forest Plan. The landmark forest plan, enacted by the Clinton administration in **1994** to protect the spotted owl and other rare forest species, placed restrictions on logging in old-growth forests. Logging over the last 150 years has destroyed about 90 percent of spotted owl habitat, forcing its protection under the Endangered Species Act. The Northwest Forest Plan accommodated environmentalists and the timber industry by setting aside millions of acres of federal forests for protection. of the threatened northern spotted owl and other wildlife while permitting logging of nearly 1 billion board feet of federal timber each year. Even so, the administration thinks the plan is broken and needs to be fixed. Although Bosworth set no deadline for rewriting the plan, he said the administration has made the effort a priority and will offer changes at its discretion.

Neither basic fiscal responsibility nor elementary stewardship principles are standing in the way of the Forest Service's headlong rush back to the days when logging took precedence in national forests.

In late January, the Forest Service filed an appeal in federal court to overturn a ruling that halted salvage logging on thousands of acres of burned timber in Montana's Bitterroot National Forest. The agency also asked the federal judge who made the ruling to allow limited logging of about 5,000 acres. On January 1, the judge had issued a court order barring the Forest Service from salvage logging about 46,000 acres of timber scorched by wildfires in 2000, ruling that the agency had illegally approved the plan by bypassing the usual public appeals process. By shutting out the public, the judge said the agency had elected "to take the law into its own hands."

In filing its motion with the Ninth U.S. Circuit Court of Appeals in San Francisco, the Forest Service claimed that cutting and removing the dead trees would actually improve the health of the forest. Exactly how clearcutting trees can "restore" a forest is unclear, but what is certain is that dead and decaying trees are important components of a healthy forest ecosystem, providing wildlife habitat and returning nutrients to the soil.

In general, the administration has moved to weaken restrictions on logging. For example, last fall, the Forest Service proposed expanding its use of "categorical exclusions," a strategy to dispense with environmental analyses and public input for certain projects. National Environmental Policy Act regulations allow categorical exclusions for minor projects that do not involve environmentally sensitive areas or issues such as roadless areas, threatened and endangered species habitat, fragile soils, or steep, erosive slopes. But the agency has proposed to use categorical exclusions whenever its field managers unilaterally determine that any of several broad classes of actions "would not have a significant effect" on the environment. This proposal appeared to be the first salvo in Chief Bosworth's campaign to dispense with a variety of regulatory safeguards that help protect the environment in the Forest Service's decision-making process.

Neither basic fiscal responsibility nor elementary stewardship principles are halting the Forest Service's headlong rush back to the days when logging took precedence in national forests. The General Accounting Office (GAO) issued a report in October that found the Forest Service had secretly eliminated its periodic timber-sale monitoring reports earlier in the year. The GAO also found "serious accounting and financial reporting deficiencies" with Forest Service timber sale calculations. According to Taxpayers for Common Sense, a fiscal watchdog group, the agency's massive financial mismanagement resulted in timber-sale losses exceeding $400 million in 1998—more than triple the amount disclosed by the agency.

EVERGLADES RESTORATION: WATERED DOWN

Last year Congress overwhelmingly approved an approximately $7.8 billion initiative to save the Everglades. Half of this national treasure has been lost to development; the other half is used as a reservoir, filled up during the rainy season and drained in the summer.

On January 9,2002, President Bush and his brother, Florida Governor Jeb Bush, signed a congressionally required agreement that the state of Florida would not divert water from the Everglades intended for the restoration project. While an important and positive step, this agreement pales in comparison to on-the-ground implementation plans that are the responsibility of the Corps of Engineers.

For example, the Corps proposed on December 28 a plan for restoring the Everglades' ecosystem. But the 58-page draft "programmatic regulations" lacked substantive details. The Corps' plan also did not provide performance goals required by law, or a timeline for those goals, that would ensure accountability. Nor does the plan spell out how the Corps will manage this unprecedented effort involving 68 projects over a 30-year period.

The restoration project focuses on "re-plumbing" the Everglades water management system with artificial reservoirs and other technologies to *try* to store hundreds of billions of gallons of water. Congress mandated that 80 percent of the recaptured water should be used to restore the natural system. But the Corps' draft rejects that directive. Given that Florida's population is expected to double by 2050 to 12 million people, the state government is counting on this water to meet future water demand. The Corps apparently **is** more interested in satisfying the needs of a growing population than protecting the Everglades ecosystem.

While the Corps could still change its plan in response to additional public comment, the agency has ignored substantial input from environmental groups for more than ***a*** year. Meanwhile, the Interior Department is not doing much to ensure that the Everglades' unique wildlife will still be there if the magnificent marsh is saved. In the latest of the administration's assaults on the Endangered Species Act, the U.S. Fish and Wildlife Service reversed itself in April on the gravely endangered Cape Sable seaside sparrow. Found only in and around Everglades National Park, this bird is considered by scientists to be the quintessential indicator of the Everglades' health. Nevertheless, the service decided to remove restrictions on the Corps' water management practices that had cut the species' numbers in half over the last decade.

WETLANDS PROTECTION: ROTTEN AT THE CORPS

Last year, a few days before Earth Day 2001, the EPA upheld a Clinton administration decision narrowing the so-called Tulloch loophole, which had allowed thousands of acres of wetlands to be drained for development. That day, White House spokesman Ari Fleischer issued a statement that read in part: "Wetlands serve a vital function in our environment.... This administration will continue to take responsible steps to ensure that we can preserve these vital natural resources [wetlands] for future generations of Americans."

The Bush administration promptly broke its pledge by weakening a key program under the Clean Water Act designed to protect the nation's wetlands. The original nationwide permit program, established by Congress nearly ***25*** years ago, allows the *Corps* to issue "general" permits for activities that discharge fill or dredged material into wetlands or streams only if those projects have "minimal adverse effects" on the environment. The agency awards more than 30,000 such permits every year. Unlike "individual" permits for more destructive activities, general permits do not require public notice or comment, and they undergo much less stringent review, if any, by the Corps.

On January **14,2002,** the White House signed off on a controversial plan by the U.S. Army Corps of Engineers to relax the nationwide permit rules. The administration's new permits would allow the Corps to waive limits on impacts to streams, loosen restrictions on filling wetlands in floodplains, and lift the half-acre cap on impacts for commercial developments such as malls and office parks. While the EPA had formally opposed the Corps' plan for these reasons, Interior Secretary Gale Norton never submitted comments written by the U.S. Fish and Wildlife Service—Interior's key biological agency—that were even more critical of the plan. In an October 15 memo, the Fish and Wildlife Service argued that the Corps did not have "sufficient scientific basis to claim" that the new expedited permits will "cause only minimal impact on the nation's natural resources." In fact, the agency predicted the Corps' changes would cause "tremendous destruction of aquatic and terrestrial habitat."

John Studt, chief of the Corps' regulatory program, characterized the permit revisions as minor bureaucratic changes that would improve, not weaken, environmental protection. Studt has commented that he views speeding up the wetland permitting process as a patriotic way of spurring "economy development and moving money into **the** economy." "The harder we work to expedite issuance of permits," he wrote in an email message to staff on September 21, "the more we serve the Nation by moving the economy forward." While Studt has since left this position, his legacy remains.

FEDERAL CONTRACTORS: IRRESPONSIBLE POLICY

Government agencies no longer will deny federal contracts to businesses that violate environmental law thanks to the Bush administration's December 28 decision to repeal a contractor responsibility rule. The original regulation prohibited government agencies from awarding contracts worth more than $100,000 to companies that violate federal laws, including those that protect the environment, public health, consumers, and

working families. Proponents of the rule had argued that companies that repeatedly violate such laws should be barred from doing business with the very entity responsible for enforcing those laws—the U.S. government. The Bush administration apparently thinks otherwise.

ENDANGERED SPECIES: CRITICAL CONDITION

The nation's plants and animals most at risk these days can expect no refuge under the Bush administration. Although Bush officials have pledged to defend federal wildlife protections, particularly the Endangered Species Act (ESA), their actions tell a different story. The administration is currently trying to weaken rules for "critical habitat." Critical habitat consists of areas that biologists have determined necessary for the survival and recovery of a threatened or endangered species. In some cases, the government is allowed to limit or block development and other activities in the areas if federally protected species could be harmed.

The administration scaled back habitat protection for an endangered butterfly by 40 percent from what it proposed a year ago. On April 5, the U.S. Fish and Wildlife Service reduced nearly 130,000 acres of critical habitat for the endangered Quino checkerspot butterfly, and instead plans to set aside 172,000 acres in Southern California 40 percent less protected land than the agency proposed in February 2001. Before that, the agency had considered protecting more than 300,000 acres. The inch-long butterfly used to be plentiful throughout San Diego and Riverside counties, but agriculture and development have significantly reduced its range over the past several decades. More than 95 percent of the butterfly's habitat has been developed, and the remaining territory has been harmed by the spread of non-native plants that kill the insect's host plants. Federal officials declared the insect in danger of extinction in 1997, and environmental groups successfully sued to force the government to implement habitat protections two years later.

On March 19, a federal judge upheld the government's right to protect endangered species by ruling that the Forest Service can restrict irrigation water in order to protect salmon listed under the **ESA.** The judge dismissed a lawsuit by county officials and local irrigators in Washington State who argued that requiring minimum stream flow **is illegal** because it favors fish over farmers. But the fish aren't out of the woods yet. The Bush administration is urging federal judges in California to roll back legal protections for endangered species.

The Fish and Wildlife Service and the National Marine Fisheries Service (NMFS), two agencies responsible for enforcing the ESA, asked the courts on March 11 to rescind millions of acres of protected habitat for nearly two dozen endangered species throughout the country. Despite the fact that habitat loss is the main reason why species go extinct, the agencies want to lift habitat protections while they conduct a two-year analysis of the economic impacts of critical habitat designations.

Withdrawing critical habitat would please developers, who likely would drop their lawsuits if they were able to build in ecologically sensitive areas. For instance, NMFS reached a settlement in federal court in March with the National Association of Home

Builders, 17 property rights groups, and several local governments that had filed suit over "excessive" federal endangered species protections. The agency agreed to withdraw critical habitat designations put in place by the Clinton administration two years ago for 19 salmon and steelhead populations in four Western states. The Bush administration's settlement paves the way for increased development in wildlife habitat covering 150 watersheds, river segments, bays, and estuaries throughout Washington, Oregon, Idaho, and California.

In February, the Army Corps of Engineers issued its final recommendation on the fate of four dams located on the lower Snake River in Washington and, unfortunately, the news is not good for endangered fish. Environmentalists and scientists blame the dams for the extinction of native fish populations or their listing under the ESA. Populations of Snake River salmon and steelhead plummeted following construction of the dams in the 1960s and 1970s. Since 1995, the Corps has studied ways of improving fish passage through the dams and preventing further extinction. Instead of breaching the dams, the Corps plans to spend $400 million over the next 10 years on fish ladders, additional transportation barges, and other programs in hopes of making the dams less lethal to fish. The last hope for the Snake River's migrating fish resides with another federal agency. The NMFS is ultimately responsible for the government's plan to restore the salmon and plans to reevaluate the plight of the fish next year.

GLOBAL WARMING POLICY: TOO MUCH HOT AIR

In its first year, the Bush administration retreated from a campaign promise to limit carbon dioxide emissions, rejected the Kyoto Protocol, and proposed a new national energy policy that would actually accelerate global warming—all while promising that it would, in due course, issue its own solution to the serious problems posed by climate change. So far, the administration has failed to deliver. In fact, it recently took *two* bold steps backwards by unveiling a do-nothing policy course, and then shooting the messenger who took a divergent position from the administration on the issue of global warming.

On April 2, to the delight of politically-connected energy companies, the White House moved to take America's top climatologist off a prestigious panel that assesses global warming. The State Department has decided not to renominate Dr. Robert Watson now that his term on the panel is expiring. Watson has been outspoken in his belief that global warming is a serious environmental threat and that the problem is caused by human activity: emissions. The United States emits 25 percent of the world's carbon dioxide pollution (CO_2), the main contributor to global warming. The administration has steadfastly rejected international efforts to force industry to reduce its CO_2 emissions.

On Valentine's Day, President Bush announced a voluntary global warming plan that will let emissions of heat-trapping pollutants continue growing indefinitely at exactly the same rate they have grown over the last 10 years. The plan uses accounting tricks to mask the fact that, even if its voluntary emissions targets are actually achieved, heat-trapping CO_2 pollution would keep increasing at almost exactly the same rate it has for the past decade. Based on the president's own projections, emissions would increase 14 percent

over the next 10 years, which is precisely the rate at which they grew during the last 10 years.

The president's non-binding goal is to reduce "emissions intensity"—CO_2 pollution relative to economic output—by 18 percent over the next decade. Yet from 1990 to 2000, emissions intensity fell **17.4** percent. Economic growth already tends to outpace CO_2 increases and has for several decades. But it still allows unsafe emissions growth to proceed unabated. The White House claims that the Bush target is similar to global warming targets of the rest of the world. In fact, the new plan would result in U.S. emissions 30 percent above 1990 levels in 2012. Meanwhile, the rest of the industrialized world has committed to reduce emissions to near 1990 levels under the global warming treaty abandoned by the administration last year.

CLEAR SKIES: NOT LIKELY

In March, the EPA unveiled its long-awaited policy to reduce the nation's air pollution. The "Clear Skies" initiative encourages industry to voluntarily reduce emissions of sulfur dioxide, nitrogen oxide, and mercury. Carbon dioxide emissions—the main global-warming pollutant—are not addressed in the president's plan. The Bush plan's reliance on a "cap and trade" program would be ineffective at combating air pollution because sources can avoid cleaning up their pollution by purchasing credits from different parts of the country.

Eric Schaeffer, the EPA's former director of regulatory enforcement who resigned in protest over the administration's policies, said that the Clean Air Act would provide better results than Bush's "Clear Skies" proposal if it were implemented. The president's plan would delay by up to 10 years life-saving emission cuts now required under the Clean Air Act. It allows three times more toxic mercury emissions than current law would allow, and postpones forthcoming mercury limits by a decade. **It** would allow 50 percent more sulfur emissions—which cause acid rain and premature death from respiratory disease—than current law and push back cleanup standards from 2012 to 2018. It also would allow hundreds of thousands of tons of additional smog-forming nitrogen-oxide pollution, and delay their clean-up for a decade beyond current requirements.

YUCCA MOUNTAIN: NUCLEAR FALLOUT

With no clear scientific consensus, and after several decades and billions of dollars spent studying the issue, the Bush administration approved Nevada's Yucca Mountain, 90 miles north of Las Vegas, **as** the sole repository for most of the nation's high-level nuclear waste. In February, President Bush endorsed Energy Secretary Spencer Abraham's recommendation to store 77,000 tons of spent nuclear fuel underground at the Yucca facility, and urged Congress to sign off on the plan.

Last December, the Department of Energy issued new site-suitability guidelines that dropped a key requirement: the government must prove Yucca Mountain's underground

rock formations would prevent radioactive contamination of the environment. The department instead plans to rely on "engineered waste packages" (cylindrical casks in a series of tunnels) that it says will adequately contain the highly radioactive waste. The administration's new, relaxed guidelines are an attempt to meet the EPA's own weak and inadequate standards. NRDC is challenging the EPA's standards in the United States Court of Appeals for the D.C. Circuit. Briefing on the merits of the case commences in May and will conclude next fall.

In issuing these new site-suitability guidelines, Energy Secretary Abraham ignored the advice of the General Accounting Office (GAO). GAO had recently issued a report raising serious questions about whether the project could be successfully implemented as conceived. GAO urged the Bush administration in early December to postpone indefinitely a decision on licensing.

Nonetheless, after weakening the standards for the proposed repository, the Department of Energy formally recommended that Yucca Mountain become the country's permanent storage site for highly radioactive nuclear waste from power plants and weapons factories around the country. In a January 9,2002, letter *to* Nevada officials, Energy Secretary Abraham said he concluded that Yucca Mountain would be a secure home for the waste, and that he would recommend within 30 days that President Bush authorize the Department of Energy to submit a license application to the Nuclear Regulatory Commission to construct the repository.

Despite his campaign promise to base the decision about Yucca Mountain on "sound science," President Bush approved the project after one day of reflection. On April 8, under a provision of the Nuclear Waste Policy Act, which allows the governor **of** a targeted state the right to reject the president's selection, Nevada Republican Governor Kenny Guinn vetoed the use of Yucca Mountain **as** the nation's dump for its most highly radioactive waste. Congress now has 90 days to debate the issue, and a vote is expected in July.

SNOWMOBILES: A SNOW JOB

Shortly after taking office, the Bush administration set its sights on the Clinton-era ban on snowmobiles in national parks. First, **the** administration proclaimed its commitment **to** phasing out off-road vehicles in Yellowstone and Grand Teton national parks over three years and replacing them with safer, cleaner, multi-passenger snow coaches. But last June, it negotiated an out-of-court agreement with the snowmobile industry to delay the rule pending additional studies and public comment, effectively overturning the ban.

Every year, tens of thousands of snowmobiles roar through these majestic national parks during the winter season, spewing enormous amounts of air pollution in the process. In a single winter, Yellowstone snowmobiles have emitted the equivalent of 68 years worth of automobile pollution. Already this year, snowmobiles have forced park employees to wear respirators to protect themselves from carbon monoxide, formaldehyde, benzene, and other harmful air pollutants. **A** decade of scientific research has shown that snowmobiles also harass wildlife, make park employees sick, and destroy the solitude that visitors expect to experience.

The original decision to phase out snowmobiles was based on extensive scientific review and public input and would safeguard the parks for current and future generations. During the three-year public process that produced the first environmental impact statement, 22 public hearings were held and more than 65,000 public comments were received. In December, 13 months after the government issued its ''final''decision to phase out snowmobiles, the National Park Service (NPS) announced that actual implementation of the plan would not begin in Yellowstone and Grand Teton Parks during the winter of 2002–03, as scheduled.

In February, park officials launched another supplemental environmental impact statement (EIS). The latest draft EIS, released last month, once again confirms that snowmobiles harm the parks' air quality and serene setting, jeopardize the health of employees and visitors, and harass wildlife. The agency is considering three alternatives: delay the phase-out by one more year; continue to allow snowmobiles in the parks but impose restrictions on access and the number of vehicles; or require cleaner and quieter snowmobiles, reduce the number, and limit access to major snow roads. For the fifth time, the public is being asked for input on the proposals. The comment period lasts until May 29 and a final decision is expected by mid-November.

Yellowstone and Grand Teton are not the only national parks facing a controversial decision over snowmobiles. On November 29, the NPS reversed a snowmobile ban in Minnesota's Voyageurs National Park, reopening 4,667 acres of lake surface to snowmobiles after an internal study "found no link between human and wolf activity in those areas." This reversed the agency's 1992 moratorium, which had been justified by evidence that recreational activity in lake bays interfered with the ability of wolves to hunt and reproduce. Park officials had cited biological studies confirming that gray wolves in Voyageurs had higher stress levels than those in more remote parks. Snowmobile proponents had filed a lawsuit over the ban, but a federal appeals court ruled that the NPS was authorized to close portions of the park to protect the wolf population. In lifting this moratorium, the NPS now denies that snowmobiles cause the wolves' stress.

SUPERFUND: A SUPER DEAL FOR POLLUTERS

The federal trust fund used *to* cleanup 30 percent of the nation's worst waste sites is facing a cash crunch. President Bush plans to shift cleanup costs to citizens rather than make polluters foot the bill. The funding shortage also means that fewer toxic sites will be designated for restoration.

In 1980 Congress established the Superfund program, which levies a tax on industry to cleanup contamination at "orphan" sites, or those where the responsible party could not be identified or could not—or would not—pay. Under pressure from chemical companies, Congress abandoned the "polluter pays" principle in 1995 by letting the corporate taxes expire. The fund dwindled from a high of $3.8 billion in 1996 to a projected $28 million next year. President Reagan and George W. Bush's father re-authorized the taxes. By not including the superfund tax in his budget, unveiled in

February, the new President Bush favors placing the financial responsibility of the massive cleanup program squarely on the shoulders of American taxpayers.

Faced with the lack of money, the government has had to slash the overall number of sites it has designated for cleanup. Few cleanups have already been completed. Since the Superfund program began, the EPA says that 1,551 sites have been put on the national priority list, with 257 cleaned up and another 552 mostly cleaned up. At most of the sites, groundwater contamination remains a problem that will take years to remedy. The Bush administration projected that it would complete cleanups at *65* sites in 2001, but it only finished 47. The Clinton administration cleaned up more than 80 sites annually between 1996 and 2000.

NATIONAL MONUMENTS: MONUMENTAL CHANGES

When President Clinton established nearly two dozen new national monuments, the BLM directed field offices to manage these lands accordingly until final plans could be determined after a three- to four-year public comment and study period. In response, the Bush administration has taken steps to weaken the management guidelines for all national monuments. On October 11, with no public notice, the BLM loosened restrictions on environmentally damaging activities at monuments, including one that limited vehicles *to* designated roads and trails. Now visitors can drive vehicles through national monuments on any track or trail where a vehicle has been before. Other changes included lifting restrictions on predator control and making it easier to allow utility lines to run through monuments.

The administration also is seeking local input to determine whether to redraw the boundaries of national monuments — particularly those in the West — to allow energy development activities. Interior Secretary Norton wrote to state officials on March 28 asking them to identify commercial uses that should be permitted in national monuments and to suggest changes in their boundaries.

WETLANDS: NEW NET LOSS

The nation is losing nearly 60,000 acres of wetlands annually, according to the U.S. Fish and Wildlife Service. Regardless, the Corps of Engineers — without public notice or coordination with other federal agencies — issued a guidance document on Halloween 2001 weakening mitigation standards. Mitigation involves restoring wetlands or creating new wetlands to replace those destroyed by development. The Corps' new policy considers preserving existing wetlands — as well as preserving or enhancing non-wetland areas such as streams, ponds, or upland areas — as mitigation for wetlands loss. But because filled-in or paved-over wetlands would not be replaced, this approach abandons the national goal of "no net loss" of wetlands established in 1990 by the first Bush administration. Stung by criticism that it had acted unilaterally, the Corps reluctantly sought input from other agencies on December 19. The comment period, which ended March 1, 2002, was not open to the public. Both the EPA and the National Marine

Fisheries Service submitted detailed comments sharply critical of the Corps' approach. The EPA noted that "provisions of the [guidance document] raise questions regarding the administration's commitment to the no net loss of wetlands goal." Meanwhile, the new policy remains in effect.

The Corps' controversial policy reversal came on the heels of growing criticism for its failure to ensure that mitigation efforts are actually working. **A** National Research Council report released last June found that the Corps lacked the data to demonstrate the success of current mitigation projects. This followed a May study by the **GAO** that documented widespread failure by the Corps to ensure that lost wetlands are being replaced. Recent Corps assessments confirm that there are problems with its mitigation program.

MINING POLICY: GETTING THE SHAFT

The federal mining law has not been substantially updated since **1872.** Over the years, mining activities in the western United States have polluted 40 percent of all Western watersheds, according to a 2000 Environmental Protection Agency estimate. **A** half-million abandoned or closed mines dot the nation's landscape, with cleanup costs estimated in the tens of billions of dollars.

Mining companies and their trade associations contributed millions of dollars to President Bush's campaign, which may explain the administration's favorable treatment of the industry.

Mining companies and their trade associations contributed millions of dollars to President Bush's campaign, which may explain the administration's favorable treatment of the industry. In December, Interior Secretary Norton overturned her agency's rejection of a Canadian conglomerate's proposal to locate a major open-pit gold mine in an area of the Southern California desert. The area is of great cultural and religious importance to the Quechan Indian nation. Former Interior Secretary Bruce Babbitt had denied permission to dig the mine because of the devastating impact it would have on the rich archeological resources of the 1,571-acre Indian Pass site.

In an action with more far-reaching consequences, Secretary Norton issued new final hard rock mining regulations in late October that reverse more stringent environmental restrictions on mining for gold, silver, copper, and other metals on federal lands. Under the new rules, which took effect December 31, the Interior Department no longer has the authority to deny a permit for a proposed mine on the ground that it would result in "substantial irreparable harm" to the environment or to historic and cultural resources. The new rules also limit corporate liability for irresponsible mining practices, undermining regulatory provisions that required strong pollution cleanup standards for safeguarding ground and surface water.

Earlier that month, Forest Service Chief Bosworth asked the Interior Department to lift a two-year moratorium on new mining activities covering more than 800,000 acres of national forest lands in southern Oregon—home to pristine rivers and streams, wild salmon, and rare plants. During the Clinton administration, Interior Secretary Babbitt had imposed the moratorium and also had ordered a review of more than 1,000 existing mining claims in the Siskiyou National Forest to protect fish and wildlife and their habitats from damage and loss resulting from mining.

AIR QUALITY IN HOUSTON: WE HAVE A PROBLEM

NRDC and other environmental groups reached a consent decree with the EPA in **2000** requiring the agency to approve a state plan demonstrating how the Houston/Galveston area would meet the national smog standard by the **2007** deadline set by the Clean Air Act. The EPA could either approve a plan submitted by Texas state authorities or produce a plan of its own. In either case, the decree required that the plan spell out how Texas was going to achieve pollution reductions needed to bring the Houston/Galveston area into line with the federal smog standard. The EPA did approve a Texas plan late last year, but that plan failed to spell out how it would achieve the necessary pollution reductions. By the EPA's own calculations, the approved plan is 56 tons per day short of necessary pollution reductions—equaling more than **40** million pounds per year of excess, illegal pollution in the region's air.

The EPA's refusal to meet the statute's cleanup requirements for Houston is particularly indefensible, considering that the Houston/Galveston area set last year's national record for the highest reading of smog and exceeded the federal smog standard more often than any other region in the country. NRDC and other environmental groups have filed suit to force the EPA and the state to ensure clean air for the area's **4** million residents, as the Clean Air Act requires.

CHAPTER 2

ON THE CHOPPING BLOCK

As of mid-January, 2002, the Bush administration was considering action on more than a dozen significant regulatory or policy issues, In every case, the administration is proposing changes that would benefit industry at the expense of public health and the environment.

EVERGLADES MINING: LIMESTONE COWBOYS

The Army *Corps* of Engineers, the agency in charge of implementing the restoration plan for the Florida Everglades, will actually allow miners to destroy thousands of acres of this natural treasure even before restoration efforts begin. In April, the *Corps* issued 10-year permits to the limestone mining industry to turn about 5,000 acres of Everglades wetlands into open-pit mines. And that's just the first phase: the project would eventually open up a 30-square-mile hole in the middle of the Everglades. Mining the Everglades would irreversibly destroy critical wetlands and endangered species habitat, harm Everglades restoration, contaminate local drinking water supplies, and cost taxpayers hundreds of millions of dollars.

The *Corps* argues that, in theory, decades from now some of the pits could be used as water reservoirs for the Everglades. But experts question whether the pits would be built in such a way as to safely or cost-effectively function as reservoirs. The EPA and Interior Department also previously objected to the thousands of acres of unique wildlife habitat that would be destroyed, the harm the pits would do to restoring water flows in the Everglades, and the contamination threat the mines pose to adjacent drinking water supplies. Studies are currently under way that explore these threats, possible solutions, and alternative ways to store and deliver additional water to the Everglades. But the *Corps* is inexplicably allowing mining to go forward before the studies *are* completed.

NEW SOURCE REVIEW: SAME OLD STORY

During the 2000 campaign, George W. Bush promised that, if elected, he would "require electric utilities to reduce emissions and significantly improve air quality." But he reversed his position after taking the White House, as he did with his campaign pledge to regulate carbon dioxide emissions. Now, under the guise of reform, the Bush administration is moving to weaken an important Clean Air Act program that requires older, dirtier power plants and other industrial facilities to have modem pollution controls installed whenever plant upgrades or expansions significantly increase pollution.

In March, the **EPA** finally announced that it will make formal rule changes aimed at discouraging new government lawsuits against polluters. Instead, it favors incentives for voluntary reductions in toxic emissions. No longer will older plants that expand or significantly modify their operations — thereby increasing emissions — be sued for violating the Clean Air Act's new-source-review provision unless the companies agree to install updated antipollution equipment.

Coal-tired power plants are major sources of smog and tiny particles of soot called particulate matter, pollution that has been linked to environmental and health problems, and tens of thousands of deaths annually in the United States. Under the Clean Air Act of 1970, hundreds of the nation's oldest and dirtiest power plants, oil refineries, and chemical and manufacturing plants built before the new law went into effect do not have to meet current pollution cleanup rules. **A** key provision of the act called "new source review" requires that these facilities install state-of-the-art equipment when they expand or modernize their operations. This program, along with the accompanying tough requirements for new industrial facilities and power plants, is intended to ensure long-term air quality improvement as old pollution sources are rebuilt or replaced.

During the Clinton administration, the Justice Department found that violators of new-source-review rules illegally emitted tens of thousands of tons of pollution. At first, the Bush administration continued to prosecute these cases, and the Justice Department settled four of them last year on terms unfavorable to corporations. Responding to heavy lobbying by the energy industry however — a big contributor to Bush's election campaign — the administration quickly softened its stance.

In the president's energy plan, the EPA was directed to launch a 90-day "study" of the new-source-review program and the Justice Department was instructed to review the 51 lawsuits pending against industry. The review ended up lasting nearly a year. On January 15, the Justice Department concluded that the government was justified in suing the polluting power plants, and Attorney General John Ashcroft vowed to continue to "vigorously" pursue those cases. But Justice Department officials admit that potential settlements of new-source-review cases will reflect the Bush administration's changes to the program. These changes will likely weaken today's air pollution protections and reward violators that are resisting settlement discussions until the law is relaxed in their favor.

ENVIRONMENTAL FUNDING: CASHING OUT

President Bush's budget for fiscal year 2003 proposes billions of dollars in taxpayer subsidies for energy companies at the expense of the environment and public health. In February, the White House proposed slashing overall spending for natural resources agencies by $1 billion next year. According to the administration's own figures, inflation would seriously erode the purchasing power of environmental funding, in effect reducing its value by another $14 billion over the next five years. Hardest hit would be energy-efficiency and water-resource programs.

While seriously undercutting investment in the nation's environmental future, the Bush budget hides its intent behind claims of new or expanded initiatives. An honest

accounting of the books would reveal that the administration's assertions repeatedly fall short of its claims. For example, President Bush pledged to fully fund the Land and Water Conservation Fund (LWCF) and eliminate a $4.9 billion backlog of maintenance and protection in national parks. But his budget only provides $486 million of the $900 million for LWCF and increases park spending by just $3 million, which is a drop in the buck to address park needs.

The administration's proposed cuts to the EPA's enforcement program would eviscerate some of the most important air and water statutes while leaving them on the books. But less controversial programs also face debilitating cuts. For example, the White House wants to eliminate the EPA's budget for graduate student research in the environmental sciences. The EPA Star grant program provides highly motivated doctoral students with three years of modest funding (around $13,000) to pursue research on topics ranging from developing effective biological control agents for managing agricultural pests to understanding the effects of global warming on national parks. The cost of the program is little more than a tenth of one percent of the agency's total budget.

The White House even wants to eliminate funding for widely popular and successful programs that teach children the importance of a healthy environment. The president's budget labeled environmental education "ineffective" and re-allocated this funding to math and science programs. This budgetary shell game comes at a time when environmental education is enjoying huge support nationwide. A 12-state consortium recently prepared a study called "Closing the Gap," which gave rave reviews to environmental education. And a 2001 Roper/Starch poll confirmed that 95 percent of parents support environmental education programs.

The administration's hostility toward environmental spending is nothing new. President Bush's first budget proposed slashing overall spending for environmental and natural resources agencies by $2.3 billion (7.2 percent) in fiscal year 2002. Specific cuts included nearly $500 million from the EPA, nearly $400 million from the Interior Department, and nearly $500 million from the Forest Service. The administration also wanted to slash the Department of Energy's budget by roughly $450 million, cutting clean-energy and environmental-cleanup programs. Fortunately, Congress restored most of the funding.

CLEAN WATER PROTECTIONS: WHAT A WASTE

The Bush administration is poised to weaken a critical rule under the Clean Water Act that prevents the disposal of mining and other wastes into the nation's waters. The rollback is at the behest of the surface-coal-mining industry which seeks to continue mountaintop-removal mining, an extraordinarily destructive practice in which the tops of mountains are blown up to gain access to narrow seams of coal. The obliterated mountaintops, now mining waste, are then dumped into the valleys below, burying miles of streams under hundreds of tons of rubble. The Army Corps of Engineers has been illegally issuing permits for these "valley fills" for years, and citizens in West Virginia and Kentucky have filed lawsuits to stop the agency. The administration wants to thwart

the citizens' efforts by changing the rules so the Corps can continue issuing permits for valley fills.

The rule the White House wants to change defines the scope of the Corps' authority to issue permits under the part of the Clean Water Act that regulates filling wetlands, streams, and all other waters. The Corps can issue permits to allow companies to fill these waters for development purposes, but the current rule expressly forbids the Corps from allowing the use of waste material to fill waterways. It is this waste exclusion in the existing rule — adopted in 1977 under Carter — that the administration wants to delete from the law to let mining companies dump their wastes into streams.

The proposal to change this rule was initially made by the Clinton administration due to political pressure brought on by a decision in a federal court case in West Virginia. That case questioned the legality of Corps permits allowing waste disposal from mountaintop-removal coal mining. More than 17,000 citizens and dozens of members of Congress objected to the plan. Only the handful of industries that would benefit from the rule change supported it. As a result, the Clinton administration abandoned the proposal, which has now been revived by the Bush administration.

The proposed rule change would reach far beyond mountaintop-removal mining, giving the Corps carte blanche to issue permits for dumping all kinds of wastes — from hardrock mining, road building, and construction debris — into the waters of the United States. The EPA and the Corps claim that the rule change is simply meant to "clarify" what is currently allowed under the Clean Water Act, and to ratify the Corps' current practice of issuing rubberstamp permits for mountaintop-removal mines. The current rules are clear enough: the Corps is not allowed to issue permits for dumping waste into waters of the United States. The proposed rule change would serve to legalize this currently illegal and environmentally destructive practice.

Buckling to industry pressure, the agency is treating the new alternatives as options to reduce regulatory burdens on factory farms, not to protect public health and the environment.

FACTORY FARMS: COWERING TO INDUSTRY

In November, the EPA released a "notice of data availability" (NODA) related to its proposed rules for livestock factory farms, also known as concentrated animal feeding operations (CAFOs). Factory farms crowd thousands of cows, chickens, or pigs in confined areas and produce enormous amounts of untreated waste. These industrial operations often store the waste in massive open-air pits that are prone to break, leak, or overflow, fouling waterways and drinking water supplies. The EPA's CAFO regulations, written in the 1970s, are outdated and riddled with loopholes that allow approximately 70 percent of factory farms to escape regulation.

The NODA outlines alternatives that the EPA is considering in response to public comments on the proposed CAFO rule. Buckling to industry pressure, the agency is treating the new alternatives as options to reduce so-called regulatory burdens on factory farms, not to protect public health and the environment. Some of the alternatives would weaken groundwater controls and monitoring, authorize states to exempt factory farms from Clean Water Act permitting requirements, and substitute mandatory controls with voluntary measures.

MINING PROPOSALS: NO RESERVATIONS

Interior Secretary Norton is considering approving a mine in the pristine Southern California desert. The area is historically and culturally significant to local Native Americans, which is why former Interior Secretary Babbitt denied a mining company's request to dig a 1,600-acre open-pit gold mine there. Norton reversed that decision in October, but has yet to make a final ruling on the permit. Given that the Bush administration rescinded Clinton-era mining regulations that empowered federal officials to reject mining proposals deemed too harmful to the environment, opponents of the mine are not hopeful about their prospects.

OFF-ROAD VEHICLES: ON THE WRONG TRACK

The BLM is considering lifting restrictions on off-road vehicle usage on nearly 50,000 acres of sand dunes in California. The Imperial Sand Dunes Recreation Area, located 150 miles east of San Diego, is home to rare desert plants and threatened and endangered species. In March, the BLM recommended reopening a previously closed 34,000 acres to hundreds of dirt bikes and all-terrain vehicles. Another 15,000 acres could be opened to an unlimited number of riders. If approved, the plan would effectively reverse a November 2000 legal settlement prohibiting off-road access in certain zones. Protections for the fragile ecosystem could be dropped despite the fact that every year more than 200,000 off-road vehicles enjoy access to 68,000 acres, covering more than 100 square miles. The BLM is planning public hearings on the issue and is expected to issue a final decision in October.

Access is not the only controversy surrounding the use doff-road vehicles on public lands. The issue of air pollution hangs over the use of snowmobiles as well. The Clean Air Act requires the EPA to protect air quality, public health, and the environment from dirt bike, snowmobile, and other off-road vehicle pollution. On September **14,** the agency proposed standards that would "encourage" manufacturers to switch to more efficient engines beginning in 2006. Ostensibly these standards would reduce harmful emissions. But the **EPA** refused to require cleaner, readily available engines and cleanup devices for off-road vehicles.

The **EPA** refuses to accept that new "cleaner" engines would still be much dirtier than standard automobile engines. While most other vehicle classes have been getting cleaner, off-road vehicles are dirtier today than they were 10 years ago, and are the largest single source of air pollution on public lands. For example, although cars outnumber snowmobiles by about 16 to 1 in Yellowstone National Park, the National Park Service found that snowmobiles produce as much as 68 percent of the park's annual carbon monoxide pollution and as much as 90 percent of its total hydrocarbon emissions. Regardless, the EPA sided with industry, which had the support of the OMB, and proposed a dramatically weaker rule than was necessary.

RADIOACTIVE RECYCLING: BUYER BEWARE

The Bush administration is considering overturning a ban on recycling radioactive metal from government nuclear installations. On August 28, the Department of Energy launched a 12-to18-month study on the environmental and health risks of recycling waste from decommissioned nuclear plants and weapons facilities into scrap metal. The scrap metal presumably would be used to make various products, ranging from lawn chairs to zippers.

The nuclear power industry has lobbied the Bush administration to lift the ban, and energy officials say that the government must consider all options for disposing of the nation's growing pile of hazardous wastes. Aside from obvious public health concerns associated with exposure to radioactive material in consumer products, metal industry trade groups are concerned about potential contamination of their mills and workers.

IMPAIRED WATERS: DOWN AND DIRTY

America's water bodies are badly polluted, many to the point that the water is unsafe for fishing, boating, swimming, or drinking. The EPA estimates that 40 percent of surveyed waterways fail to meet water quality standards. Even so, the Bush administration is poised to weaken rules implementing a key provision of the Clean Water Act, called the total maximum daily load (TMDL) program, which sets limits on pollution in impaired waterways.

The TMDL program requires states and the EPA to identify waterways that remain polluted, rank them for priority attention, and then develop pollution limits for each water body. The TMDL standard is based on a calculation of the maximum amount of a pollutant that a water body can hold and still meet water quality standards.

After years of study and consultation, the EPA announced a new TMDL rule in July 2000, but Congress delayed its implementation until October 2001. On July 16,2001, the administration postponed until 2003 the effective date of the rule and, in the meantime, initiated a process to "improve" the rule.

NRDC and other environment groups are concerned that this will be the EPA's first step in weakening the entire TMDL program. The agency is considering revisions that would weaken its oversight of state administration of the program, and enable states to ignore polluted waters.

AIR QUALITY IN NATIONAL PARKS: A HAZY FORECAST

Last May, the Environmental Protection Agency affirmed a Clinton-era rule to cleanup hazy skies over national parks and wilderness areas by cutting pollution from coal-fired power plants, oil refineries, and other industrial facilities. The agency's 1999 regional haze rule would require owners of these facilities to retrofit them with the latest pollution-control technology. However, in July, EPA Administrator Christie Todd Whitman proposed replacing several of the government's toughest air pollution programs with a single approach favored by the electric power industry. The agency would then

scrap the new haze rule in favor of a pollution-credit trading program, leaving our national parks clouded over by pollution.

DIESEL POLLUTION: ALL CHOKED UP

In a major step forward in reducing air pollution throughout the nation, EPA Administrator Whitman affirmed on February 28, 2001 a Clinton-era rule to reduce sulfur levels in diesel fuel by 97 percent in mid-2006, leading to 90 percent reductions in asthma-inducing particulate soot and 95 percent reductions in smog-forming nitrogen oxides by 2007. Cutting these truck and bus emissions will save more than 8,300 American lives and prevent nearly 800,000 asthma attacks and other respiratory problems each year. This new diesel rule will be the most significant step to cut vehicle pollution since the government forced refineries to remove lead from gasoline—and is the most serious effort to reduce air pollution yet made by the Bush administration.

Unfortunately, almost immediately after the diesel announcement, the oil and engine industries began lobbying the White House to give them another opportunity to weaken the rule. Industry filed lawsuits to block the rule, and the D.C. Circuit is expected to rule at any time. While the EPA and the Bush administration are defending the rule in court, they have also taken steps that should please the industry lobbyists who are attacking the rule. On August 1, for example, EPA officials informed the Senate that the agency would convene an "independent panel" to reexamine the rule as it moves toward implementation. This unprecedented move may allow industry yet another opportunity to delay the rule. At a minimum, the continuing existence of such an external review panel has environmentalists, state officials, and others concerned that this panel will have a chilling effect on nascent research and development efforts to cleanup the nation's diesels to meet the new emission and fuel standards.

Whitman proposed replacing several of the government's toughest air pollution programs with a single approach favored by the electric power industry.

AIR CONDITIONER STANDARDS: THE BIG CHILL

After delaying implementation of new energy-efficiency standards for residential central air conditioners, the Department of Energy announced in April that it intended to substantially weaken the standard from a Seasonal Energy Efficiency Ratio (SEER) 13 to SEER **12.** The final rule calling for a SEER 13 standard, published on January 22,2001, mandated a 30 percent increase in energy efficiency. This standard would cut some 9 million tons of global warming pollution annually, improve electric system reliability, save consumers and businesses more than *$50* billion through 2030, and avoid the need to build **200** new power plants.

Rolling back the air conditioner efficiency standard would increase peak electric demand 18,000 megawatts by 2030, requiring the construction of 200 polluting power plants. From 2006 to 2030, this rollback would cost Americans $18.4 billion more to run air conditioners and increase carbon pollution by 45 million metric tons.

Though the EPA has announced its support for the SEER 13 air conditioner standard, the Department of Energy has yet to finalize the SEER **12** standard.

SEWAGE RULES: ABOUT TO BE FLUSHED?

In January 2001, the Bush administration stalled rules set by the EPA during the Clinton administration minimizing raw sewage discharges and requiring public notification of overflows. In 2000 alone there were 40,000 discharges of untreated sewage into basements, streets, playgrounds, and waterways across the country. Sewage containing bacteria, viruses, fecal matter, and a host of other wastes also closed beaches, killed fish, shut down shellfish beds, and caused gastrointestinal and respiratory illnesses. Children, the elderly, and those with weakened immune systems are at the greatest risk from exposure to sewage. A year later, the proposed rules remain under "internal review" by the administration.

ISOLATED WETLANDS: NOT GONE, AND NOT FORGOTTEN

On January 9,2001, a divided U.S. Supreme Court held that the Corps of Engineers had exceeded its regulatory authority under the Clean Water Act when it tried to block construction of a landfill site that would destroy some 17 acres of seasonal ponds that provide habitat for hundreds of migratory bird species. The court held that habitat protection for migratory birds was not enough to warrant government jurisdiction over "non-navigable, isolated, intrastate" waters.

The court left it to the Bush administration, primarily through the EPA, to determine which wetlands should be protected under the Clean Water Act. An overly broad interpretation of this legal decision could lead to more wetlands destruction, and the impacts on habitat would harm a variety of wildlife species, many of which are endangered. While the administration drags its feet on deciding the scope of Clean Water Act protections, vital wetlands and streams are being lost forever. For example, the Corps has taken advantage of the legal ambiguity of the Supreme Court decision to declare open season on so-called isolated wetlands, such as prairie potholes, vernal pools, pocosins, spring-fed lakes, and seasonal streams.

CHAPTER 3

REGULATORY OVERKILL

The Bush administration has given unprecedented new power to the Office of Management and Budget to undermine existing environmental rules and bottle up new ones indefinitely. The agency has carried this effort a step further by reaching out to polluters and their supporters to develop a "hit list" of environmental safeguards they plan to weaken. The result could threaten a wide range of public health protections.

This systematic assault involving the OMB has unfolded in three stages. First, the White House centralized power at the OMB and diminished the influence of the agencies that oversee environmental regulations. Second, the OMB slanted the role of science in its rulemaking process to give greater leverage to industry. Third, the OMB is using biased cost-benefit and risk-assessment analyses to block meaningful environmental proposals. Taken together, these actions have twisted the very framework of the regulatory process into a bamer against potential rulemakings.

The administration decided to weaken a number of regulatory protections through administrative actions or negotiated side-deals with special interests.

CENTRALIZING POWER

In one of the first moves of the Bush presidency, White House Chief of Staff Andrew Card issued a memo freezing all pending regulatory actions until officials could reconsider them using new review procedures (see Appendix II). Specifically, the Card memo withdrew regulations from the Federal Register that had not yet been published and suspended for 60 days published regulations not yet in effect. Following the Card memo, the administration decided to weaken a number of regulatory protections through administrative actions or negotiated side-deals with special interests. It sent other proposals back to agencies, where they were either killed outright or still face a tenuous **future.**

Later, the OMB's new director, Mitch Daniels, made it clear that the mission of his new chief of regulatory review, John Graham, would be to impose the White House perspective on cost-benefit analysis. Daniels went even further, saying that one of Graham's missions would be to involve the OMB early in agencies' regulatory decision making to ensure that this perspective was enforced. This unusual White House involvement early in agency deliberations could take many forms, ranging from issuing prescriptive guidance on how rules must be considered to hounding an agency at every step of the way. The implications of this early involvement are quite serious. The shifting of power to the White House could be used to smother potential proposals in the cradle without the public being involved or even knowing that the idea has been killed.

The selection of John Graham as director of the OMB's Office of Information and Regulatory Affairs (OIRA) was, in itself, a controversial act. Graham's conformation

debate was divisive, with his critics charging that his record as the head of an industry-backed think tank showed that he was likely to use his position to bend the regulatory process into a more industry-friendly shape. So far his actions have supported the views of his critics.

Graham has begun to put in place unprecedented procedures for agencies to follow. The effect of these procedures is to substitute the White House's judgment for that of the agencies that are responsible for rulemakings under various statutes. Though the White House is trying to usurp the agencies' role, it can not fully replicate the agencies' expertise. At best it would produce misguided decisions due to individual bias or a lack of understanding. At worst, it grants special interests a way to dictate policy. One of the most notable procedures established by Graham was the formalization of a "return letter." The return letter allows the OMB to send a rule back to an agency for more cost-benefit analysis when the OMB does not like the agency's conclusions. The OMB can use a return letter to send a rule back to an agency even when a cost-benefit test was not the one prescribed in the statute. Now, whenever industry complains about a proposal it does not like, this new power enables the White House to use its own preferred approach to judging costs and benefits as a way to override environmental statutes that may be based on other criteria, such as available technology or protecting human health.

Graham's record as the head of an industry-backed think tank showed that he was likely to use his position to bend the regulatory process into a more industry-friendly shape.

Using this new tool, Graham already has returned several rules to agencies for "improved analysis," which means they likely will be watered down or killed by paralysis. One such rule was the EPA's already weak proposal for reducing emissions from snowmobiles and other off-road vehicles. On September **24,** Graham notified the EPA that the OMB was requiring the agency to perform a host of additional assessments. These assessments could favor industry by inflating cost estimates even though the fuel savings to consumers alone would justify the proposed rule.

SLANTING SCIENCE

As an extension of the White House substituting its own views for the expertise of individual agencies, the OMB also has begun replacing its traditional scientific review procedures with new, industry-friendly ones.

One of the first procedures Graham put into place was a directive that agency rules must be subjected to review by outside panels or they would receive less favorable treatment from the OMB. Although outside review may sound like a good idea, in practice it is rife with problems. In many cases, agencies already have their work peer-reviewed. An additional requirement for an outside review at the end of the process could create unnecessary costs, or worse, another needless opportunity **for** delay. More significant, the directive does not fully ensure that the outside panel will be objective. Indeed, such panels are typically stacked with industry "peers" without full public disclosure of conflicts of interest.

The OMB also recently issued new guidance on how federal agencies can use information. This guidance affects both the kind of information agencies can use in their decision-making process as well as information they disseminate *to* the public on a right-to-know basis. It puts in place several internal hurdles agencies must overcome before

they can use information, including outside panel review without adequate safeguards for panel objectivity. In addition, the guidance allows vested interests to repeatedly lodge complaints about agency data; and then requires the agency to respond to the complaints and report on their response to the OMB. This sets up a potentially endless cycle of industry complaint, response, and appeal. The guidance will make it more costly, time-consuming, and difficult for agencies to complete work on rules because their data is subject to OMB second-guessing and industry challenges. The guidance also serves as another example of early intervention by the OMB in the rulemaking process that may discourage many agencies from even attempting to initiate valuable proposals.

The OMB is buttressing its role as the government's arbiter of science by hiring more watchdog staff, enlarging its own internal bureaucracy. Yet, the OMB can never be expected to credibly replace the substantive work of the army of scientists at the various federal agencies. The result is likely to be one that replaces the scientific work of expert agencies with work that hews to a preconceived ideological position.

FLUNKING THE COST-BENEFIT TEST

In addition to paralyzing the regulatory process, the OMB is expected to load cost-benefit analyses with assumptions that will yield industry-friendly results. **As** the director of the Harvard Center for Risk Analysis (HCRA), Graham spearheaded the use of biased risk assessment techniques, including three that are especially questionable. While at Harvard he used techniques that:

- Blurred the distinction between risks that are voluntary and those imposed by others
- Discounted the importance of people who die in the future from hazards like cancer
- Claimed that if someone dies, it does not matter as much if they are old

The **2001** OMB report on regulatory costs and benefits (published in December) identifies discounting as a technique that is "ripe for review" in the future. In fact, Graham has a long history of advocating the use of this practice, despite its controversial nature. While at HCRA, Graham used the technique of discounting the value of lives that are lost in the future to compare pollution control proposals.

The discounting of future lives is a technique borrowed from economic **analysis.** Most practitioners of cost-benefit analysis agree that it is appropriate to discount future monetary benefits when comparing them to current monetary costs as a way of making sure that financial apples and oranges translate into the same kind of fruit. However, the same logic does not necessarily apply to qualitative values such as saving lives, since life (unlike money) cannot be invested in a bank account for a greater future yield. The practice of discounting future lives introduces a systematic bias into any cost-benefit test that is applied to pollutants with delayed effects, such as carcinogens.

The impact of cost-benefit analysis discounting can be significant. For example, Robert Hahn of the American Enterprise Institute-Brookings Joint Center has used discounting of future lives to argue that the old arsenic standard of 50 parts per billion may be too strict and should be weakened. (Hahn and Graham have a long association, including working together at Harvard.) As it turns out, the new 10 ppb arsenic in tap

water standard is one of the rules on the OMB hit list and could be weakened during implementation. Other cases in which discounting could have a major impact include controls on toxic chemicals, radiation standards, dioxin limits, and pesticides in food.

Another technique that can slant cost-benefit analysis is the use of "life-years" as a quantitative measure of cost-effectiveness. The OMB intends to consider further use of this tool. According to this measurement, the elderly may not be worthwhile, since older people may not have long to live. Like the discounting of future lives, doing calculations based on life-years ignores the qualitative nature of the loss of life and attempts to reduce it to a numerical ratio. Even as it engages in this false reduction, it ignores related economic concepts, such as the higher than average ability of older people to pay for life extension because of their greater resources and their willingness to pay because of the scarce supply of years remaining to them.

On October 8, 2001, Graham presented his views on quality of life-years to the National Academy of Sciences. He wanted to convince the academy that certain air pollution regulations may not be worth the cost, since many of the people killed by air pollution are older than the general population's average age. Such a methodology, if adopted, could be used to block the new-source-review provision of the Clean Air Act, one of the rules on the OMB hit list (see Table 1). Moreover, if the OMB succeeds in institutionalizing this approach throughout the federal government, health protections for senior citizens would be threatened.

Graham and conservative members of Congress are working directly with business groups to develop a regulatory hit list,

THE OMB HIT LIST

John Graham did not waste any time implementing his plans to roll back existing regulations, and he has been reaching out to industry for help. For example, he met with representatives of the National Association of Manufacturers at its headquarters in late October and asked for their assistance in identifying "ill-advised" regulations under consideration. A subsequent ***Washington Post*** article disclosed links between Graham and conservative members of Congress who are working directly with business groups to develop a regulatory hit list.

Meanwhile, the recent 2001 OMB report on regulations selectively gleaned recommendations from antiregulatory groups and industry trade associations such as the American Petroleum Institute, the American Gas Association, and the National Association of Manufacturers, while largely ignoring input from public interest groups. The OMB report goes further by identifying a list of 23 rules that are candidates for weakening. More than half of rules on the list (13) relate to the environment, underscoring the administration's anti-environmental tilt. The list includes rules governing such major debates as arsenic in drinking water, controls on toxic chemicals, the new-source-review provision of the Clean Air Act, limits on the total maximum daily load of water pollutants, effluents from concentrated animal feeding operations, and forest planning regulations.

Although the OMB has solicited comments from the public and a range of interested groups, all of the rules selected for further review by the OMB were targeted by industry trade associations or the Mercatus Center, represented by Wendy Gramm, the former

head of OIRA under the Reagan administration. The Mercatus Center, which made numerous suggestions for reducing pollution controls on some of the greatest sources of air and water pollution, is itself a conservative think tank heavily funded by industry donors. The OMB seems to listen only to what it wants to hear about changing regulatory protections.

Table 1 lists the 13 environmental rules that the OMB says it may revise sometime in the coming year. The table lists the rule identified by an outside commenter, the name of the commenter, and the potential effect on the environment if the government adopts the proposed changes. The 13 rules that the OMB has put on its hit list include some of the most significant regulations currently being debated nationally for their potential to improve environmental quality in the United States.

Table 1. The OMB "Hit List" of Major Rules for Review

Rule	EPA: Clean Air Act New Source Review
Source	Mercatus Center
Impact of change	Permits increases in air pollution from old, dirty power plants and other facilities
Rule	EPA: Clean Water Act Total Daily Maximum Load
Source	Mercatus Center
Impact of change	Impedes the cleanup of polluted waters to safe levels
Rule	EPA: Clean Water Act Confined Feedlot Operations
Source	Mercatus Center
Impact of change	Allows continued discharges of untreated animal wastes into waterways
Rule	EPA: Arsenic in Drinking Water
Source	Mercatus Center; Association of Metropolitan Water Agencies
Impact of change	Weakens implementation of standard through possible waivers or loopholes
Rule	EPA: Drinking Water Cost-Benefit Analysis
Source	City of Austin
Impact of change	Tilts analysis by overestimating costs and underestimating benefits
Rule	EPA: Mixture and Derived from Rule for Toxics
Source	American Chemistry Council
Impact of change	Lessens restrictions on management of hazardous waste

Rule	EPA: Notice of Substantial Risks from Toxics
Source	American Petroleum Institute
Impact of change	Shields handlers of toxic substances from reporting on potential threats

Rule	EPA: Air Quality Economic Incentive Program Guidance
Source	Mercatus Center
Impact of change	Allows potential increases in pollution, particularly in minority areas

Rule	Forest Service: Roadless Area Conservation Rule
Source	Mercatus Center
Impact of change	Allows costly and ecologically destructive road construction in national forests

Rule	Forest Service: Forest Planning Rules
Source	Mercatus Center
Impact of change	Prevents the mandatory use of updated forest management practices

Rule	DOI: Hard Rock Mining Regulations
Source	Mercatus Center
Impact of change	Removes oversight on operation of the most environmentally damaging mines

Rule	DOI: Regulations on Snowmobiles in National Parks
Source	Mercatus Center
Impact of change	Weakens limits on environmental effects of snowmobiles in national parks

Rule	DOE: Central Air Conditioner and Heat Pump Energy Conservation Rule
Source	Mercatus Center
Impact of change	Increases wasted energy and air pollution from residential energy devices

APPENDIX I:

THE BUSH ENVIRONMENTAL RECORD

Since taking office, the Bush administration has quietly and consistently conducted an assault on the environment, mostly in the regulatory realm. **A** complete chronology of these actions is listed below. Full details about the items contained in the following list can be found on the web at: www.nrdc.org/bushrecord/default.asp.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 20, 2001	Regulatory Freeze	White House Chief of Staff Andrew Card issues memo to all federal agencies ordering a 60-day suspension of all rules finalized by the Clinton administration at the end of its term, including numerous important regulations to protect the environment and public health.
January 20, 2001	Sewage Overflows	The administration holds up rules announced by the EPA in December 2000 to minimize raw sewage discharges and to require public notification of overflows. Last year alone, there were some 40,000 discharges of untreated sewage carrying bacteria, viruses, and fecal matter into basements, streets, playgrounds, and waterways across the country.
February 12,2001	Energy	Department of Energy delays implementation of new energy efficiency standards for residential and commercial appliances and equipment. Although the administration ultimately retained the new standards for clothes washers and water heaters, on April 13 it announced its intention to substantially weaken an air conditioner standard which would have reduced electric demand by more than 14,000megawatts nationally, equal to the output of more than 50 nedium-sized power plants.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 20,2001	National Monuments	Interior Secretary Gale Norton announces that the administration will try to adjust the boundaries of the **22** new national monuments designated by President Clinton, and will consider allowing commercial activities on these lands.
March 7, 2001	Endangered Species	The Fish and Wildlife Service and National Marine Fisheries Service withdraw supplemental biological opinion, issued in January 2001, which called for protecting nine endangered species of salmon, steelhead, and bull trout in the Columbia and Snake River basins. The administration will also halt other activities that could both protect salmon and generate electricity on the Columbia and Snake Rivers.
March 13, 2001	Air Quality	President Bush retreats from campaign promise to regulate carbon dioxide pollution — the chief contributor to global warming — from power plants. The president claims that CO_2 is not considered a pollutant under the Clean Air Act. (Section 103(g) of the act includes emissions of CO_2 from power plants in a list of air pollutants that Congress directed the EPA to include in pollution prevention programs.)
March 13, 2001	Energy	President Bush announces that the administration will consider allowing drilling for oil and gas on all public lands — including all national monuments and treasured wilderness areas in the West — as part of his new energy policy.
March 16, 2001	Roadless Rule	After delaying and weakening the landmark rule protecting **58** million acres of wild national forest lands from logging, road building, and coal, oil, and gas leasing, the administration decides not to defend the regulation in court.
March 21, 2001	Mining	The administration delays new hard rock mining regulations that would allow the federal government to prohibit new mine sites on federal land; enforce standards preventing mining contaminants from reaching waterways; and require companies to protect water quality, pay for cleanup, and restore public lands ruined by mining activities. The mining law has not been substantially updated since **1872.**

DATE	ISSUE	ADMINISTRATIVE ACTION
March 28, 2001	Global Warming	EPA Administrator Christie Todd Whitman announces that the administration will not support ratification of the Kyoto Protocol. This announcement came just weeks after the world's eight largest industrialized nations issued a declaration that they would strive to reach an agreement on the treaty.
April 9, 2001	Endangered Species	In his budget, President Bush calls for a provision to relax requirements for endangered or threatened species listings under the Endangered Species Act. The budget includes no funding to implement court orders brought by citizen suits under the act, severely restricting the ability of citizens and environmental organizations to bring related suits against the government.
April 9, 2001	Environ-mental Funding	President Bush unveils his fiscal year 2002 budget, slashing overall spending for environmental and natural resources agencies by $2.3 billion. Specific cuts include nearly $500 million from the EPA (including an 8 percent cut in enforcement staff), nearly $400 million from the Department of Interior, and nearly $500 million from the Forest Service.
April 23, 2001	Snow-mobiles in National **Parks**	Though Interior Secretary Norton allows a Clinton-era final rule banning snowmobile use in Yellowstone and Grant Teton National Parks *to* temporarily remain in effect, the administration compromises an out-of-court settlement to a lawsuit filed by snowmobile proponents, and may weaken the rule as early as February 2002.
April 25, 2001	Endangered Species	The Interior Department shelves a compromise plan to reintroduce grizzly bears into federal wildlands in Idaho and Montana. There are only about **1,200** grizzlies left in the lower **48** states, where they have been driven from 98 percent of their original range.
April 26, 2001	Water Quality	The EPA shifts 180-degrees to support a proposed Florida rule that undermines the Clean Water Act's otal maximum daily load (TMDL) program by changing the way in which "impaired" (polluted) bodies of water are identified and listed. Florida's rule would effectively "de-list" a number of polluted streams, rivers, and lakes, and, in those instances, Mould exempt the state from federal mandates to cleanup water pollution.

DATE	ISSUE	ADMINISTRATIVE ACTION
April 30, 2001	Energy	Vice President Cheney promotes the need for more domestic oil, gas, and coal supply, denouncing efforts to reduce fuel demand through energy efficiency or increasing our reliance on renewable energy sources.
May 4, 2001	Roadless Rule	The administration launches a "sneak attack" on the Roadless Area Conservation Plan, ceding federal authority over national forests to local officials. In public statements and court filings, the administration makes it plain that its long-term intent is to allow individual national forests to opt out of the roadless rule on a case-by-case basis, on the authority of each forest's officials.
May 10, 2001	Energy	Department of Energy officials reject NRDC's Freedom of Information Act (FOIA) request for documents about individuals involved in formulating the administration's energy policy.
May 12, 2001	Endangered Species	The administration reneges on a November 2000 agreement to increase protection of desert tortoises in three Southern California counties. Under Interior Secretary Norton, the BLM has failed to remove cattle from a half-million Mojave Desert acres covered by the agreement, prompting a federal judge to sharply criticize the administration for violating "the letter, the spirit, and everything about the whole process."
May 17, 2001	National Forests	Agriculture Secretary Veneman suspends Forest Service regulations that guide the development of management plans for national forests.
May 17, 2001	Energy	The administration's energy plan offers a smorgasbord of incentives for the energy industry, emphasizing the need to increase domestic fossil-fuel supplies and renewing a commitment to nuclear power. Dwarfed by large federal subsidies to energy companies are limited incentives for energy efficiency and renewable energy.
May 22, 2001	Arsenic in Water	The administration suspends the new standard for arsenic in tap water and right-to-know requirements. The **EPA** also suspends the January 2001 arsenic rule's right-to-know measures, which would require water utilities to inform their consumers about arsenic levels in their water.

DATE	ISSUE	ADMINISTRATIVE ACTION
May 31, 2001	National Parks	President Bush pledges improvements to infrastructure and maintenance of national parks, but draws funding for the projects away from other important park programs such as wildlife and wildlands preservation, and air and water quality.
June 5, 2001	Oil Drilling/ Mining	Secretary of Interior Norton announces plans to move ahead with drilling in the Outer Continental Shelf off the coasts of Florida and California despite opposition from the governors of both states, and suggests the boundaries of some protected public lands may be "redrawn" to allow drilling and mining.
June 6, 2001	Nuclear Waste	The **EPA** announces final radiation standards for Yucca Mountain nuclear waste repository that rely on dilution — instead of containment — of radioactive material to a specific standard for drinking water exposure. Site approval at Yucca Mountain, the only location being considered for storage of the nation's nuclear waste, is essential for President Bush's efforts to revive the nuclear power industry.
June 15, 2001	Mining	After political pressure surrounding the removal of Clinton-era protections, the BLM upholds only the "non-controversial" portion of hard rock mining rules. Now that the BLM has acted on some of the rules, the administration can try to weaken the rest of the new rules, including provisions that specifically protect environmental and cultural resources.
June 18,	Energy	Vice President Cheney announces to General Motors executives that the Bush administration has no plans ***to*** pursue higher fuel efficiency standards.
June 28, 2001	Energy	President Bush boasts that he will earmark $85.7 million in research grants for energy efficiency, but this funding level would still be lower than the amount approved so far by either the House or the Senate in 2001, and by the Congress in 2000. His proposed budget in fact cuts overall federal research into energy efficiency by nearly 30 percent, or $180 million.

DATE	ISSUE	ADMINISTRATIVE ACTION
July 2,2001	Oil Drilling	The administration offers new oil leases for offshore drilling in the eastern Gulf of Mexico, posing an unacceptable and unnecessary risk to Florida's waters and beaches. Offshore oil and gas development causes substantial environmental damage, including oil spills, destruction of coastal wetlands, water pollution from the waste products of drilling operations, and air pollution.
July 12, 2001	Global Warming	The administration's new "Federal Climate Change Expenditures Report to Congress" indicates that U.S. assistance to developing countries to help curb global warming has been cut nearly **25** percent—from $165 million to **$124** million. The administration has also reduced critical energy assistance projects by 32 percent and eliminated two programs designed to promote transfer of energy efficiency and renewable technologies.
July 13, 2001	Global Warming	President Bush outlines a global warming agenda that calls for more studies and rejects the idea of binding pollution cuts. Meanwhile his agenda offers nothing to control the emissions responsible for the problem.
July 17, 2001	National Monuments	The administration backs legislation (H.R. **2114,** Rep. Simpson) that would weaken presidential authority to create new national monuments through the Antiquities Act. This act allows for the protection of federal lands, such as the 800,000-acre Grand Canyon National Monument, from sale or development.
July 23, 2001	Endangered Species	Interior Secretary Norton recommends that the Justice Department not appeal an Idaho court's ruling that denies water rights critical to the integrity of the Deer Flat National Wildlife Refuge on the Snake River. If the decision goes unchallenged, it would present *a* rare instance in which the federal government opted not to iefend its water rights.
July 26, 2001	Global Warming	:PA Administrator Whitman says the administration s no longer interested in attempting to reopen ntemational discussions on global warming.
July 26, 2001	**Air** Quality	"he EPA plans to scrap air pollution regulations for)ower plants in favor of **an** approach endorsed by the :lectric industry. Rules limiting emissions from power ılants and reducing hazy skies over national parks vould be dumped and replaced with a pollution-credit :ading program.

DATE	ISSUE	ADMINISTRATIVE ACTION
August 2, 2001	Endangered Species	The administration abandons a plan for major flow changes in the Missouri River, despite public acknowledgement by the *Corps* of Engineers that its present management of the river violates the Endangered Species Act. The U.S. Fish and Wildlife Service ruled earlier that such changes are necessary to prevent the extinction of endangered fish and birds. In December, the Corps agreed that a spring rise is necessary to save the river's pallid sturgeon, piping plovers, and least terns.
August 8, 2001	Wetlands	In a stunning reversal of President Bush's Earth Day pledge to preserve wetlands, the Corps of Engineers proposed relaxing a series of year-old rules designed to protect streams and other wetlands. The EPA, Fish and Wildlife Service, and other federal environmental agencies oppose the move, which would overturn stringent nationwide permits regulating certain development and industrial activities in sensitive watersheds.
August 12, 2001	National Forests	The Forest Service grants Chief Bosworth authority to review road building and timber sale projects in roadless areas, removing protections for the most pristine and largest roadless national forests.
August 14, 2001	Air Quality	The EPA postpones a report on the new-source-review program in an effort to delay and weaken federal air quality standards on power plants implemented by the Clinton administration. The Justice Department had previously used these tougher enforcement rules — requiring utilities and refineries to install pollution curbs when they modernize their facilities — to sue dozens of older coal-fired plants **for** violating federal air pollution limits.
August 17, 2001	Oil Drilling	The administration appeals a federal judge's decision to ban drilling off California's coast. On June **22,** U.S. District Judge Claudia Wilken ruled that the federal Minerals Management Service (MMS) illegally extended ***36*** undeveloped oil leases off the central California coast because it failed to comply with the Coastal Zone Management Act and the National Environmental Policy Act.

DATE	ISSUE	ADMINISTRATIVE ACTION
August 22, 2001	Roadless Rule	The Forest Service announces an interim directive that greenlights road building and logging in the Tongass rainforest and other national forests. The administration has abandoned the original Roadless Area Conservation Rule issued during the Clinton administration, which halted road building and virtually all logging in 58.5 million acres of roadless areas in national forests.
August 27, 2001	Endangered Species	Interior Secretary Norton reneges on an agreement to protect the endangered desert tortoise. As a result, the BLM has announced that it will not comply with the original court-imposed September 7 deadline to remove cattle from the endangered habitat until the new round of negotiations are completed.
August 28, 2001	Nuclear Waste	President Bush considers lifting a moratorium on radioactive recycling. The Department of Energy will spend the next 12 to 18 months studying the environmental and health risks of recycling waste from decommissioned nuclear plants and weapons facilities into scrap metal for use in consumer products.
September 7,2001	Environ-mental Enforceme nt	In a reversal of one of President Bush's campaign promises, the EPA proposes ending the longstanding practice of holding federal government operations accountable to the same environmental standards as private industry. These comments clash with Bush's earlier statements in which he denounced federal facilities as the nation's worst polluters and pledged to hold them accountable.
September 20,2001	Roadless Rule	Forest Service proposes to increase its use of so-called categorical exclusions, a method of avoiding environmental analyses and eliminating the public's opportunity to comment on and file administrative appeals of certain agency projects.
September 21,2001	Wetlands	The Corps of Engineers' staff is directed to expedite wetland development permits as a way of spurring "economic development and moving money into the economy" following the attacks on the World Trade Center and the Pentagon.

DATE	ISSUE	ADMINISTRATIVE ACTION
September 24,2001	Regulatory Review	The OMB advises federal agencies it will supercede traditional reliance on agency expertise and employ its own "science-based" tools, including cost-benefit analyses and extensive peer reviews, to evaluate proposed regulations. Substituting cost-benefit analysis for agency analysis is a marked departure for the rulemaking process.
September 26,2001	Regulatory Review	OMB regulatory chief John Graham invites industry to identify regulations that businesses find overly burdensome. According to a news report, the lobbyists produce a list of 57 rules dealing with health, safety, and the environment. Later, based on comments from conservative think tanks and trade associations, the OMB adopts a "hit list" of major regulations to possibly weaken.
October 1, 2001	National Forests	A report by the GAO finds "serious accounting and financial reporting deficiencies" with Forest Service timber sale calculations. According to Taxpayers for Common Sense, a fiscal watchdog group, the agency's massive financial mismanagement resulted in timber sale losses exceeding $400 million in 1998—more than triple the amount disclosed by the agency.
October 2, 2001	Mining	Forest Service Chief Bosworth asks Interior Secretary Norton to lift a two-year moratorium on new mining activities covering 1.15 million acres of federal land in southern Oregon, including a 700,000-acre area formerly under consideration for national monument status.
October 12, 2001	Right-to-Know	Attorney General John Ashcroft issues a memo to federal agencies urging them to resist Freedom of Information Act (FOIA) requests made by American citizens. Passed in 1974 in the wake of the Watergate scandal, FOIA allows ordinary citizens to hold the government accountable by requesting and scrutinizing public documents and records.

DATE	ISSUE	ADMINISTRATIVE ACTION
October 15, 2001	Wetlands	Interior Secretary Norton blocks the U.S. Fish and Wildlife Service from submitting negative comments to the Corps of Engineers about the Corps' proposal to relax a series of wetlands protection rules. Saying the Corps' plan had "no scientific basis," the Fish and Wildlife Service warned that the proposed changes to permitting rules for development would result in widespread environmental destruction. Norton prevented the release of the service's findings. As a result, the Corps fails to consider formal input from Interior's key biological agency.
October 25, 2001	Mining	Interior Secretary Norton announces new hard rock mining regulations that reverse more stringent environmental restrictions on mining for gold, silver, copper, and other metals on federal lands. Of the nearly 50,000 public comments received regarding the proposal, more than 47,000 opposed weakening the nation's mining regulations.
November 2,2001	Wetlands	The Corps of Engineers issues a new policy on "mitigation" for destroyed wetlands, essentially ignoring a national goal of "no net loss" of wetlands established during the first Bush administration. The Corps issues its new policy without any public notice or coordination with other federal agencies that share responsibility for wetlands protection.
November 6,2001	Everglades	Claiming a reduction in "bureaucratic overhead," nterior Secretary Norton closes an Interior lepartment field office in south Florida, which had)een established to coordinate work on a 40-year, nultibillion recovery plan for the Everglades, the most ımbitious ecosystem restoration project in **U.S.** iistory.
November 27,2001	Salvage Logging	?orest Service Chief Bosworth skirts the appeals)rocess by asking his superiors in the Agricultural lepartment to approve a controversial salvage-ogging plan for 46,000 acres that burned in vlontana's Bitterroot Valley last year, forcing a long :ourt battle with environmental groups.

DATE	ISSUE	ADMINISTRATIVE ACTION
November 28,2001	Environ-mental Funding	The OMB previews its fiscal year 2003 budget, indicating the likelihood of dramatic reductions in environmental spending and other secondary priorities. However, environment and energy programs under Energy, Interior, and other spending bills actually make up a very small portion of the federal budget.
November 28,2001	Pesticides	The EPA considers ending a ban on accepting data from studies that intentionally dose human volunteers with toxic pesticides. Testing on human patients has been widely condemned as unethical and unscientific, and violates federal rules and international agreements, including the Nuremberg Code adopted after World War II.
November 29,2001	Snow-mobiles in National Parks	The NPS reverses a snowmobile ban in Minnesota's Voyageurs National Park after a new study claims "no link between human and wolf activities in the area," reopening **4,667** acres of pristine lake surface.
December 3,2001	Endangered Species	The Corps of Engineers decides not to restore the migration patterns of endangered salmon by breaching four lower Snake River dams. The four dams—Ice Harbor, Lower Monumental, Little Goose, and Lower Granite—have been blamed for obstructing salmon migration to the Pacific Ocean, causing the extinction of native populations or their listing for protection under the Endangers Species Act.
December 10,2001	Mining	Interior Secretary Norton reverses her agency's previous denial of a Canadian company's proposal to locate a major open-pit gold mine in an area *of* the Southern California desert that is of great cultural and religious importance to the Quechan Indian Nation. Former Interior Secretary Babbitt had denied the mine because of the devastating impacts it would have on the resources of the 1,571-acre Indian Pass site, which includes some 55 archaeological sites eligible for the National Register of Historic Places and sacred trails.
December 10,2001	Snow-mobiles in National Parks	After delaying a Clinton rule that would gradually phase out snowmobiles in national parks, the NPS admits the ban will not be implemented in Yellowstone and Grand Teton.

DATE	ISSUE	ADMINISTRATIVE ACTION
December 14,2001	Nuclear Waste	The Department of Energy says the government no longer must prove that Yucca Mountain's underground rock formations would prevent radioactive contamination of the environment. Several critics have alleged that under DOE's changed site-suitability rules that no longer rely on geological barriers, the nuclear waste repository could be placed just as easily in the basement of DOE headquarters as in the desert 90 miles northwest of Las Vegas.
December 14,2001	Roadless Rule	The Forest Service guts protections for roadless areas, particularly those in the Tongass National Forest. The changes also lift mandatory environmental impact reviews, allowing regional forest officials leeway to dispense with environmental and public reviews.
December 28,2001	Everglades	The Corps of Engineers proposes a program for restoring the damaged South Florida Everglades ecosystem, but it lacks substantial details, including specific requirements and assurances that Congress required as necessary to ensure the success of the landmark project.
December 28,2001	Contractor Respon-sibility	Businesses with poor environmental track records no longer will be denied federal contracts, following the administration's final decision to repeal the contractor responsibility rule.
January 8, 2002	Nuclear Testing	The Bush administration indicates that the United States needs to be ready to resume nuclear weapons testing. The Nuclear Posture Review calls for speeding up preparations at the government's Nevada test site just in case. Since taking office, President Bush has said that he would maintain a moratorium on underground nuclear testing imposed by his father in 1992 and upheld by President Clinton.
January 10, 2002	Oil Drilling	The Bush administration tries to strip the right of the state of California to review proposals for oil drilling off its coast by appealing a federal district judge's ruling (June 22, 2001) that the federal Minerals Management Service (MMS) illegally extended ***36*** undeveloped oil leases off the state's central coast. The judge ruled that California was improperly denied a voice in deciding the fate of the leases.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 10, 2002	Nuclear Waste	Citing "sound science" and "compelling national interest" in the wake of the September 11 terrorist attacks, Energy Secretary Abraham recommends that President Bush approve Yucca Mountain in the Nevada desert as the nation's repository for nuclear waste.
January 14, 2002	Oil Drilling/ National **Parks**	The NPS concludes that expanding oil drilling in the Big Cypress National Preserve would not harm the environment. The NPS will **allow** a company to drill nearly 15,000 holes in a 41-square mile grid, detonate charges of dynamite 25 feet underground in each of them to seismically search for oil, drill a 11,800-foot exploratory well, and build a 7.5-mile access road. A few days later, the Bush administration backtracks in the face of intense public criticism over the drilling decision. Interior Secretary Norton announces that the government will explore the possibility of acquiring the mineral rights to prevent expanded drilling in the preserve.
January 14, 2002	Wetlands	The Corps of Engineers, with approval from the White House, weakens rules designed to protect thousands of streams, swamps, and other wetlands from destruction through the Clean Water Act. Despite opposition to the changes from two other federal environmental agencies, the Corps finalized its plan to make it easier For developers, mining companies, and others to qualify for permits to dredge and fill wetlands. The relaxed rules roll back several restrictions imposed by he Clinton administration and appear to contradict President Bush's pledge to protect the nation's Wetlands.
January 16, 2002	**Air Quality**	The EPA plans to delay for one year a requirement hat coal-fueled power plants reduce smog-causing pollution that often drifts from the Midwest and Ohio Jalley into the Northeast. EPA Administrator Nhitman notifies 70 members of Congress that she will seek court approval to postpone a requirement hat utilities cut their pollutants significantly by May 2003.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 17, 2002	Arctic Drilling	The Interior Department reverses its position and declares that improvements in oil-drilling technology will allow adequate protection of polar bears, despite two studies that show polar bears will be adversely affected by oil drilling in the Arctic National Wildlife Refuge.
January 18, 2002	Energy	The Bush administration fails to require light trucks to meet stricter fuel efficiency standards, saying after six months of study that it did not have enough time to evaluate a report by the National Academy of Sciences that recommended higher fuel efficiency standards.
January 18, 2002	Endangered Species	Despite a contrary study, the U.S. Fish and Wildlife Service concludes that logging does not significantly affect the spotted owl, and reopens national forests in the Northwest to timber sales.
January 21, 2002	Drilling in National Monuments	The BLM gives preliminary approval to a company to drill eight natural gas wells on already leased federal land on the eastern end of the Upper Missouri River Breaks National Monument in Montana. The national monument lands comprise **47,000** acres along a 149-mile stretch of the Missouri River.
January 21, 2002	Wildlife Refuges	Interior Secretary Norton proposes an 18 percent funding increase **($56.5** million) for the national wildlife refuge system, primarily to cover maintenance and renovation costs rather than wildlife programs.
January 22, 2002	Logging	The U.S. Forest Service files an appeal in federal court to overturn a ruling that halted salvage logging on thousands of acres of burned timber in Montana's Bitterroot National Forest, claiming that cutting and removing dead trees helps improve forest health. On January 1, a federal judge issued a court order barring the agency from "salvage" logging about **46,000** acres, because the agency had illegally approved the plan by bypassing the usual public appeals process.
January 24, 2002	Oil Drilling	The BLM plans to allow oil exploration on the Dome Plateau, a scenic 36-square-mile area near Arches National Park in southern Utah's Redrock Canyon Country. The project involves crisscrossing the landscape with nearly 50 miles of cable and heavy-duty trucks to conduct seismic testing.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 4, 2002	**EPA** Budget	President Bush releases a fiscal year 2003 federal budget that eliminates the EPA's budget for graduate student research in the environmental sciences. Funding for the EPA Star grant program, which provides highly motivated doctoral students with three years of funding to pursue environmental research, amounts to little more than a tenth of one percent of the EPA's total budget.
February 4, 2002	Budget	President Bush unveils his fiscal year 2003 budget request, proposing billions of dollars in subsidies for energy companies while slashing overall spending for environment and natural resources departments by $1 billion. Hardest hit would be energy-efficiency and water-resource programs.
February 4, 2002	National Forests	President Bush requests $404 million in subsidies to support timber sales on national forests in the fiscal year 2003 budget request.
February 5, 2002	Snowmobiles in National **Parks**	National park officials delay implementation of a plan to gradually phase out snowmobiles in Yellowstone and Grand Teton National Parks by the winter of 2003–04 for at least another year. The decision is based on a new study ordered by the Bush administration after the snowmobile industry filed a lawsuit to overturn the ban.
February 6, 2002	Environmental Enforcement	The Bush administration reveals new forest management plans that could elevate the role of industry at the expense of environmental review and public participation. The president's fiscal year 2003 budget contains a provision for so-called charter forests—a new category of federal forestland that would be managed locally, raising concerns for enforcement of federal environmental regulations.
February 7, 2002	Endangered Species	Claiming success for the administration's Everglades restoration plan, the White House announces that legal protections for five endangered species in Florida's Everglades may be reduced. Biologists dispute the plan's responsibility for the relative well being of the five species and voice concern for their premature down-listing under the Endangered Species Act.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 11,2002	Motorized Vehicles in Wilderness	Environmental groups file a lawsuit against the National Park Service after the agency authorized motorized-vehicle tours in Georgia's Cumberland Island Wilderness. The Wilderness Act prohibits the use of motorized vehicles in wilderness areas except in rare cases such **as** emergencies. The tours also appear to violate the law's limits on commercial use of wilderness areas.
February 14,2002	Global Warming	President Bush announces a plan to address global warming that allows greenhouse-gas-emissions growth to continue unabated.
February 14,2002	**Air** Quality	President Bush announces new targets for three pollutants — mercury, sulfur dioxide, and nitrogen oxide — from power plants that would delay by up to 10 years emission cuts now required under the Clean Air Act.
February 15,2002	Nuclear Waste	Citing energy, homeland, and national security, President Bush endorses Energy Secretary Abraham's recommendation to store 77,000 tons of high-level nuclear waste in an underground facility in Yucca Mountain, 100 miles northwest of Las Vegas, Nevada. Opponents of the plan believe that the proposed facility would not adequately protect the public and the environment from radiation contamination.
February 15,2002	Endangered Species	The Bush administration asks a federal judge to allow the U.S. Fish and Wildlife Service to lift protections on more than a half-a-million acres in Southern California while it conducts a two-year reevaluation of economic analysis of up to 10 "critical habitat" designations. Critical habitat is a category of protected land in which development and other uses can be limited or barred to ensure the survival of imperiled plants and animals.
February 15,2002	Mining on Public Lands	The U.S. Forest Service gives preliminary approval for lead mining exploration — involving the drilling of hundreds of holes — in Missouri's Mark Twain National Forest. Critics worry that the porous limestone in southeastern Missouri could lead to massive water pollution.
February 19,2002	Snowmobiles in National **Parks**	The Bush administration offers three alternatives to an outright ban of the vehicles in Yellowstone and Grand Teton National Parks. The National Park re-opens the public comment process for the fifth time.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 21,2002	Endangered Species	
February 23,2002	Superfund	
February 26,2002	**Air** Quality	
February 27,2002	Endangered Species	endangered fish in favor of agricultural interests. Contrary to federal endangered species protections, the plan could push coho salmon and *two* types of sucker fish toward extinction.
March 5, 2002	Water Quality	**4** U.S. Forest Service internal memo states that road construction near streams in national forests does not require Clean Water Act permits.
March 6, 2002	Arctic Drilling	Jews reports reveal that **U.S.** Fish and Wildlife Service employees in Alaska were instructed not to liscuss issues related to drilling in the Arctic National Wildlife Refuge. Drilling opponents claim the action was intended to stifle dissenting opinions within the ervice.

DATE	ISSUE	ADMINISTRATIVE ACTION
March 7, 2002	Enforcement	In an unprecedented statement that undercut her own enforcement staff, EPA Administrator Christie Todd Whitman tells a senate committee that, were she their attorney, she would not advise utility polluters to settle ongoing Clean Air Act enforcement cases. After a storm of criticism, the Administrator publicly re-affirmed her support for enforcement of the Clean Air Act.
March 12, 2002	Urban **Sprawl**	The Bush administration rolls back a four-year planning effort to establish the Little Darby National Wildlife Refuge near Columbus, Ohio, as the U.S. Fish and Wildlife Service withdraws its proposal to create the refuge.
March 19, 2002	Regulation	The OMB calls for agencies to adopt a "science-based" approach to rulemaking in its 2002 draft report to Congress. John Graham, head of the OMB's Office of Information and Regulatory Affairs (OIRA), is a proponent of cost-benefit analysis, a method that critics argue underestimates the health and environmental benefits of rules.
March 25, 2002	Energy	The Energy Department provides NRDC with 11,000 pages of formally secret Energy Task Force materials Following a successful NRDC lawsuit under the Freedom of Information Act. More than 15,000 additional pages are withheld, and many of the documents provided are heavily censored. Even so, the materials document the deep, secret connection between the energy industry and the recommendations of the vice president's energy task force.
March 25, 2002	Energy	Court-ordered documents obtained by NRDC show that the Energy Department used money from its clean energy budgets to pay the cost of printing its fossil-fuel-friendly national energy plan. A total of $135,615 came out of the solar, renewable energy, and energy conservation budgets to produce 10,000 copies of the White House energy policy released last May.

DATE	ISSUE	ADMINISTRATIVE ACTION
March 27, 2002	Oil Drilling	The BLM considers a proposal to drill more than 3,000 oil wells and 50,000 coal-bed-gas wells in Wyoming's Powder River Basin. The plan includes the construction of 17,000 miles of new roads and 20,000 miles of pipelines across 200,000 acres of sensitive agricultural land. Trillions of gallons of contaminated water produced by the drilling would be dumped or leaked into the ground, eventually entering streams and rivers.
March 28, 2002	Oil and Gas Drilling	As the Bush administration considers overturning a ban against oil and gas exploration in Montana's Rocky Mountain Front, Agriculture Secretary **Ann** Veneman tells local officials that oil and gas exploration, even logging, should not be automatically off-limits in the region. Despite the fact that the five-year old decision to protect the region from development was based on years of scientific study and extensive citizen input, the secretary claims that new drilling technology could ensure adequate protection from environmental damage.
March 29, 2002	Department of Defense	The Defense Department circulates draft legislation that would exempt military activities at sea and on the nation's air bases, bombing ranges, and other facilities from protections under major environmental laws and regulations. Environmental regulations targeted by the bill —including the Clean Water Act, Marine Mammal Protection Act, Noise Control Act, Coastal Zone Management Act, and Endangered Species Act—already contain exemptions for the military in times of national crisis.
March 29, 2002	Off-Road Vehicles	The BLM **issues** management recommendations **for** the Imperial Sand Dunes Recreation **Area,** including a 'preferred alternative" to reopen a 49,000 acres of currently protected dunes to off-road vehicles, effectively reversing a November 2000 legal settlement prohibiting off-road access to certain zones. Off-road vehicles currently have access to 68,000 acres covering more than 100 square miles of the dunes, which are home to rare desert plants and endangered species.

DATE	ISSUE	ADMINISTRATIVE ACTION
April 1, 2002	Energy	Despite President Bush's call to reduce dependence on foreign oil, the administration fails to meet a deadline for issuing a fuel economy standard for 2004 light trucks. The National Highway Traffic Safety administration made no increase to the current 20.7 mile per gallon Corporate Average Fuel Economy (CAFE) standard for light trucks, sport utility vehicles, and minivans.
April 2, 2002	Global Warming	The State Department decides not to re-nominate Robert Watson, America's top climatologist, to a prestigious international panel that assesses global warming. Watson has been outspoken in his belief that global warming is a serious environmental threat and that it is caused by emissions.
April 4,2002	Drilling on Public Lands	The Bush administration, citing rising energy demand, announces plans to increase gas supplies through coal-bed methane development in public lands of the Rocky Mountain region.
April 5, 2002	Endangered Species	The U.S. Fish and Wildlife Service scales back by 130,000 acres the lands to be designated as critical habitat for the endangered Quino checkerspot butterfly. More than 95 percent of the butterfly's habitat has been lost to agriculture and development.
April 7, 2002	Arctic Drilling	The USGS reports in a new study that drilling in the Arctic National Wildlife Refuge's coastal plain could significantly harm wildlife and would especially hurt the Porcupine caribou herd. The report refutes claims by the Bush administration that oil drilling would have little impact on the environment. The scientists who authored the report also confirm that drilling activities could endanger other refuge wildlife, including polar bears, musk oxen, and snow geese. A week later, under pressure from senior officials, the USGS reverses its conclusion.

DATE	ISSUE	ADMINISTRATIVE ACTION
April 8, 2002	**Endangered** Species	Forest Service Chief Dale Bosworth instructs BLM regional agency heads to recommend changes to the Northwest Forest Plan (NFP) in an attempt to boost logging on public lands. Logging over the last **150** years has destroyed about 90 percent of spotted owl habitat, forcing its protection under the Endangered Species Act. The NFP, enacted by the Clinton administration in 1994 to protect the spotted owl and other rare forest species, placed restrictions on logging in old-growth forests to protect wildlife habitat.

APPENDIX II:

THE CARD MEMO—TARGETING REGULATIONS

One of the first acts of the Bush administration was to issue a directive to federal agencies to pull back on regulatory actions taken near the end of the Clinton administration. This directive, entitled " a "Memorandum for the Heads and Acting Heads of Executive Departments and Agencies," (see following page) was signed by Chief of Staff Andrew Card on January 20,2001 — President Bush's first day in office. The so-called Card Memo specifically instructed agencies to take three main steps:

- To postpone for 60 days the effective date of any final regulation that had been published in the Federal Register but which had not yet taken effect
- To withdraw from the Office of the Federal Register any final or proposed regulation that had been submitted to but not yet published in the Federal Register
- To send no more proposed or final regulations to the Office of the Federal Register unless it had been approved by a Bush presidential appointee

Limited exceptions were provided for emergencies related to health and safety and fot regulations promulgated pursuant to statutory or judicial deadlines.

The Card Memo caught in its net at least 13 significant environmental rules. The status of these final or proposed rules is summarized in Appendix III. Of all of these rules, only five were retained essentially in their original form, and none were strengthened following review. Even some of those that were retained are now being reexamined for future changes or weakening during implementation. In other cases, the administration signaled its inclination to weaken the Clinton rule through rulemakings or out-of-court legal settlements with industry, as in the case of standards for air conditioners, the conservation rule for roadless areas in national forests, and restrictions on the use of snowmobiles in national parks. In other cases, the fate of the proposed rule remains uncertain.

The Card Memo in itself lacked the legal authority to postpone the effective date of any rule or to withdraw a rule from publication in the Federal Register. In fact, the only way final rules could be suspended legally would be to amend them by following the regular rulemaking procedures under the Administrative Procedures Act (APA), which require public notice and comment. Because the Bush administration failed to follow federal procedures for postponing the effective date of the rules, the actions outlined in the Card Memo are subject to legal challenge.

THE WHITE HOUSE
Office of the Press Secretary
For Immediate Release January 20, 2001

January **20,** 2001

MEMORANDUM FOR THE HEADS AND ACTING HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: ANDREW H. CARD, JR. Assistant to the President and Chief of Staff

SUBJECT: Regulatory Review Plan

The President has asked me to communicate to each of you his plan for managing the Federal regulatory process at the outset of his Administration. In order to ensure that the President's appointees have the opportunity to review any new or pending regulations, I ask on behalf of the President that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency or other urgent situations relating *to* health and safety, send no proposed or final regulation to the Office of the Federal Register (the "OFR) unless and until a department or agency head appointed by the President after noon on January 20, 2001, reviews and approves the regulatory action. The department or agency head may delegate this power of review and approval to any other person so appointed by the President, consistent with applicable law.

2. With respect to regulations that have been sent to the OFR but not published in the Federal Register, withdraw them from OFR for review and approval **as** described in paragraph 1, subject to exception as described in paragraph 1. This withdrawal must be conducted consistent with the OFR procedures.

3. With respect to regulations that have been published in the OFR but have not taken effect, temporarily postpone the effective date of the regulations for 60 days, subject to exception as described in paragraph 1.

4. Exclude from the requested actions in paragraphs 1-3 any regulations promulgated pursuant to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.

APPENDIX III:

GETTING CARDED

Below are the environmental regulations affected by White House Chief of Staff Andrew Card's memorandum to agencies on January 20, 2001.

Rule		Background	Pending Law Suits	Current Status (Jan. 2002)
Limits on Arsenic in Drinking Water	EPA	*Published:* 66 Fed. Reg. 6976 [Jan 22, 2001) **Effective Date:** 3/23/01; postponed to 5/22/01, 66 Fed. Reg. 16134 (March 23, 2001); postponed to 2/22/02, 66 Fed. Reg. 28342 (May 22, 2001)	*Vational Mining Assoc. et al. v. EPA, No.*)1-1109 (D.C. Cir.); NRDC has ntervened; on 6/28/01, NRDC sued **EPA** challenging the suspension of the rule (*NRDC v. Whitman*, No. 01-1291 (D.C. Cir.))	**Rule retained** (October 21, 2001) but could be threatened during implementation despite NAS study finding extremely high risk even under retained rule. Environmental groups and industry have pending lawsuits.
Wild Forest Protections (Roadless)	Agriculture/ Forest Service	*Published:* 66 Fed. Reg. 3243-7: (Jan. 12, 2001) **Effective Date:** 3/13/01; postponed to 5/12/01, 66 Fed. Reg. 8899 (February 5, 2001)	*State of Idaho et al. v. USFS,* CV01-11-N EJL (D. Idaho); cases also pending before district court in Alaska, Utah, and the District of Columbia; NRDC has intervened in the ID and **AK** cases. Most cases stayed pending outcome of ID case.	**Rule being threatened.** Enjoined by ID federal district judge (May **5**, 2001), interim directives issued (66 Fed. Reg. 35918 (July 10, 2001)). No proposed changes yet issued.
National Forest Planning Regulations	Agriculture/ Forest Service	*Published:* 65 Fed. Reg. 67513 (Nov 9, 2000) **Effective Date:** 11/9/00; postponed to 5/9/02	*Citizensfor Better Forestry v. USFS, CV:* C010728 (N.D. Calif.); *American Forest & Paper Assoc. v. Veneman, No.* 01-00871 (D. D.C.) (challenging "roadless" policy, road management policy, and planning regulations).	**Rule being threatened.** Lawsuit stayed pending outcome of ID roadless case (see previous entry). No draft revision issued; expected in March 2002.
Diesel Engine Standards— Clean Air	EPA	***Published:*** 66 Fed. Reg. 5002 (Jan 18, 2001) ***Effective Date:*** 3/19/01	*National Petrochemical & Refiners Assoc. v. EPA,* No. 01-1052 (D.C. Cir.); NRDC has intervened; the case is being briefed, with NRDC's brief due in December and oral argument in February 2002.	**Favorable rule retained.** Became effective on March 19, 2001. However, the EPA has convened a panel to review the rule and could consider changes to weaken it.

Rule	Agency	Background	Pending Law Suits	Current Status (Jan. 2002)
Appliance Standards-Energy Efficiency	Dept. of Energy	**Published:** 66 Fed. Reg. 3314, 3336 (Jan 12, 2001); 66 Fed. Reg. 7170 (Jan 22, 2001) **Effective Date:** Air conditioners/water heaters: 2/21/01. Clothes washers: most not effective until 1/01/04; part effective 2/12/01, but postponed until 4/13/01, 66 Fed. Reg. 8744 (February 2, 2001)	***Air conditioning and Refrigeration Institute et al. v.*** *U.S.D.O.E.,* No. 01-1370 (4th Cir.); NRDC has intervened; proceedings have been stayed pending the DOE's reconsideration of the AC rule. Litigation brought by the Gas Appliance Manufacturers Assoc. challenging the water heater standards was voluntarily dismissed. On 6/19/01, NRDC sued the DOE challenging the indefinite suspension of the AC standard ***(NRDC v. Abraham,*** **No.** 01-CV-5500 (S.D.N.Y); ***NRDC v. Abraham,*** No. 10-4102 (2nd Cir.)).	**New proposal weakens rule on air conditioner standards. Rule maintained for water heaters, clothes washers.** Weakened, proposed AC rule published July 25, 2001. Hearing held October 2, 2001.
Snowmobiles in National Parks	Interior/NPS	**Published:** 66 Fed. Reg. 7259 (Jan 22, 2001) **Effective Date:** 2/21/01; Postponed to 4/22/01, 66 Fed. Reg. 8366 (January 31, 2001)	*Intl* ***Snowmobile Manuf. Assoc et al. v. Babbitt,*** 00-CV-2296B (D. WY); similar case has been filed in Alaska; NRDC has intervened in both. On 6/29/01, a settlement agreement opposed by environmental interveners was filed with the *WY* court.	**Rule weakened by lawsuit deal.** Settlement agreement stays rule pending new EIS and revisions to management plan to be released in early Feb. 2002.
Wetlands Protection	**U.S.** Army Corps of Engineers/ EPA	**Published:** 66 Fed. Reg. 4550 (Jan 17, 2001) **Effective Date**: 2/16/01	***National Association of Home Builders v.*** *U.S.COE,* 01-CV-00274 (D.D.C.); ***National Stone, Sand and Gravel Association v. U.S. COE.*** 01-CV-00320	**Favorable rule retained.** Postponed to 4/17/01, 66 Fed. Reg. 10367 (February 15, 2001); rule took effect on 4/17/01. Despite rule taking effect, related protections for wetlands have since been weakened.

Rule	Agency	Background	Pending Law Suits	Current Status (Jan. 2002)
Right-to-Know Reporting on Lead	EPA	Published: 66 Fed. Reg. 4500 (Jan 17, 2001) Effective Date: 2/16/01; postponed to 4/17/01, 66 Fed. Reg. 10585 (February 16, 2001)	---	Favorable rule retained. Took effect April 17, 2001.
Chemical Accident Data	EPA	Published: (Draft) 66 Fed. Reg. 4021 (January 17, 2001)	---	Favorable rule withdrawn. 66 Fed. Reg. 15254 (March 16, 2001). Awaiting EPA proposal.
Clean Air in the Parks (BART)	EPA	Published: Proposed rule sent to the OMB, but not published in Fed Reg. Effective Date: Frozen indefinitely by Card memo	---	Favorable rule retained. The EPA issued **a** proposal generally consistent with Clinton proposed rule (7/20/01). However, the EPA is currently considering new air quality program that could supercede or undermine these protections.
Limits on Ocean Discharges (Marine Water Quality Std.)	**EPA**	(January 22, 2001) Effective Date: 2/21/01; Postponed to 4/22/01, 66 Fed. Reg. 8366 (January 31, 2001).		Indefinitely delayed, pending new proposal by the EPA.
Essential Fisl Habitat	Commerce, NMFS	Published: Final rule sent to the OMB, but not published in Fed. Reg.	---	Favorable rule adopted after delay. New proposal released Januarv 17. 2002.

Rule	Agency	Background	Pending Law Suits	Current Status (Jan. 2002)
Sewage Overflow Controls	EPA	**Published**: Proposed rule sent to the OMB, but not published in Fed. Reg.	---	**Favorable proposed rule delayed.** Technically remain under "internal review" at the EPA.

AMERICAN RIVERS * CLEAN WATER ACTION * EARTHJUSTICE * * FRIENDS OF THE EARTH * LEAGUE OF CONSERVATION VOTERS MINERAL POLICY CENTER * NATIONAL AUDUBON SOCIETY * NATURAL RESOURCES DEFENSE COUNCIL * SIERRA CLUB

May 3,2002

Honorable John D. Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 262
725 17th Street, N.W.
Washington, DC 20503
BY FACSIMILE AND REGULAR MAIL

Dear Administrator Graham:

We are writing to express our serious concern about a proposed rule that is reportedly close to being finalized by the Bush administration. The rule is Proposed Revision to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material" (65 FR 21292) ("fill rule"). In our view this rule should receive a much more thorough review than it has to date, in compliance with the procedures set out in Executive Order 12866 and the National Environmental Policy Act.

This proposal to alter the definitions of "fill material" and "discharge of fill material" under the Clean Water Act, if finalized, would allow the Army *Corps* of Engineers to issue permits for the dumping of mining wastes and other wastes into all waters of the United States. Currently the Corps is prohibited under its own regulations from issuing permits for dumping wastes into our nation's waters.

The proposed rule was received by OMB for review on May 1,2002. We have learned that in less than **48** hours OMB has cleared the rule for publication in the Federal Register, concurring with the agencies' view that this proposal is not "economically significant" within the meaning of Executive Order 12866. We are astounded that OMB has concurred with the agencies' finding on this point, particularly after such cursory review of the proposal. Contrary to the views of EPA and the Corps and OMB, we believe that the impacts of this rule, if finalized, will easily be in excess of the $100 million annual threshold established under Executive Order 12866 necessary to qualify as being an "economically significant regulatory action." That a contrary conclusion could be reached by the agencies or your office indicates a combination of faulty logic applied to justify the rule change, and a woefully inadequate environmental assessment. We urge you to recall this rule from the agencies and reconsider your determination of economic insignificance.

As you know the view of EPA and the Corps regarding the economic significance of a proposed rule is not the final word on the matter. The Executive Order gives the Administrator of OIRA the authority to make an independent determination whether the proposed regulatory action is significant. Because the fill rule is clearly an economically significant regulatory action within the meaning of the Executive Order, we urge you to recall the fill rule from EPA and the Corps and reexamine the question of the rule's environmental impacts and associated economic effects.

Because it makes every water of the United States a potential waste disposal site, the proposed fill rule clearly meets the $100 million threshold for significance. EPA's own statistics demonstrate this fact. The importance of clean water to our economy simply cannot be overstated. According to the EPA's report Liquid Assets 2000:

- A third of all Americans visit coastal areas each year, making a total of 910 million trips while spending about **$44** billion;
- Thirty-five million anglers spent **$38** billion in pursuit of their sport in 1996;
- In 1996 nearly 14 million people spent about $20 billion hunting game and migratory waterfowl.
- Photographers of wildlife spend more than $29 billion every year;
- The seafood industry in California alone generates sales exceeding $800 million annually.

These examples barely scratch the surface of the types of economic uses for the nation's waters that could be adversely impacted by the proposed fill rule.

To give you a better understanding of why the agencies' failure to recognize the economic significance of this proposed rule is such a serious failure of the process we **provide** some additional background on the rule change below.

The major force in support of this rule change is the mining industry's desire to continue dumping hundreds of millions of tons of waste from mountaintop removal mining into the streams and wetlands of Appalachia. The Army Corps has been issuing permits for this waste disposal for many years, <u>despite their lack of any legal authority to do so</u>. **As** a result of the Corps' illegal permitting actions, nearly 1000 miles of streams have been permitted for burial by mining waste in West Virginia alone. The practice of mountaintop removal mining has devastated communities in Appalachia. Lawsuits brought by citizens of West Virginia and Kentucky to stop the *Corps'* illegal permitting practices have spurred the effort by the *Corps* and EPA to change the rules of the Clean Water Act to conform with the mining industry's waste disposal practices, rather than require the mining industry to comply with the current rules of the Clean Water Act.

In addition the hardrock mining industry has now pushed to allow waste containing highly toxic materials including arsenic and lead to be included in the definition of "fill." Already 40% of the headwaters of western watersheds have been polluted by mining according to the EPA's Liquid Assets 2000 report.

Because the agencies' current practice is illegal, there is an imminent and significant **risk** that they will be enjoined from continuing by a federal court. Were the Army Corps to be enjoined from continuing to break the law, the discharge of coal mining waste into waters of the United States would have to stop. To avoid that result, the agencies are changing the rules of the Clean Water Act to legalize a currently illegal practice. The agencies' argument, quickly accepted by OIRA, that making an incredibly destructive and currently illegal practice legal has no economic significance, does not pass the laugh test. Common sense is enough to grasp the economic significance of sanctioning rather than stopping a destructive and costly practice.

Moreover, the environmental and economic impacts of this rule change would not end with the devastating effects of mountaintop removal mining on the waters of Appalachia. Removing the waste exclusion from current clean water regulations would also allow large and small businesses, states, municipalities and individuals, among others, to dump hardrock mineral mining waste, construction and demolition waste and all other forms of industrial wastes, as well as tires, vehicles, appliances, garbage, trash and debris' into streams, wetlands, lakes and other waters across the nation solely for the purpose of waste disposal. Thus, in addition to sanctioning whatever illegal practices are currently being permitted by the Army Corps, the proposed rule change would do much more: it would legalize the disposal of all types of solid waste into all waters of the United States with a permit from the Army Corps.

It is simply incredible that EPA and the Corps could conclude that the economic and environmental costs of such a sweeping change in 25 years of established law does not deserve a full economic and environmental assessment. For OMB to concur with the agencies' finding represents a complete failure of its mission to implement the Executive Order in a fair and balanced **manner.** It appears as if the requirement that there be a complete assessment of costs and benefits applies only to rule changes that strengthen environmental protection, and not those that weaken them.

According to the Executive Order, if the fill rule is an economically significant regulatory action EPA and the Corps must perform a Regulatory Impact Analysis (RIA) as described in §6 3(C) so that OIRA may fully review the regulatory action. The RIA must contain a thorough analysis of the costs and benefits of the fill rule to the economy and the environment. The RIA must fully consider the costs to the economy of allowing all waters of the United States to be open to disposal of solid waste of all kinds. In addition the RIA must provide "an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public...and an explanation why the planned

[1] Garbage, trash and debris would need to be in the form of a structure or infrastructure to be permitted for disposal.

regulatory action is preferable to the identified potential alternatives" (§6 3(C)(iii)). EPA and the Corps have failed to conduct the serious analysis of the costs and benefits of the proposed fill rule required under the Executive Order and OIRA has allowed the agencies to avoid conducting such an analysis. It is imperative that OIRA reverse its course and direct the agencies to do so.

Thereafter OIRA must conduct a full review of the proposed fill rule based upon the agencies' RIA. Our organizations request the opportunity to brief OIRA on our analysis of the fill rule during that review period, and we oppose the agencies' efforts to rush their proposal through OIRA and curtail the process for public input by falsely designating the rule as economically insignificant.

As part of its review OIRA should ensure that the **RIA** fully addresses the potential impacts of allowing the disposal of waste in waters of the United States on the commercial and recreational fishing sectors (including shellfish); boating and other recreational water use (canoeing, kayaking) and their associated businesses; birdwatching and other nature-based tourism; flooding and its associated economic costs; drinking water and associated costs of treatment and finding alternative sources; other business and manufacturing-related uses of clean water, including irrigation and food processing; real estate values.

We note that in its most recent report to Congress OMB indicated its continued interest in considering "sound science" as part of its analysis of pending rules. As it relates to the rule at issue here the scientific evidence is overwhelming that Mountaintop Removal mining has a devastating impact on stream hydrology and the ability of wetlands and streams to filter pollution, prevent flooding and provide habitat for numerous species.

These problems are discussed in a recent letter from forty-three scientists of stream ecology submitted to the **Army** Corps of Engineers in response to the Corps' proposal to reissue and weaken several of the Nationwide Permits for expedited filling of wetlands and other waters without public notice and comment. The scientists' letter, a copy of which is attached, focused primarily on the impacts of Nationwide Permit **2**1, which, under the guise of a general permit intended by Congress only for those activities that would have "minimal adverse effect'' individually and cumulatively, has been used to authorize nearly every mountaintop removal mine.

The same harms will occur across the country as the *Corps* issues permits for the filling of wetlands and streams for all kinds of waste disposal. To be clear: <u>as a result of the pending rule change there would be no type of solid waste that would be categorically barred from disposal in the nation's waters, nor any limit in the amount of waste disposed, nor any type of water protected fi-om disposal. This is a reversal of a twenty-five year old regulation. It defies logic and common sense that such a radical change in the Clean Water Act rules can be considered "economically insignificant."</u>

By wrongly asserting the insignificance of this major rule change EPA and the Corps seek to cut off debate and shield their proposal from the analysis and scrutiny it deserves

from both OIRA and the public. Unfortunately, rather than giving this major weakening of a Clean Water Act rule the attention and analysis that is warranted, OIRA appears to have joined in the agencies' efforts to rush through this major environmental rollback as quickly as possible. OIRA's rubber stamp review of this proposal raises serious questions about the sincerity of its oft-stated willingness to review efforts to weaken environmental protections with the same diligence and care as those to strengthen them. We urge you to reverse course and ensure that OMB and the agencies conduct the full regulatory analysis that is required under the Executive Order.

Sincerely,

Daniel Rosenberg
Natural Resources Defense Council

Sara Zdeb
Friends of the Earth

Joan Mulhern
Earthjustice

Ed Hopkins
Sierra Club

Lexi Shultz
Mineral Policy Center

S. Elizabeth Birnbaum
American Rivers

Paul Schwartz
Clean Water Action

Mary Minette
League of Conservation Voters

Perry Plumart
National Audubon Society

cc:
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05 29/2002 09:27:53 AM

Record Type: Record

To: John F. Morrall III/OMB/EOP@EOP

cc:

Subject: NRDC Comments -- Costs and Benefits of Federal Regulations

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Mr. Morall,

On behalf of Wesley Warren and the Natural Resources Defense Council, I am forwarding the following comments to you regarding the OMB's draft report to Congress on the Costs and Benefits of Federal Regulations.

Thank you for your attention to this matter. We hope there is something we can work on together here.

NRDC Comments:

<<ombreport2002.doc>>

Attachments:

<<AprilFinalrewriting_print_0402a.pdf>> <<OMB MTR let FINAL [May 3 2002].doc>>

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