



# SPECIAL INTEREST TAKEOVER



## The Bush Administration and the Dismantling of Public Safeguards

Produced by  
The Center for American Progress & OMB Watch for  
The Citizens for Sensible Safeguards Coalition



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# Acknowledgments

Reece Rushing, associate director for regulatory policy at the Center for American Progress, is primary author of *Special Interest Takeover*. Mr. Rushing worked for more than seven years at OMB Watch before joining the Center in March 2004. Melissa Brennan, formerly of OMB Watch, also contributed significant writing and research for this report. Gary D. Bass, executive director of OMB Watch, and Mark Agrast, senior vice president for domestic policy at the Center for American Progress, provided overall guidance. Shannon Ferguson and Robert Shull of OMB Watch stepped in to contribute in the final stages of the project.

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## About Citizens for Sensible Safeguards

In 1995, more than 200 public interest organizations – representing everything from environmental and consumer concerns to workers and civil rights – came together to form the Citizens for Sensible Safeguards coalition, chaired by OMB Watch. Through the remainder of the 90s, this coalition successfully beat back a string of regulatory “reform” bills that sought to prevent new public and environmental safeguards. Since then, coalition members have actively worked to spotlight special-interest influence over the executive branch. This report represents a compilation of their efforts. For more information go to <http://www.sensible safeguards.org>.



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**OMB Watch** is a nonprofit research and advocacy organization dedicated to promoting government accountability and citizen participation in public policy decisions. This mission centers on four main areas: the federal budget; regulatory policy; public access to government information; and policy participation by nonprofit organizations. OMB Watch was founded in 1983 to lift the veil of secrecy shrouding the powerful White House Office of Management and Budget (OMB). The organization has since expanded its focus to include the substantive areas that OMB oversees.

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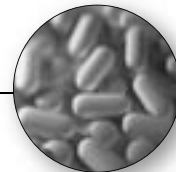
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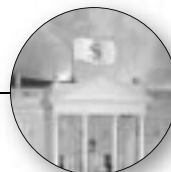


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# Introduction

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Special interests have launched a sweeping assault on protections for public health, safety, the environment, and corporate responsibility – and unfortunately the Bush administration has given way. Crucial safeguards have been swept aside or watered down; emerging problems are being ignored; and enforcement efforts have been curtailed, threatening to render existing standards meaningless.

This agenda puts special interests above the public interest, sacrificing a safer, healthier, more just America at the behest of industry lobbyists, corporate campaign contributors, and professional ideologues – many of whom the president has appointed to “regulate” the very interests they used to represent.

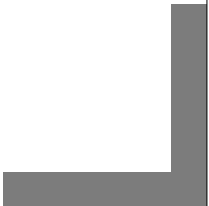
Over the last 30 years, we have made significant progress through strong public safeguards. Our air and water are cleaner, our food, workplaces, and roads are safer, and corporations and the government are more open and accountable to the public. These protections have saved thousands upon thousands of lives and improved the quality of life for all Americans – without hobbling industry or the economy.

Nonetheless, significant problems remain. Every year, more than 40,000 people die on our nation’s highways. Foodborne illnesses kill an estimated 7,000 and sicken 76 million. Nearly 6,000 workers die as a result of injury on the job, with an additional 50,000 to 60,000 killed by occupational disease. And asthma – linked to air pollution – is rising dramatically, afflicting 17 million, including six million children.

We should address these problems, and others, by building on past successes. Instead, as detailed in this report, the Bush administration has reversed course. Specifically, the administration has:

- **Weakened or repealed a host of important safeguards.** Within months of taking office, the Bush administration moved to kill or weaken a host of Clinton-era health, safety, and environmental protections – including restrictions on hard rock mining, new energy efficiency standards, and ergonomics rules to protect workers, just to name a few.

Over the last three years, this procession has not let up. From giveaways to the timber industry to the slashing of overtime pay to the repeal of food labeling requirements, the Bush administration has consistently put narrow corporate interests over the broader public good.

- **Asserted White House powers to block agency efforts to protect the public and environment.** The administration has sometimes been forced to act because of statutory or judicial requirements. In these cases, John Graham, administrator of the Office of Information and Regulatory Affairs (OIRA), an obscure but powerful office inside the White House Office of Management and Budget, has stepped in and provided a
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roadblock. In one highly dubious case that drew a stinging rebuke from a federal appeals court, Graham forced the National Highway Traffic Safety Administration to adopt a less protective standard – favored by automobile manufacturers – for warning drivers of under-inflated tires, which are linked to thousands of injuries and more than 100 deaths a year. OIRA has also substantially weakened a host of new EPA standards, including proposals to limit construction runoff (the largest source of pollution in U.S. coastal waters), cut diesel emissions from large ships and tankers, and protect the trillions of fish that are sucked up and killed each year by power plants, which use rivers, estuaries, and oceans to cool their systems.

At the same time, Graham has pushed a host of policy changes that make it more difficult for agencies to promulgate new health, safety and environmental standards. This includes new emphasis on monetizing the benefits of prospective regulation, frequently an impossible task; guidelines that allow industry to challenge the information that supports regulation; and a plan that would allow OIRA to demand industry-dominated “peer review,” which could be used to grind regulatory agencies to a halt.

- **Failed to address regulatory gaps.** The administration has refused to update and strengthen existing standards, address regulatory gaps, or take on new emerging problems. For example, of the three “significant” standards completed by EPA over the administration’s first three years, two were required by court order and the other rolled back restrictions on power-plant emissions. By contrast, EPA completed 30 economically significant standards over the first three years of the Clinton administration and 21 over the first three years of the Bush I administration.

In addition, a number of important new standards were still in development at the end of the Clinton administration. This included, for instance, standards to clamp down on air pollution in national parks, prevent workplace Tuberculosis, and limit head and neck injuries in automobile crashes – all of which have since been scuttled. In fact, the Bush EPA has completely abandoned 62 Clinton-era rulemakings, while OSHA has dropped work on 21 and the Food and Drug Administration 57.

- **Relaxed corporate oversight.** For standards that remain on the books, the administration is scaling back enforcement efforts – ignoring lessons from the recent wave of corporate accounting scandals, which were aided by an absentee SEC. For instance, the administration has cut EPA enforcement personnel by 12 percent; the average penalty for willful OSHA violations has fallen by 25 percent; FDA actions against misleading drug promotions have plummeted by almost 80 percent;



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and tests for mad cow disease were conducted at fewer than 100 of 700 cattle slaughterhouses between 2001 and 2003. With no cop on the beat, corporate abuses are bound to increase.

- **Moved to restrict access to health and safety information.** In the most high profile example, the administration refused to provide documents related to Vice President Cheney's energy task force, which among other things, resulted in proposals to boost supplies of oil and coal rather than alternative energy sources. Unfortunately, this is just the tip of the iceberg. The administration's commitment to secrecy runs wide and deep.

In October 2001, Attorney General John Ashcroft issued guidance to federal agencies on implementing the Freedom of Information Act, which is frequently used by outside parties to obtain health and safety information. The memo, in essence, encouraged agencies to withhold information whenever possible – a fundamental reversal of past policy, which stressed disclosure where possible.

This same principle has also been applied in dealings with Congress. For example, EPA withheld analysis showing that the administration's plan to reduce power plant emissions – the "Clear Skies Initiative" – is far less effective than alternative bipartisan legislation. Meanwhile, the administration has punished federal employees who have stepped in to blow the whistle. In one case, the Federal Aviation Administration transferred Bogdan Dzakovic, who formerly led mock raids on airports, to bureaucratic Siberia after he publicly faulted the agency for suppressing warnings and rigging security tests.

The administration has also moved to broadly restrict access to health and safety information – including data on chemical facilities – in the aftermath of the terrorist attacks of Sept. 11, 2001, without taking into account the benefits of disclosure. In the past, the public has used such information to hold corporate interests and government accountable to achieve significant safety improvements. By restricting access, the administration is inviting complacency and a false sense of security, without addressing the actual danger. Indeed, public disclosure can actually make us safer – by providing necessary incentives for change – while honoring our democratic values.

- **Put politics over science.** From clean air and water to worker safety to a healthy food supply, science is at odds with the Bush agenda. The administration has responded by suppressing and censoring government reports, misrepresenting scientific information, and stacking scientific advisory committees with its corporate and ideological allies. For instance, the administration blocked EPA from reporting scientific findings that linked global warming to human activity; doctored

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information to support increased drilling; and placed industry affiliates on an advisory committee on childhood lead poisoning.

- **Awarded federal contracts and grants in secret, without accountability, and for apparently political purposes.** The administration's approach to federal contracting and grantmaking provides one of the best examples of its willingness to put special interests over the public interest. Of course, there's the secret, no-bid contract awarded to Halliburton, the former employer of Vice President Cheney, for work in Iraq. However, the administration has undermined accountability for contracting in numerous other ways as well.

Upon taking office, the administration immediately moved to repeal Clinton-era contractor responsibility standards, which sought to ensure that the government does not contract with chronic lawbreakers, including violators of protections for public health, safety, the environment, and civil rights.

At the same time, the administration pressed forward with plans designed to steer money to its political and corporate allies. This includes new rules for privatizing the federal workforce, which threaten to create a modern-day spoils system, and administrative actions to award social-service grants to religious congregations – which are not subject to the same civil rights and financial disclosure requirements as other federal grantees. Meanwhile, grantees that disagree with the administration's policies have faced continuous harassment, including retaliatory audits.

Needless to say, this special interest takeover puts the public at significant risk. More power-plant pollution – permitted by an administration rollback – means more birth defects and premature death. The administration's refusal to act on reactive chemicals in the workplace – ignoring the advice of its own chemical safety board – means more workers killed and injured. The dramatic decline in enforcement actions against improper drug advertising makes it more likely that consumers will be misled about a drug's effectiveness and cheated out of their money. The administration's decision to withhold tire-safety information at the behest of the auto industry prevents consumers from making informed purchases to protect themselves and their loved ones. Downplaying the risk of Salmonella and Listeria, without scientific evidence, fosters a false sense of security over the nation's food supply. And the administration's privatization plan allows political appointees to award taxpayer dollars based on a subjective "best value" standard rather than cost, paving the way for corruption and waste.

Unfortunately, these are just a few examples. The following pages detail a government of special interests, by special interests, and for special interests. The people are no longer in control.



## A Record of Rollbacks

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

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

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

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

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

## Backing Off Power Plants & Undoing Clean Air Standards

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

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

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

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

### Global Warming

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

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

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

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

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

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

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

## Foxes In the Henhouse

### **Donald Evans, secretary of Commerce**

As Commerce secretary, Evans has worked to block action on carbon dioxide emissions – arguing that we first need to do more research<sup>5</sup> – and strip state authority to veto offshore oil drilling.<sup>6</sup> Previously, Evans spent 25 years at Tom Brown Inc., a Denver-based independent oil and natural gas producer, eventually becoming chairman and CEO. He also sat on the board of TMBR/Sharp Drilling, an affiliated oil and gas drilling operation.<sup>7</sup> Evans was campaign manager and chief fundraiser for President Bush's last three campaigns, raising more money from the oil and gas industry for the 2000 presidential race than the ten-year total of any other federal candidate in history.<sup>8</sup>

### **Samuel Bodman, III, deputy secretary of Commerce**

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

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

polluters in Texas,<sup>10</sup> and was cited in a 2002 United Nations report for illegally exploiting Congolese natural resources during the country's civil war<sup>11</sup> (charges Cabot denies). In October 2003, Bodman was nominated to be deputy secretary of the Treasury Department.

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

Smith is the primary policy adviser to the secretary of Energy on federal coal, petroleum and natural gas programs, including research and development efforts, and alternative energy initiatives. Among other things, he is assisting on a study – partly funded by Anadarko Petroleum, ConocoPhillips, and Total oil companies<sup>12</sup> – to determine when it's environmentally safe for oil companies to transport heavy equipment over arctic tundra.<sup>13</sup>

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

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

### International Exemptions for Pesticide Use

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

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

### Fox In the Henhouse

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

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

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

### A Free Pass for Coal-Fired Power Plants

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

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

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

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

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

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

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

the final weeks of the Clinton administration, for instance, Cinergy Corp. of Cincinnati agreed in principle to pay fines and install millions worth of new pollution-control equipment to reduce sulfur dioxide emissions at its affiliated plants by 35 percent by 2013.<sup>21</sup> However, following President Bush's inauguration, the company backed away from this settlement in the hopes of striking a sweeter deal, and more than three years later, the case is still in limbo.

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

it called "routine" – without adding the necessary scrubbers.<sup>22</sup>

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

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

## Money Talks

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

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

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

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

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

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

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

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

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

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

### More Breaks for Power Plants

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

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



## Foxes In the Henhouse

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

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

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

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

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

### **Francis S Blake, former deputy secretary of Energy**

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

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

### **A Political Smokescreen (The "Clear Skies Initiative")**

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

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

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

Not surprisingly, the power industry’s trade association, the Edison Electric Institute, has aggressively lobbied Congress to approve the Clear Skies Initiative.<sup>39</sup> “The industry outreach effort will be a major undertaking and will have many components,” Thomas Kuhn, EEI’s president, wrote to company officials<sup>40</sup> in announcing a special web site<sup>41</sup> designed to generate messages of support to members of Congress. (Kuhn is a personal friend of President Bush and one of his leading Pioneer fundraisers.)

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

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

### Mercury Emissions

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

## Fox In the Henhouse

### Michael Leavitt, EPA Administrator

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

Human beings are exposed to mercury primarily by eating fish.

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

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

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

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

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

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

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

### **Mercury From Chlorine Plants**

Chlorine plants release an estimated 100 tons of mercury a year<sup>47</sup> – double that from coal-fired power plants. However, the Bush administration has given them a free pass, and lifted requirements to control these emissions.

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

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

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

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

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

Instead, the administration's plan would revoke the 2000 determination that mercury emissions from power plants are "hazardous" (an action that appears to be illegal<sup>50</sup>). In doing so, the administration would put in place a "cap and trade" program that would allow utilities to buy and sell emissions credits and "bank" unused allowances for later use. The administration contends this would achieve a 70 percent reduction in mercury emissions by 2018. However, contrary to public representations, EPA calculations actually show reductions of only 38 percent to

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

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

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

#### **Snowmobiles & Dirty Air in Yellowstone**

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

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

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

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

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

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

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

### Energy Efficiency

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

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

The Clinton administration, in its final weeks, moved in this direction by requiring that most new air conditioners and heat pumps be made 30 percent more energy efficient by 2006.<sup>56</sup> At the urging of manufacturers, the Bush administration immediately lowered this requirement to 20 percent, but a federal appeals court threw out this rollback, finding that it violated the National Appliance Energy Conservation Act, which prohibits such backsliding.<sup>57</sup>

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

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

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

In comments delivered Oct. 19, 2001,<sup>61</sup> the Environmental Protection Agency criticized DOE for ignoring the “strong rationale” for sticking with the higher efficiency standard and argued that savings to consumers were “significantly underestimated.” “Changes in the electricity market due to utility deregulation has resulted in increased electricity prices overall,” according to EPA. “DOE did not consider this trend in its analysis,” which even so found \$1 billion in “net benefits” to consumers from a 30 percent standard by 2020.<sup>62</sup>

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

### Bowing to Mining Interests

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

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

## Money Talks

Mining interests gave \$10.14 million to Republicans during the 2000 and 2002 election cycles<sup>65</sup> – including \$6.5 million from the coal industry (accounting for nearly 90 percent of the industry's total donations) – and more than \$3 million to President Bush and the RNC in 2000 and 2004.<sup>66</sup>

"We were looking for friends, and we found one in George W. Bush," said industry executive James H. "Buck" Harless,<sup>67</sup> a Bush Pioneer in both 2000 and 2004.<sup>68</sup> Harless is chairman of International Industries, a holding company with mining interests, and serves on the board of Massey Energy, an Appalachian coal company that specializes in mountaintop mining and stands to reap substantial profits from the Bush rollbacks.

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

## Mountaintop Mining

The administration adopted a rule in May 2002<sup>70</sup> that allows mining companies to dump dirt and rock waste into rivers and streams, clearing the way for new "mountaintop mining" to access lucrative low-sulfur coal. This action changed the definition of allowable "fill material," eliminating the "waste exclusion" that barred dumping for the sole purpose of disposing waste. The Army Corps of Engineers now has authority

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

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

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

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

## More Breaks for Mountaintop Mining

The Bush administration unveiled a proposal<sup>74</sup> Jan. 7, 2004, that would gut a prohibition against the dumping of mining waste within 100 feet of streams, further easing the way for new mountaintop mining, which generates large amounts of dirt and rock waste.

## Fox In the Henhouse

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

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

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

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

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

"Only the Bush administration, which calls more air pollution 'Clear Skies' and

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

### **More Dumping of Mining Waste**

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

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

## Fox In the Henhouse

### **William Myers, former solicitor of the Interior Department**

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

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

### Hard-Rock Mining

On Oct. 30, 2001, the Bush administration weakened<sup>82</sup> environmental and land use protections for hard-rock mining (which includes gold, silver, copper, and other minerals, but not coal) that were issued shortly before President Clinton left office. This stripped the Interior Department of its new authority to block proposed mines on federal land that could result in "substantial irreparable harm," and locked in a sweetheart arrangement for mining interests, which urged the rollback.

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

## Fox In the Henhouse

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

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

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

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

### Giveaways to Mining Interests

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

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

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

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



mining industry was the largest toxic polluter for the second straight year, producing 3.4 billion pounds of toxic pollutants in 2000.<sup>87</sup> Such mining has polluted 40 percent of Western watersheds, according to EPA, leaving taxpayers to foot the bill for hundreds of millions of dollars in cleanup costs.

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

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## Drilling on Public Lands

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

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

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

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

## Money Talks

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

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

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

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

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

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

The administration's plan to allow new drilling off California's coast was also blocked, this time by a federal appeals court,<sup>94</sup> but in most other cases, drilling has been able to move forward unimpeded. In a memo to field personnel, Bureau of Land Management officials said their "No. 1 priority" was to grant new leases for oil, gas and coal mining on public lands.<sup>95</sup> Not surprisingly, the number of such leases increased 51 percent during the first year of the Bush administration<sup>96</sup> – from 2.6 million acres in 2000 to 4 million acres in 2001, according to BLM data – and new projects continue to be approved. As described below, this endangers some of the nation's most precious public lands.

### The Powder River Basin

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

Besides endangering the basin's diverse wildlife, high salt content also makes water unsuitable for irrigation purposes, and local farmers and ranchers have opposed the project. In May 2002, EPA gave the project – the largest drilling operation ever on federal lands<sup>97</sup> – its worst possible rating, declaring it "environmentally unsatisfactory."<sup>98</sup>

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

## Fox In the Henhouse

### J Steven Griles, deputy secretary of Interior

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

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

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

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

### **New Mexico's Otero Mesa**

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

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

### **Alaska's North Slope**

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

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

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

## **Fox In the Henhouse**

### **Cameron Toohey, Interior's special assistant for Alaska**

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

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

### **Padre Island National Seashore**

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

### **Utah Parks and Scenic Area**

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

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

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

## Fox In the Henhouse

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

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

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

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

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

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

### **No New Wilderness Area**

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

## Fox In the Henhouse

### **Gale Norton, secretary of Interior**

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

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

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

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

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

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

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

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

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## Clearing the Way for Logging

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

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

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

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

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

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

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

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

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

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

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

### **Forest Management**

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

## **Fox In the Henhouse**

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

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

have to evaluate environmental impacts or solicit public input.

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

### **Environmental Review & Public Input**

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

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

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

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

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

### **Endangered Species Consultations**

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

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

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

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

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

### **Roadless No More**

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

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

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

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

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

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

### **Alaska's Tongass National Forest**

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

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

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

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

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

### **More Logging in Protected Areas**

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

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

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

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



### **Rolling Back Standards for Grazing on Public Land**

The Bush administration has also moved to open public land to ranchers and their livestock. On Dec. 8, 2003, BLM proposed<sup>132</sup> to overturn a 1995 Clinton standard that aimed to stop overgrazing, which had caused substantial environmental damage over the previous decades – including erosion, degraded water quality, and reduced wildlife.

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

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

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

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

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

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

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

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

### **Rewarding Developers**

Development destroys tens of thousands of wetlands each year, contributing to flooding, pollution runoff, and loss of habitat for fish and wildlife.<sup>138</sup> Yet instead of tightening environmental protections, the Bush administration has sought to appease the real estate industry, which forked over more than \$32 million to President Bush and the Republican National Committee in 2000 and 2004.<sup>139</sup> In 2000, the real estate industry produced 47 Bush Pioneers, and already accounts for 37 Rangers and Pioneers in 2004.<sup>140</sup>

### **Dredging and Filling**

On Jan. 14, 2002, the Army Corps of Engineers weakened environmental standards<sup>141</sup> to make it easier for developers, mining companies and others to dredge

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

### **‘Offsetting’ Wetlands Destruction**

In 1989, the president’s father set the goal of “no net loss” of wetlands. This means that to receive a Corps development permit, developers must agree to either restore the affected wetlands or create replacement wetlands. However, in 2001, two separate reports by the National Academy of Sciences<sup>143</sup> and the General Accounting Office revealed that this policy has substantially failed, as wetlands continue to be destroyed at an alarming rate.

Nonetheless, just after these reports, in October 2001, the Bush administration issued “clarifying” guidelines<sup>144</sup> that further undermined the policy of acre-for-acre replacement of wetlands. Specifically, this action permits the Corps to approve projects based on “mitigation” efforts such as enhancement of existing wetlands, buffer strips along streams, ponds and other waters, or deepening of wetlands for swimming or fishing.<sup>145</sup> Needless to say, this is a much more subjective standard than acre-for-acre replacement, and clears the way for numerical loss of wetlands, which is especially disturbing given the Corps’ track record and the administration’s cozy relationship with the real estate industry.

### **Isolated Wetlands**

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

In offering the proposal last January,<sup>146</sup> EPA claimed to be responding to a

### **Florida Paybacks**

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

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

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

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

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

### **Lifting Protections for Sewage Treatment**

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

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

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

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

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

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

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

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

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

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

### **Exempting the Military from Environmental Laws**

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

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

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

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

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

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

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

## Foxes In the Henhouse

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

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

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

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

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

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

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

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

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

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## Undoing Protections for Workers

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

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

### Ergonomic Hazards

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

These standards<sup>163</sup> were issued at the end of the Clinton administration after more than a decade of study. In fact, Elizabeth Dole initiated the process in 1990 as labor

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

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

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

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

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

## Foxes In the Henhouse

### **Elaine Chao, secretary of Labor**

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

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

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

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

### **Gary Visscher, deputy assistant secretary for occupational safety and health**

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

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

### **Eugene Scalia, former Labor Department Solicitor**

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

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

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

Shortly after taking office, President Bush met with Republican congressional leaders and encouraged them to vote down the ergonomics standards<sup>171</sup> through the little-used Congressional Review Act, which gives Congress 60 legislative days to reject executive branch regulations. The White House also issued a formal statement in support of congressional repeal just before the vote. This approach allowed the administration to forgo administrative action and avoid likely legal challenges.

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

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

### **Recording of Ergonomic Injuries & Hearing Loss**

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

for musculoskeletal disorders (ergonomic injuries) and hearing loss.

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

On Dec. 17, 2002, OSHA again delayed the recording requirements for both hearing loss and ergonomic injuries by another year<sup>176</sup> (until January 2004), and on June 30, 2003, OSHA issued its final determination that employers do not have to note when workers report ergonomic injuries.<sup>177</sup>

### **Coal Dust**

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

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

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

## Foxes In the Henhouse

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

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

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

### **John Caylor, MSHA's deputy assistant secretary**

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

### **John Correll, Labor's deputy assistant secretary**

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

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

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

### **Diesel Matter & Miners**

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

At the end of the Clinton administration, in January 2001, the Mine Safety and Health Administration published a final standard for metal and non-metal mines to reduce exposure to DPM. Specifically, this standard directed mines to reduce the concentration of carbon to 400 micrograms per cubic meter of air by July 2002, and then to 160 micrograms by January 2006.<sup>186</sup>

However, just as the interim limit was to kick in, MSHA announced – without ever soliciting public input – that it would not issue citations for noncompliance for one year, until July 19, 2003.<sup>187</sup> As this date approached, MSHA again chose to undercut the standard, issuing a compliance guide that allowed mine operators to substitute the use of personal protective equipment (PPE), such as masks, for compliance with the interim limit.<sup>188</sup>

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



### **Driving Hours for Truckers**

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

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

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

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

### **Overtime Pay**

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

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

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

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

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

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

### **Wages for Migrant Workers**

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

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

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

In a case brought by the United Farmworkers of America and others, a court subsequently found that this delay violated the Department of Labor's own rules<sup>196</sup> – forcing Chao to issue new wage rates, which were published in February 2003.

## Stripping Patient Protections

The Bush administration has stripped away protections for medical patients at the urging of HMOs, hospitals, and nursing homes, which combined contributed more than \$5.5 million to President Bush's campaign efforts in 2000 and 2004.<sup>197</sup> In one of its most far-reaching actions in any area, the administration significantly weakened medical privacy protections – potentially allowing personal records to be used for drug marketing – and later relaxed standards for nursing home and emergency room care.

### Medical Privacy Safeguards

On Aug. 14, 2002, the Bush administration weakened medical privacy protections<sup>198</sup> issued at the end of the Clinton administration. As a result, personal records can be shared without patient consent between doctors, pharmacies, pharmaceutical companies, employers, insurance companies, and the government – frequently for purposes other than health care, such as drug marketing.

The Clinton standards<sup>199</sup> (which the Bush administration immediately suspended upon taking office) sought to put an end to this by requiring health care providers to obtain written patient consent before sharing medical records. However, the Bush revisions revoked this obligation and instead merely require that patients be informed of privacy practices. This shifts control of sensitive medical records from the patient to the provider and again allows such information to be sold to pharmaceutical companies for marketing purposes regardless of the patient's wishes.

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

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

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

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

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

## Nursing Home Care

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

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

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

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

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

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

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

## Emergency Room Standards

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

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

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

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

unable to proceed to the proper emergency treatment area.

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

## Undoing Food Labeling Protections

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

### Health Claims on Food Labels

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

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

FDA concludes that there is little scientific evidence supporting this claim."<sup>208</sup>

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

### Olestra Labeling Requirements

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

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

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

### Country-of-Origin Labeling

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

products to bear a label indicating their country of origin.

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

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

## Fox In the Henhouse

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

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

### **Dolphin-Safe Tuna**

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

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

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

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

## Relaxing Media Ownership Rules

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

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

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

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

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

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

## Money Talks

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

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

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

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

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

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



# White House Roadblock

Although the Bush administration has been chiefly interested in relaxing regulatory requirements on its corporate allies, in a number of cases, because of statutory or judicial requirements, it has been forced to act.

Not surprisingly, the White House has taken a special interest in these decisions, acting through its Office of Information and Regulatory Affairs (OIRA),<sup>1</sup> an obscure but powerful office within the Office of Management and Budget, which by presidential executive order has the authority to review and possibly reject or amend new agency regulations.

Under the leadership of Administrator John Graham – whose nomination was widely opposed by health and safety advocates, and ultimately, 37 Senate Democrats – OIRA has consistently used its review authority to weaken agency health, safety and environmental proposals, putting costs to corporate interests ahead of all other considerations. Indeed, of the major decisions discussed below,<sup>2</sup> the regulated industry prevailed over agency recommendations in every last one, owing its success directly to OIRA intervention.

Meanwhile, Graham has pushed a host of policy changes that make it more difficult for agencies to promulgate new regulation, centralizing control over the rulemaking process at OIRA. This includes new emphasis on monetizing the benefits of prospective regulation, frequently an impossible task; guidelines that allow industry to challenge the information that supports regulation; and a plan that would allow OIRA to demand industry-dominated “peer review,” which could be used to grind regulatory agencies to a halt. To top it off, OIRA has solicited an industry hit list to begin the next generation of regulatory rollbacks. In the Bush administration, health, safety and environmental policy unfortunately begins – and ends – with John Graham.

## Standards Weakened

The examples listed below are not rollbacks, as identified in Chapter I, in that they were never on the books. Yet in terms of transparency and accountability, they represent something more pernicious. If the administration wants to weaken an existing standard, it must act out in the open, submitting changes to the public for comment. In the case of OIRA review, however, Graham is free to exert influence largely in secret, insulated from public accountability – which gives industry an ideal backdoor to shape regulation.

OIRA changes are not published for public comment, nor are they made available through the web. Rather, the only way to figure out OIRA's role in shaping standards is to comb through agency docket libraries and talk to those with direct knowledge (which is how the following examples were compiled).

What makes this all the more galling is that OIRA has no statutory authority to shape health, safety and environmental protection (or any other regulation)<sup>3</sup>; Congress has given that exclusive power to regulatory agencies, such as NHTSA, FDA and EPA, which as described below have been involved in some especially egregious cases of OIRA interference.

### Tire Pressure Monitoring

On June 5, 2002, the National Highway Traffic Safety Administration (NHTSA) issued a watered down standard to guard against under-inflated tires – which are linked to numerous deaths each year – after OIRA, at the urging of the automobile industry, rejected its first attempt. A federal appeals court later rebuked OIRA and overturned the standard, calling it “contrary to the law and arbitrary and capricious.”<sup>4</sup>

The rule – required by Congress as a response to the Firestone tire debacle that resulted in 271 deaths – allowed manufacturers to choose between installing a “direct” system or a less reliable, yet cheaper, “indirect” system. A direct system relies on

## Fox In the Henhouse

### John D. Graham, administrator of OMB's Office of Information and Regulatory Affairs

The record chronicled in this chapter is hardly surprising given Graham's background as founding director of the Harvard Center for Risk Analysis, which during his tenure received the majority of its funding from corporate interests (including Dow Chemical, E.I. DuPont, Monsanto, Glaxo-Wellcome, Exxon, General Electric, and General Motors). In this position, Graham was a consistent and reliable ally of almost any industry seeking to hold off new regulation. For instance, after receiving funding from AT&T Wireless Communications, Graham produced a study in July 2000 that argued strongly against a ban on the use of cell phones while driving, which was being considered by many cities and states at the time.<sup>5</sup> He also downplayed the health risks of diesel engines, as well as second-hand smoke, and argued against a ban on highly toxic pesticides (all after receiving funds from affected industries). In a talk at the Heritage Foundation at the time, Graham said, “Environmental regulation should be depicted as an incredible intervention in the operation of society.”<sup>6</sup>

a pressure sensor in each tire that can alert the driver of an under-inflated tire through a dashboard monitor. An indirect system works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for one tire compared to the others.

Public Citizen, New York Public Interest Research Group, and the Center for Auto Safety challenged the standard in court – arguing that NHTSA, under pressure from the auto industry and OIRA, failed to comply with the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in adopting the less safe standard.

The court agreed, noting that the indirect system would fail “to warn drivers in approximately half of the instances in which tires are significantly under-inflated,”



while the direct system “would prevent more injuries, save more lives, and be more cost-effective.” The three-judge panel instructed NHTSA to develop new standards.

NHTSA originally wanted to require direct systems to be installed in all vehicles by 2007, which NHTSA estimated would avert 10,271 injuries and 141 fatalities a year; according to OIRA’s estimates, indirect systems would avert 5,000 injuries and 70 fatalities.

Yet in rejecting this approach,<sup>7</sup> Graham incredibly argued that allowing indirect systems would actually produce greater safety benefits overall because it would serve as an incentive for manufacturers to install anti-lock brakes, which are necessary for indirect systems to work.

Pointing to a recent study<sup>8</sup> by Charles Farmer of the Insurance Institute for Highway Safety, Graham concluded that the resulting increase in anti-lock brakes would save 118 to 266 lives a year, on top of the 70 fatalities averted from indirect systems. According to Graham, this “yields a total of 188 - 336 fatalities averted or between 47 and 195 more than with direct systems.”

Yet Graham appears to have been overly enthusiastic in his appraisal of anti-lock brakes based on the available evidence. After Graham’s return letter, Farmer met with NHTSA on March 23, 2002, to discuss his study – which Graham called the “best estimate” available – and according to the meeting log filed by NHTSA, “Mr. Farmer thought that Dr. Graham of OMB was being optimistic in assuming that antilock brakes would produce fatality benefits.”<sup>9</sup> *That’s any fatality benefits at all.*

In other words, the author of the study that formed the foundation of OIRA’s decision explicitly rejected Graham’s conclusions, yet Graham chose to ignore this, insisting that NHTSA allow indirect systems anyway. This willful misinterpretation of the evidence seems to indicate that the concern over anti-lock brakes was really just a diversion tactic, meant to distract from the bottom-line action: Graham rejected the safest possible standard as a result of cost objections from the auto

industry, which incidentally contributed generously over the years to the Harvard Center for Risk Analysis, where Graham served as director prior to his confirmation as OIRA administrator.

## **Bioterrorism**

Industry representatives met with OIRA officials on numerous occasions<sup>10</sup> in what was ultimately a successful effort to relax new FDA standards<sup>11</sup> – mandated by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 – that require food importers to provide advance notice of shipments bound for the United States.

The original proposal, issued in February 2003 for public comment, required importers to notify the FDA by noon the day before a shipment was to arrive. The final standards, however, require just eight hours notice for shipments arriving by sea, four hours for those transported by air or rail, and only two hours for shipments coming by land.

“These regulations are critically needed to protect the food supply, but we’re concerned that the agency is requiring less advance notice for imported food shipments,” said Caroline Smith DeWaal of the Center for Science in the Public Interest. “If trucks of food can arrive at our borders with just two hours notice, it might be easier for someone to avoid inspection.”<sup>12</sup>

## **Construction Runoff**

OIRA tossed out an EPA proposal to limit runoff from construction and development sites, the largest source of pollution in coastal waters and estuaries in the United States.

EPA’s original submission to OIRA sought to require an 80 percent reduction in storm water discharges both during and after construction through commonly used measures, such as various drains, barriers, and buffer zones. Yet citing costs, OIRA cut out any reference to permanent controls put in place after construction – the main source of the problem – and blocked the performance standard for discharges during construction,<sup>13</sup> a move strongly

urged by developers, including the National Association of Home Builders.

Instead, according to agency sources, OIRA forced EPA to present three weak options for public comment,<sup>14</sup> one of which was to do nothing. Amazingly, this was the option EPA ultimately chose.<sup>15</sup>

During construction and development, the natural landscape is disturbed and soil is left exposed for a period of time. When rainwater runs over these sites, massive amounts of sediment are swept into streams, lakes, rivers, and oceans. Forest stripped for construction produces 500 to 1,000 times the amount of sediment of undeveloped land.

After construction, much of the previously natural area is paved over and covered with impervious surfaces that prevent water from soaking into the ground. Runoff continues, carrying pollution from human activity in addition to sediment. This includes metals, pesticides, fertilizers, oil, grease, bacteria, viruses, and trash.

This storm water pollution, as it's commonly known, accounts for 55 percent of the pollution in coastal waters and 46 percent in estuaries, and is the leading cause of beach closures and advisories. EPA estimates that construction sites annually discharge 80 million tons of solids into U.S. waterways, which is only increasing with the rapid pace of development. EPA estimates that 2.2 million acres of rural land are developed each year, which has also led to increased flooding. Urbanized land increased 47 percent between 1982 and 1997 while population increased only 17 percent.

### **Fish Killed by Power Plants**

OIRA substantially weakened an EPA rule to protect the trillions of fish and aquatic organisms that are sucked up and killed each year by power plants that use rivers, estuaries, and oceans to cool their systems.

Each year, electric generating plants withdraw more than 70 trillion gallons of water, killing trillions of aquatic organisms in the process, including plankton, crustaceans, shellfish, sea turtles, marine mammals, as

well as fish and their eggs. Larger fish and shellfish are often trapped on a plant's intake screen, and die there from lack of oxygen and movement, in what's known as impingement. Smaller fish or eggs that make it into the cooling structure are usually killed in the cooling process, called entrainment, which generally results in much higher losses than impingement.

In the Delaware Bay, for instance, EPA estimates staggering annual losses of 359.4 million fish from the Salem Nuclear Generating Station (which withdraws more cooling water than any plant in the country), 356.3 million of these from entrainment. At the Big Bend facility in Tampa Bay, Fla., an estimated 8.13 million fish are lost annually. And in the San Francisco Bay Area, more than 400,000 threatened or endangered fish are thought to be lost annually from two plants, Pittsburg and Contra Costa.

As originally submitted to OIRA, EPA sought to require the 59 largest plants in the most ecologically sensitive areas to meet the performance achievable by a closed-cycle cooling system, which reduces fish kills by up to 98 percent by recirculating or reusing water, withdrawing only 2 percent to 28 percent of the water used by older systems. This would have acknowledged the Clean Water Act's requirement to set the standard based on the best technology available – clearly a closed-cycle system, which is currently used by 69 facilities. (EPA sought less stringent requirements for the roughly 500 remaining plants subject to the proposal.)

Yet citing costs, and ignoring the requirements of the law, OIRA stripped out the closed-cycle standard for the most harmful plants, according to EPA documentation required by Executive Order 12866.<sup>16</sup> Instead, OIRA embraced alternative, less protective measures urged by energy companies – including Cinergy, Edison Electric, and Public Service Electric & Gas (PSE&G), among others – which EPA published as a proposed rule for public comment on April 9, 2002.<sup>17</sup> (This proposal was subsequently finalized to OIRA's specifications in February 2004.)

Specifically, OIRA substantially lowered the performance standard to require a 60 percent reduction in entrainment (from a baseline of no controls) and an 80 percent reduction in impingement. Moreover, under further OIRA changes, facilities are allowed to plead special circumstances with state permit authorities, and avoid meeting even this watered-down standard.

"This weak mandate would allow existing plants to kill 20 to 1000 times more fish per megawatt than [plants with closed-cycle systems], and continue to decimate aquatic life in U.S. waterways indefinitely," according to Riverkeeper Inc., which brought suit against EPA resulting in a 2000 consent decree requiring a standard.

The reduction targets pushed by OIRA are based on the performance achievable by lesser technologies, including better intake screens and fish return systems. In addition, OIRA altered EPA's original proposal to allow plants to forgo even these minimal upgrades by instead employing "restoration measures," such as fish restocking programs and the restoration of wetlands and aquatic habitat "that will result in increases in fish and shellfish in the watershed." Yet such measures have proven highly unreliable, and don't actually replace the aquatic life killed – there is no requirement to put back the same amount, kind, age, etc., of fish killed, and indeed, this would be impossible.

### **Factory Farm Runoff**

OIRA watered down already weak EPA draft rules to address pollution from factory-style animal farms – resulting in standards that are more protective of corporate polluters than of public health and the environment.

Just before leaving office in 2001, the Clinton administration proposed new standards to regulate factory farms after reaching a legal settlement with the Natural Resources Defense Council, which called on EPA to update rules crafted in the 1970s. Under the Bush administration, EPA reworked the Clinton-era proposal, dropping a number of important provisions – most notably one

that would have held corporate livestock owners liable for damage caused by animal waste pollution. These owners often evade culpability by hiring contractors to raise their animals, a loophole that would have been closed by the Clinton proposal. The agency also dropped a requirement that would have forced facilities to monitor groundwater for potential contamination by animal waste, which often seeps into the earth, leaving communities vulnerable to potentially dangerous drinking water supplies.

OIRA further weakened the standards by broadening a provision that exempts "agricultural storm water discharge" from regulation – legalizing the discharge of raw sewage, bacteria, and other elements from land where waste has been applied.<sup>18</sup> The office also altered a provision to allow facilities to avoid strict federal standards governing the land application of animal waste – instead embracing industry's preferred approach of regulation by state-level authorities.

Records indicate that John Graham and OIRA staff met with industry representatives<sup>19</sup> interested in the factory farm rules in November of 2001, nearly a year before the formal review of the measures began – suggesting some type of upfront involvement by the office. Unfortunately, the extent of this involvement is unclear because OIRA disclosure requirements<sup>20</sup> apply only to the formal review period. (Indeed, OIRA was under no obligation to disclose its November 2001 meeting.) Whatever the case, the changes made by EPA to the original Clinton proposal mirror many of the recommendations made by the industry representatives who met with Graham.

### **Snowmobile Emissions**

EPA weakened its original proposal to cut emissions from snowmobiles and other off-road vehicles after meeting resistance from the vice president's office and John Graham, who sided with the snowmobile industry.

Despite their harmful effects, snowmobile emissions have never been regulated under the Clean Air Act. A typical 2-stroke snowmobile

engine emits as much harmful pollution in seven hours as a car driven for 100,000 miles; snowmobiles annually discharge about 530,000 tons of carbon monoxide and 200,000 tons of hydrocarbons.<sup>21</sup> This pollution is especially concentrated in national parks, where tens of thousands snowmobile every year, endangering park employees, impairing visibility, and harming the natural habitat.

The new rule – signed by then EPA Administrator Whitman on Sept. 13, 2002, as required under a court order – mandates at least a 50 percent reduction in hydrocarbon emissions by 2010 and a 30 percent reduction in carbon monoxide, as opposed to the 50 percent reduction called for in the agency's original proposed rule,<sup>22</sup> which Graham questioned in a "post review letter."<sup>23</sup>

Even EPA's original proposal would have been too weak. The four major snowmobile manufacturers already produce 4-stroke engines that can achieve much higher emissions reductions, and a new 2-stroke engine developed by Colorado State University can reduce hydrocarbon emissions by 88 percent and carbon monoxide by 99 percent.<sup>24</sup>

Nonetheless, the manufacturers staunchly opposed even a 50 percent reduction in carbon monoxide emissions, pressing their case in a meeting on Sept. 6, 2001,<sup>25</sup> with Graham that was attended by a representative of Vice President Cheney – a snowmobile enthusiast who owns a home in Jackson, Wyo., just south of Yellowstone National Park, where controversy over the rule has swirled. According to a feature story in the Washington Post's Weekend section on Aug. 18, 2002, briefing notes from an unnamed official indicated, "VP's office has an interest in [the snowmobile] portion of the rule, and a few concerns." Days later, Graham issued his post review letter.

### Marine Diesel Emissions

OIRA gutted an EPA proposal to limit diesel emissions from large ships and tankers, which are a growing – and still unregulated – source of air pollution around coastal cities and ports, emitting about 273,000

tons of nitrogen oxide (NOx) per year. This proposal was subsequently finalized to OIRA's specifications in February 2004.<sup>26</sup>

As originally prepared,<sup>27</sup> EPA's submission to OIRA contained two tiers. Tier 1 codified modest limits contained in a 1996 international agreement known as Annex VI, which still needs to be ratified and remains unenforceable. Tier 2 required more stringent limits that would achieve an additional 30 percent reduction in NOx emissions from new engines beginning in 2007.

However, during its review (which began on April 15, 2002), OIRA stripped out this second phase, according to EPA sources and documentation required by Executive Order 12866, after the tanker industry weighed in heavily against it.<sup>28</sup> With this change, the proposed rule (published on May 29, 2002<sup>29</sup>) merely asked for comments on the possibility of the Tier 2 standards, which of course were ultimately rejected.

The Tier 1 limits, which are supported by industry,<sup>30</sup> were left in tact, and apply to all new engines for 2004. Yet by EPA's own admission, this will not yield any new health or environmental benefits because manufacturers have already achieved compliance with the identical Annex VI limits, which apply to all ship engines built after Jan. 1, 2000.

Meanwhile, ship and tanker emissions continue to increase with the rise in international trade, now accounting for 14 percent of global NOx emissions and 16 percent of the world's sulfur emissions.<sup>31</sup> These emissions are associated with premature death, lung damage, chest pain, asthma aggravation, acid rain, global warming, smog and reduced visibility due to haze, along with many other detrimental environmental affects, according to EPA.

With commercial ships expected to double or triple in the next 20 years, this problem will only get worse unless further action is taken. Indeed, EPA estimates that even with its proposed Tier 1 limits, U.S. emissions from large ships will increase 6 percent by 2020 and 13 percent by 2030, with port cities disproportionately hurt.

## Industrial Air Pollution

At the insistence of OIRA, EPA incorporated “risk-based” exemptions into two rules regulating industrial facilities that emit hazardous air pollutants (HAPs).<sup>32</sup> This action allows certain facilities to avoid installing modern pollution controls if EPA determines they do not present a serious health risk – an apparent violation of the Clean Air Act, which demands more objective and easier-to-enforce technology-based standards (successfully employed for more than a decade).

Industry representatives met with OIRA staff on numerous occasions<sup>33</sup> in the summer of 2002 in a successful effort to push this approach.<sup>34</sup> In fact, EPA’s subsequent proposed rules contained language explicitly drawn from three white papers<sup>35</sup> submitted to OIRA by the American Forest & Paper Association – white papers drafted by the Washington law firm Latham & Watkins, where EPA’s air administrator, Jeffrey Holmstead, previously worked.

OIRA also demanded that EPA consider incorporating risk-based exemptions for two other major rules,<sup>36</sup> but EPA ultimately determined that it could not because of legal time constraints coupled with the complexity of the issues raised.

## Hazardous Waste

OIRA blocked an EPA effort to protect soil and drinking water from excessive levels of manganese – an industrial by-product linked to numerous health problems, including respiratory problems, sexual dysfunction, nervous system issues, mental and emotional disturbances, as well as manganism, a disease with symptoms similar to Parkinson’s.

EPA originally published a proposed rule<sup>37</sup> on Sept. 14, 2000, to list manganese, among other elements, as a hazardous waste. This action, compelled by a 1998 consent decree with Environmental Defense, would have prohibited the “underground injection, or land disposal” of any waste containing manganese, unless it was first treated to reduce manganese to safe levels. (Manganese

is actually healthy and necessary for human life at low levels.)

Yet in response to intense pressure from the steel industry, OIRA stripped the listing of manganese during its review of the final rule, which was eventually published on Nov. 20, 2001<sup>38</sup>; instead, EPA agreed to give the issue further study – though well over three years later, this still hasn’t happened.

## New Blockades

Graham is not just making changes one standard at a time. He has initiated a series of sweeping reforms that tilt the entire standard-setting process to favor industry, making strong health, safety and environmental protections nearly impossible. These reforms are being carried out even though they have never received congressional blessing and in some cases run directly counter to the law.

## Pricing the Priceless

At the heart of Graham’s approach is cost-benefit analysis, which requires federal agencies to estimate regulatory benefits in monetary terms and show “net benefits” (benefits minus costs). This exercise can produce some puzzling, seemingly unanswerable questions. How much is a life worth? What is the dollar value of avoided injury or disease? What is the economic benefit of a clear view over our national parks or protecting endangered species?

These are not things bought and sold on the open market. They speak to our values as people and a society. For example, assigning a price tag to IQ points lost from childhood lead poisoning will strike many as morally repugnant.

Yet in Graham’s world of devising federal regulation, this is par for the course. It turns out that human life – valued anywhere from \$6.3 million to under \$1 million, depending on whether the life is saved today or in the future – isn’t priceless after all.

Graham began his tenure at OIRA with an agency-wide memo<sup>39</sup> indicating his intent

to elevate monetized cost-benefit analysis in regulatory decision-making, and later issued new guidelines<sup>40</sup> spelling out his preferred analytical methods.

On the surface, the phrase “cost-benefit analysis” may conjure the image of even-handed, dispassionate decision-making. Yet because many benefits are difficult or even impossible to monetize, it naturally skews in favor of inaction. For this reason, most health and safety laws, such as the Clean Air Act and the Occupational Safety and Health Act, prohibit decisions based on cost-benefit analysis, and instead place health, safety, and the environment as the preeminent concerns, above costs. Unfortunately, Graham has largely ignored these congressional directives.

Consider EPA’s proposed rule to protect the trillions of fish and aquatic organisms that are sucked up and killed each year by power plants (discussed above). In performing its cost-benefit analysis, EPA did not monetize losses of invertebrate species, such as lobsters, crabs, and shrimp, as well as endangered or threatened species, nor did it consider the interrelationships of the species affected. Rather, EPA’s estimate was based exclusively on the commercial value of the fish that would have been caught had they not already been killed by power plants. This accounts for less than 20 percent of the total fish killed by power-plant cooling systems. EPA used the non-monetized benefits to argue for a relatively protective standard, but OIRA would only recognize those benefits that were monetized, and in apparent violation of the Clean Water Act, significantly weakened the proposal as a result.

Likewise, OIRA gutted EPA’s proposal to control runoff from construction and development (discussed above) because the agency was unable to monetize what it considered substantial benefits, including effects on natural habitat, benefits to human health, and impacts of many storm water pollutants, such as lead, zinc, herbicides and pesticides, as well as oils and grease.

Where benefits are monetized, Graham’s methodological preferences further skew decision-making against action, with particular consequences for regulation aimed at cancer or other diseases of old age. For instance, Graham’s cost-benefit guidelines promote the use of “life years” in monetizing human life (on top of valuations based on the number of lives saved, the traditional measurement used by agencies), which naturally cuts against protections for the elderly, who have fewer life years remaining.

This practice has the effect of rationing regulatory protection based on age, placing it on shaky logical and moral ground. With our more than \$9 trillion economy, there is nothing stopping us from protecting both young and old. Nor is there evidence that the elderly value their lives any less than the young, or are any less willing to pay for regulatory benefits.

The same can be said for society as a whole, which generally recognizes a special obligation to our seniors. However, this is not reflected in Graham’s approach to cost-benefit analysis.

This bias against the elderly was on plain display in the development of EPA’s rule to prevent air pollution from snowmobiles (discussed above). After OIRA’s review of the agency’s original proposal, Graham issued a post review letter<sup>41</sup> demanding a more “refined” cost-benefit analysis for the final rule. For EPA, this meant, in part, valuing the lives of those over 70 at 37 percent less than those younger – \$2.3 million compared to \$3.7 million.

This conclusion – which was also applied in analysis of the administration’s flagship environmental proposal, the Clear Skies Initiative – derived from a 1982 British study by Michael Jones-Lee, who subsequently told the Miami Herald, “I certainly wouldn’t argue for my 1982 figure.”<sup>42</sup> After seniors protested, then EPA Administrator Christie Whitman swore off the approach entirely. However, Graham left the door open for future use, arguing that it was really a problem of dated information, not a flaw in the underlying premise.<sup>43</sup>

### Stifling Regulatory Information

Corporate interests are now testing the Graham's new government-wide guidelines on "data quality," which can be used to challenge and potentially suppress health and safety information that supports regulation. According to William Kovacs of the U.S. Chamber of Commerce, "This is the biggest sleeper there is in the regulatory arena and will have an impact so far beyond anything people can imagine."

These guidelines were directed by the Data Quality Act, a little noticed industry-backed appropriations rider pushed by Sen. John Shelby (R-AL) and Rep. Jo Ann Emerson (R-MO). However, Graham went far beyond the congressional mandate and asked agencies to set new demanding standards for scientific risk assessment – potentially creating an extremely high burden of proof for dissemination and, ultimately, regulatory action. As required by the act, each agency then developed more specific, detailed guidelines within the parameters set by Graham.

In virtually any risk assessment, which forms the foundation of much health and safety regulation, there is a great deal of scientific uncertainty. Sometimes an agency may be confronted with conflicting studies, and in almost all cases, it is extremely difficult to pinpoint exactly how much risk flows from a particular hazard (as with global warming, for instance). To deal with this inevitable uncertainty, agencies are forced to make certain default assumptions, which frequently point the agency in the direction of caution – that is, a more protective standard.

The data quality guidelines, however, could be interpreted as leaving little room for such uncertainty or assumptions.<sup>44</sup> For instance, all "influential information" – and by any measure, risk assessment would fall under this category – must be "reproducible," meaning the same result would be achieved following reanalysis. Yet a risk assessment can be extremely complex, drawing from a vast range of studies and data sets (each subject to their own separate data quality challenges).

As posed by Joe Rodricks, a toxicologist at the ENVIRON International Corp. and consultant for hundreds of manufacturers, "Can all people look at all the information on dioxin and cancer and reach the same conclusion that EPA has reached (or at least tentatively reached) about dioxin and cancer?"<sup>45</sup> Indeed, it might be possible to look at the studies and data used by the agency, and draw completely different conclusions. Does this mean the risk assessment fails the "reproducible" test, that the agency's information lacks sufficient quality for dissemination?

Clearly, that's what many corporate interests have in mind. For example, the Triazine Network – a consortium of companies that manufacture herbicides and pesticides – launched a challenge against EPA's recent determination that the herbicide atrazine is a likely endocrine disrupter;<sup>46</sup> the Chemical Products Corporation challenged the agency's findings on barium, which were used in setting hazardous waste standards; and the Competitive Enterprise Institute (CEI), which receives substantial funding from corporate sources, contested recent conclusions on global climate change by EPA, the National Oceanic and Atmospheric Administration, and the White House Office of Science and Technology Policy.

Under the guidelines, EPA, like all other agencies, gets to decide on challenges (and appeals) to its information, which might leave the impression that this is relatively benign. Indeed, EPA rejected the challenges against atrazine, barium, and climate change.

Yet critically, the question of judicial review and whether corporate interests can successfully sue over data quality judgments remains unresolved – which could take ultimate decision-making authority out of agency hands. (CEI brought suit against the climate change information, but eventually dropped the matter after the agencies agreed to add a disclaimer to their findings.) At the time the guidelines were being adopted, Graham said, "[T]here are as many legal theories about how these issues can be litigated as there are lawyers. My personal

hope is that the courts will stay out of the picture, except in cases of egregious agency mismanagement. Yet it will probably take a few critical court decisions before we know how this law and the associated guidelines will be interpreted by judges.”<sup>47</sup> If judicial review becomes commonplace, scientifically illiterate judges, many of whom have been appointed by President Bush, will be in the position of telling federal agencies what scientific information can be disseminated to the public. Moreover, regardless of court involvement, Graham warned, “If agencies do not develop an objective appeals process, I predict that there will be efforts down the road to authorize appeals outside the agency.”<sup>48</sup>

Given the troubling nature of the guidelines, and the interest of industry in using them in nefarious ways, this could have profound consequences for dissemination of health and safety information and the ability of regulatory agencies to act on that information – just as Kovacs predicted.

### Political ‘Peer Review’

Building off the data quality guidelines, Graham proposed a government-wide bulletin on peer review in September 2003<sup>49</sup> that asserted substantial political control over “all significant regulatory information” and gave preference to the judgments of industry-funded scientists. After a torrent of criticism from scientists, Graham re-proposed this bulletin in April 2004, dropping some of the most objectionable provisions, but still retaining political control for his office.

Peer review is already widely used by government agencies, and when done properly can be a useful tool. However, Graham’s sweeping proposal – which still must be finalized – would force unnecessary peer review, done in a one-size-fits-all way that might not be appropriate for each agency or every issue.

For example, David Michaels, now a professor of occupational and environmental health at George Washington University, oversaw rule changes at the Department of Energy that required reductions in beryllium

exposure for nuclear industry workers, a process that took several years and included measures to ensure scientific accuracy. The administration’s peer review proposal “would have added nothing to that,” he said. “It would have only added more time and expense, and as a result caused more disease by delaying regulation.”<sup>50</sup>

Graham’s revised proposal grants some concessions for agency flexibility, allowing agencies to choose, on a case-by-case basis, among a wider range of peer review models for “influential scientific information.” However, agencies still must do peer review – which is time consuming and burdensome no matter the model – even when it may be unnecessary.

Moreover, the revised proposal prescribes more demanding peer review (including a public comment period) for “highly influential scientific assessments,” and empowers OIRA to designate what qualifies for this category. This threatens to inject political considerations into the scientific process, and could be used to grind regulatory agencies to a halt.

The original proposal went even further, granting OIRA authority to demand peer review of any information deemed “relevant to an Administration policy priority.” At the time, Michael Taylor, former deputy commissioner at FDA under the first Bush administration, responded, “OMB’s proposal says it gets to weigh in on any agency statement that would have a significant impact on industry. Any FDA warning or recall would have that nationwide impact. So should the FDA commissioner have to go to John Graham for permission to warn people about the possible danger from tainted onion greens?”<sup>51</sup> The revised proposal allows agencies to waive peer review without OIRA permission for information that involves an imminent danger. However, for other information, OIRA would still be in position to substantially influence the peer review process.

Making matters worse, there is concern that peer review panels would be stacked with scientists funded by industry. Peer review requires a substantial investment of time, and peer reviewers generally are not financially



compensated for their service. A significant expansion of peer review may make it difficult to find independent, qualified experts who are able and willing to serve. Industry-funded scientists, on the other hand, have the financial backing to make this commitment, as well as political muscle behind them. Indeed, the administration has already stacked numerous scientific advisory committees at the suggestion of industry, as discussed in Chapter VII. This possibility is especially worrisome given that Graham's proposed bulletin absolves peer review panels from the Federal Advisory Committee Act,<sup>52</sup> which requires government advisory bodies to be balanced and participants to publicly disclose potential financial conflicts of interest.

Graham's original proposal was up front about the administration's preference for industry-funded scientists. Specifically, it sought to prohibit agency-funded scientists (who government has judged to be the best in the country) from serving on peer review panels while offering no comparable prohibition for industry-funded scientists.

"To grasp the implications of this radical departure, one must recognize that in the United States there are effectively two pots of money that support science: one from government and one from industry," responded Anthony Robbins, a professor of public health at Tufts University School of Medicine, in a Boston Glob op-ed. "...If one excludes scientists supported by the government, including most scientists based at universities, the remaining pool of reviewers will be largely from industry—corporate political supporters of George W. Bush."<sup>53</sup>

The revised proposal allows recipients of government research grants to serve as peer reviewers if they received their funds "through an investigator-initiated, peer reviewed competition." However, it discourages the use of scientists who have a consulting or contractual arrangement with the agency conducting the peer review, and bars federal employees from panels evaluating "highly influential scientific

information." The assumption is that government scientists are automatically tainted, even if they are not directly involved with the issue under review. By contrast, industry scientists are considered sufficiently independent to serve on peer review panels, so long as they don't have a direct financial conflict of interest.

Graham cites the Data Quality Act (discussed above) as the legal authority for his proposal,<sup>54</sup> yet the act includes no mention of peer review. Far from reflecting congressional intent, Graham is pushing his own long-held hobbyhorse. Following Newt Gingrich's Contract with America, Graham emerged as a key proponent of regulatory "reform" legislation that would have – like his new proposal – created uniform peer review across government agencies. However, this approach was consistently thwarted. Now Graham is moving forward on his own, without ever receiving congressional backing. Needless to say, there is question over the legality of this action – especially given that it steps on numerous health, safety and environmental statutes that spell out their own decision-making processes.

Moreover, there seems to be no problem to solve. Graham's proposal cites no examples where current agency practices for peer review and scientific analysis have broken down. Rather, OMB has directed reporters to comments of the American Chemistry Council – the trade association of chemical manufacturers – which criticized EPA assessments of a number of chemicals, including a plasticiser used in soft vinyl children's products.<sup>55</sup>

Of course, on the other side, the scientific community has overwhelmingly opposed Graham's move. At a workshop at the National Academy of Sciences on Nov. 18, 2003, speaker after speaker blasted the original proposal as misguided. In comments to OMB, the Federation of American Scientists, the Association of American Medical Colleges, and the American Association for the Advancement of Science, among others, all registered

strong objections. Unfortunately, under the Bush administration, the concerns of a self-interested industry trade association apparently carry more weight.

### Regulatory Hit List

As documented in Chapter I, the Bush administration has moved to kill a slew of crucial health, safety, and environmental protections. What's next on the chopping block? The answer may lie with Graham, who has instructed federal agencies to re-evaluate scores of existing regulations, with OIRA's guidance, for possible revision or repeal.

In 2001, for the first time in its more than 20-year history, OIRA solicited public recommendations for reform of specific regulations. At the time, few paid attention to this exercise, done as part of a routine annual report to Congress. Indeed, of the 71 recommendations submitted to OIRA, 44 came from George Mason University's conservative Mercatus Center, which enjoys close ties to the administration. From these suggestions, OIRA developed what amounted to a hit list of 23 "high priority" rules, which included, among other things, EPA's now weakened New Source Review program (see Chapter II).

Not surprisingly, industry lobbyists spotted an opportunity in Graham's report. When OIRA again asked for regulatory recommendations for the 2002 report, it received a whopping 267 – the majority of which came from industry or trade associations. Of these recommendations, which heavily target health, safety and environmental protections, 53 percent advised changes to relax regulation, or in OIRA's words "increase flexibility," and 8 percent recommend repealing regulation, while roughly a quarter argued for stronger regulation (including many submitted by members of Citizens for Sensible Safeguards).

Because of the enormous response, OIRA decided not to rank these submissions in terms of priority – as it did the year before – and instead, directed relevant agencies to conduct the evaluations themselves. On the surface, this may seem relatively benign: OIRA merely passed along a few recommendations. Yet these recommendations are being used as a primary tool for ranking regulatory priorities, which for some agencies means a significant redirection of focus. Together, the Department of Transportation, EPA, and Department of Labor received 155 recommendations, many deregulatory in nature.

For instance, Transportation proposed to extend the number of consecutive hours that truckers are allowed to drive, from 10 to 11 hours (see Chapter I), after OIRA forwarded complaints from the American Road and Transportation Builders Association, as well as the industry-backed Mercatus Center.

Many of these protections were adopted because of significant public pressure to solve a serious problem. Yet they could now be undone because of one industry complaint to OIRA. At the very least, agencies must evaluate these "recommendations," even if they have already identified other priorities. In the process, scarce resources are diverted from serving the broad health and safety interests of all Americans to addressing the narrow concerns of special interests.

In February 2004, this service to special interests was made even more explicit. Graham specifically solicited recommendations for regulatory revisions that would reduce costs on the U.S. manufacturing sector,<sup>56</sup> which accounts for much of the country's pollution as well as workplace deaths and injuries. The health and safety benefits delivered to the public were all but ignored; for Graham and the administration, industry concerns come first.



# The Toll Of Neglect

The Bush administration has refused to address regulatory gaps, take on new emerging problems, or strengthen existing health, safety and environmental standards. Since President Bush took office, the Department of Interior, OSHA, and the Mine Safety and Health Administration have not completed a single significant protective standard. As discussed in the previous chapter, legal requirements have forced EPA to take significant action on several occasions, but those standards were always watered down to industry's liking.

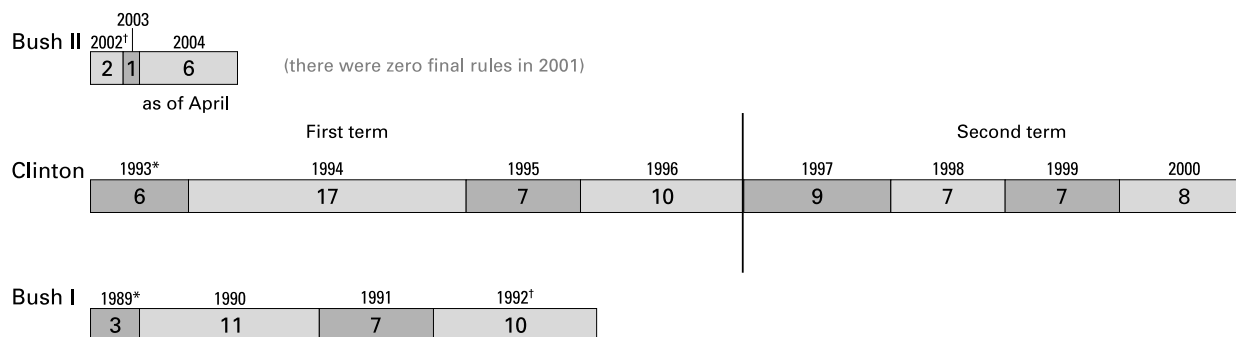
At the end of the Clinton administration, there were a number of important new standards still in development. This included, for instance, standards to clamp down on air pollution in national parks, prevent workplace Tuberculosis and exposure to crystalline silica, and limit head and neck injuries in automobile crashes. None of these standards have been moved forward to completion. In fact, through the Bush administration's first two years, EPA completely abandoned 62 Clinton-era rulemakings, while OSHA and FDA dropped work on 21 and 57 respectively.<sup>1</sup> Such stagnation is unprecedented. As noted in the introduction, we have made substantial progress on public health, safety and the environment over the last 30 years. This has happened because we have been willing to build on past successes and resist complacency. The Bush administration has halted this progress and turned a blind eye to some of the nation's most pressing problems.

For example, nothing has been done to improve safety at chemical plants, which are considered potential terrorist targets. Fuel efficiency standards for passenger cars remain unchanged, cementing our dependence on foreign oil. Workers continue to die from an array of preventable hazards, including the cancer-causing hexavalent chromium. There is no testing for E. coli 0157:H7 in beef carcasses even though tens of thousands have suffered life-threatening illness from the bacteria. And traffic fatalities are soaring because of SUV rollovers, which have killed thousands over the last decade.

Of course, corporate interests, chiefly interested in the bottom line, oppose regulatory standards to address these problems. Yet consider where we would be if corporate interests had always gotten their way. Industry strongly opposed removing lead from gasoline, setting *any* fuel efficiency standards, cracking down on vinyl chloride in the workplace, and acting to reduce CFCs, just to name a few examples.

In these cases, the public interest won out over the special interests, and the country moved forward as a result. The Bush administration has flipped this formula, and now we're headed in reverse. The following list details just a few problems that are being ignored.

### EPA Output of Significant Rules (1989-2003)<sup>2</sup>



Source: Office of Management & Budget

\*excludes January of that year

<sup>†</sup> includes January of the following year

The Bush EPA has advanced few “economically significant” standards – defined as those with an estimated total impact, including benefits, of at least \$100 million per year. These are the regulations that have broad application and usually draw industry opposition. Many of the Clinton-era rules that the Bush administration rolled back were economically significant, including OSHA’s now-repealed ergonomics standard and HHS’s now-weakened medical privacy protections.

Of the eight economically significant rules completed during the first three years and four months of the Bush administration,

one rolled back restrictions on power-plant emissions as discussed in Chapter I, and the other seven were required by judicial order; as discussed in Chapter II, most of these were watered down to industry’s liking, including rules on snowmobile emissions, fish killed by power-plant cooling systems, factory farm runoff, and several rules on industrial air pollution. By contrast, as the chart shows, EPA completed 30 economically significant standards over the first three years of the Clinton administration and 21 over the first three years of the Bush I administration.

## Security

### Chemical Plant Safety

Perhaps nothing better illustrates the Bush administration’s fealty to corporate interests than its refusal to address the possibility of a terrorist attack on a U.S. chemical plant.

One hundred twenty-five facilities have a “vulnerability zone” encompassing more than one million people who could be killed or injured in the event of a chemical accident or terrorist attack; about 700 facilities put more than 100,000 people at risk; and roughly 3,000 facilities put at least 10,000 people at risk.<sup>3</sup> All told, one in six Americans lives in a vulnerable zone.

Yet disturbingly, no federal law regulates these vulnerability zones in terms of size, chemical intensity, or population at risk.

Companies are not even required to assess and consider inherently safer methods of operation.

Sen. John Corzine (D-NJ), in early 2002, introduced legislation that would take this basic, common sense step. However, the Bush administration fiercely resisted and, as urged by the chemical industry, instead backed a legislative smokescreen put forth by Sen. James Inhofe (R-OK) – which most egregiously, would exempt facilities that participate in voluntary industry-sponsored security programs from the bill’s very mild requirements.

Such voluntary programs have been woefully ineffective. Industry lobbyists tout the “Responsible Care Program,” launched in 1988 by the chemical manufacturers’ trade association<sup>4</sup> in the aftermath of the catastrophic explosion at a Union Carbide plant in Bhopal, India, which killed 2,000

### **What's Good for Washington, D.C...**

For years, the Blue Plains Wastewater Treatment Plant in Washington, D.C., stored deadly chlorine gas in 90-ton rail cars. A rupture of just one of these rail cars would have put 1.7 million people at risk, covering the White House, Congress, as well as Bolling Air Force Base.

These risks had been known for almost two decades, prompting repeated complaints from the Dept. of Defense and the City of Washington – which commissioned a study in 1991 that recommended bleach as a safer substitute for the more dangerous chlorine. Yet the Blue Plains facility refused to change, no government action was taken, and the danger persisted.

Then came 9/11. Suddenly, the threat of a terrorist attack on the plant, setting off a deadly release of chlorine, became very real. Indeed, the Washington Post reported that trade publications from the U.S. chemical industry were found in a hideout of Osama bin Laden.<sup>5</sup> In short order, the Blue Plains facility removed its 90-ton rail cars, and began to use sodium hypochlorite bleach, which does not have the potential to drift off-site, as a substitute for chlorine (at an expected annual cost of just 25 to 50 cents per customer<sup>6</sup>).

The possibility of a catastrophic accident should have been frightening enough to prompt the switch. On average, there are over 60,000 chemical accidents a year, resulting in more than 250 deaths and thousands of injuries.<sup>7</sup> In the summer of 2001, for instance, a 25,000-gallon rail-car holding methyl mercaptan – which can cause paralysis, severe breathing problems, and death – caught fire at Atofina Chemical Plant in Riverside, Mich., killing three workers and forcing the evacuation of about 2,000 residents, many of whom complained of a burning sensation in their throats, stinging eyes, itchy skin, headaches and nausea.



Unfortunately, Blue Plains is still the exception. Chemical facilities have been very slow to shift to safer substitute chemicals, such as bleach, or to store hazardous materials in safer, smaller volumes, and amazingly – yet perhaps not surprisingly given the track record – the 9/11 attacks have not led to broad efforts to reduce chemical hazards.

Instead, chemical manufacturers have focused almost exclusively on site security, which nonetheless

remains woefully inadequate. A fact sheet from the Working Group on Community Right-to-Know provides excerpts from a host of news stories about security lapses since 9/11.<sup>8</sup> For instance, according to an investigation of facilities in western Pennsylvania conducted by the Pittsburgh Tribune-Review (published April 7, 2002), “The security was so lax at 30 sites that in broad daylight a reporter – wearing a press pass and carrying a camera – could walk or drive right up to tanks, pipes and control rooms considered key targets for terrorists.”

Previously, a 1999 report from the Agency for Toxic Substances and Disease Registry noted that “security at chemical plants ranged from fair to very poor” and that “security around chemical transportation assets ranged from poor to non-existent.”<sup>9</sup> Yet it wasn’t until Oct. 23, 2001, that chemical industry trade associations issued voluntary guidelines for greater site security to prevent against terrorist attacks<sup>10</sup> (years after they first raised the possibility of terrorism as a reason to restrict data on chemical hazards as discussed on page 98). These guidelines virtually ignore the issue of reducing the hazards themselves. Indeed, with the Bush administration unwilling to force the issue, the danger presented by chemical facilities is virtually unchanged since the day after 9/11.

and injured 300,000. However, this voluntary program provides for no measurable goals, timelines or means of independent validation for reducing chemical hazards.<sup>11</sup>

In early 2003, Inhofe's industry-backed bill was voted out of committee on a party-line vote, but fearful of potential embarrassment, the Senate's Republican leadership has not brought it up for a floor vote. That seems just fine for the Bush administration, which already has necessary legal authority to act through regulation. The administration unfortunately seems more concerned with protecting the chemical industry than the American public.

## Fox In the Henhouse

### **Carolyn Merritt, chair of the Chemical Safety and Hazard Investigation Board (CSB)**

In this role, Merritt is supposed to promote the prevention of chemical accidents by conducting research and advising industry and key agencies, such as EPA. Previously, Merritt worked for the Tennessee Chemical Company, and most recently (from 1994 to 2001) served as senior vice president of environment, health and safety at IMC Global Inc., the world's largest producer of fertilizer and animal feed ingredients and one of the country's biggest toxic polluters. (In 2003, IMC Global settled a \$6.3 million lawsuit by the residents of Arkwright, S.C., over pollution of the town's air, soil, and water by a fertilizer plant that the company abandoned in 1986 and failed to clean up.)

Despite her background, however, it should be noted that Merritt advised OSHA to implement stronger standards for reactive chemicals – which not surprisingly the agency ignored (as discussed on page 66).

### **Nuclear Plant Safety**

In recent security tests, mock terrorists were successful an amazing 46 percent of the time at penetrating areas of nuclear power plants where an act of sabotage could have led "in many cases to a probable radioactive release," according to the Nuclear Regulatory

Commission. Even more amazing, these plants knew the mock attacks were coming and still couldn't stop them. "The power plants quite literally get the snot kicked out of them," according to Ron Timm, president of RETA Security Inc. and consultant to the Department of Energy.<sup>12</sup>

Unfortunately, the Bush administration has followed the advice of the nuclear industry, which has long fought tighter security standards, and neglected to take the necessary steps to correct this problem – despite the potentially catastrophic consequences.

As Danielle Brian, executive director of the Project on Government Oversight, described the threat to Congress, "A terrorist group does not have to steal nuclear material, create a nuclear device, transport it to the United States and detonate it in a major city. They could simply gain access to the material at a U.S. nuclear facility – some of which are near large metropolitan areas – and tests have shown they could accomplish the same outcome."

In May 2003, the NRC issued new security standards for nuclear power plants – which were developed in secret with the exclusive consultation of the nuclear industry – that reportedly fall far short of what's needed (they have not been released to the public).

The standards outline the most likely terrorist attacks against reactors, referred to as the "design basis threat," specifying the number of attackers and the type of weapons nuclear plants are required to defend against. Before 9/11, plants were required to prepare for just three modestly armed attackers, aided by an insider, who enter the plant together from a single location. Industry sought to stop significant changes to this rosy assumption, and in the end supported the Bush administration's action.

"They did it totally backwards," said Peter Stockton, a senior investigator with the Project on Government Oversight and former Department of Energy consultant. "You figure out what a credible threat is to a nuclear power plant, and then you size your guard force to meet that threat."<sup>13</sup> Instead, the administration (which made the expansion

of nuclear power a key feature of its energy plan) tailored its standards to what the nuclear industry said it could afford.

"The new rules may be a reaction to 9/11, but the commission doesn't seem to have learned the lesson of those attacks – not a thing will be done to reduce the vulnerability of reactors to strikes from the air," Bennett Ramberg, a former analyst at the State Department and author of "Nuclear Power Plants as Weapons for the Enemy," wrote in a New York Times op-ed.<sup>14</sup>

Meanwhile, NRC inspections of nuclear plants have also been remarkably lax. Among other things, "NRC inspectors often used a process that minimized the significance of security problems," and mock terrorist exercises were made easier for plants and did not duplicate "the real-life threat," according to a 2003 report by the General Accounting Office.<sup>15</sup>

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## Clean Air

### Fuel Efficiency

After dragging its feet for two years, in April 2003, the administration issued a new – but unfortunately, weak – fuel efficiency standard for light trucks and SUVs that will achieve only minimal pollution reductions (and not surprisingly, was supported by the auto industry).

The action increased fuel economy for such vehicles by a mere 1.5 miles per gallon (mpg), from 20.7 mpg today to 22.2 mpg by 2007 – well below what is technologically feasible. (Congress had previously blocked the Clinton administration from updating its 1996 standards.)

At the same time, the administration also strongly opposed a 2002 proposal offered by Sens. John Kerry (D-MA) and John McCain (R-AZ) that would have raised fuel economy for passenger cars from 27.5 mpg to 35 mpg by 2015. In fact, the administration has made no move to increase fuel efficiency standards for passenger cars, which have not been raised in 18 years.

### Air Pollution in National Parks

Power-plant pollution has covered our national parks and wilderness areas with a thick, whitish haze. In the Great Smokey Mountains and Shenandoah National Parks, for instance, summertime visibility is about one-eighth what it would be without this pollution, while in the West, visibility in protected areas has been reduced from up to 140 miles to about 35-90 miles.

On July 1, 1999, the Clinton administration adopted "regional haze" standards to address this problem, demanding pristine air quality in 156 national parks and wilderness areas by 2064 – to be achieved through a 15 percent reduction in haze every 10 years. Under this standard, all power plants that contribute to impaired visibility in these areas are required to install "best available retrofit technology" (BART) starting in 2012.

As part of this standard, EPA committed to set new BART guidelines that inform states, which are in charge of implementation, how to determine which power plants should be retrofitted with modern pollution controls. Without these guidelines, states cannot begin to implement the regional haze standards.

In January 2001, EPA was set to propose new BART guidelines, but the Bush administration blocked this action upon

## Fox In the Henhouse

### Spencer Abraham, secretary of Energy

In 2000, Michigan voters denied Abraham re-election to the U.S. Senate. During that campaign, he raked in more than \$700,000 from the automotive industry (including General Motors, Ford, DaimlerChrysler, and Lear Corp.) – tops among all federal candidates.<sup>16</sup> At Energy, Abraham has returned the favor, declining to impose strong fuel efficiency standards.

In fact, there is question whether Abraham believes Energy has any important purpose at all. As senator, Abraham co-sponsored legislation to abolish the department, a position he recanted at his January 2001 Senate confirmation hearing.

taking office and subsequently proposed weaker guidelines on July 20, 2001.<sup>17</sup> Slightly less than a year later, this proposal was called into question when the D.C. Circuit Court of Appeals vacated part of EPA's 1999 regional haze rule – a decision strongly disputed by environmentalists.

In response, EPA went back to the drawing board and on April 15, 2004, proposed revised BART guidelines and changes to the haze standards. (EPA was required to propose BART guidelines by this date as part of a legal settlement with Environmental Defense; final guidelines are due by April 15, 2005.) However, this proposal may never actually be implemented.

On Jan. 30, 2004, EPA proposed a new rule on interstate transport of power-plant emissions modeled after President Bush's feeble "Clear Skies Initiative." In the preamble of the BART proposal, EPA indicated that this rule may be used as a substitute for regional haze standards, even though EPA's own analysis demonstrates that it would have little

impact on haze. According to EPA, the Clear Skies approach would improve visibility in the East by only 2-4 miles<sup>19</sup>; current visibility is impaired by as much as 80 miles on the haziest days.

John Stanton, senior counsel at the National Environmental Trust, called the administration's BART proposal "a step in the right direction if it wasn't stillborn."<sup>20</sup>

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## Clean Water

### Sewer Overflows

The Bush administration has delayed issuing new standards to prevent sewer overflows. In the meantime, more than a trillion gallons of untreated sewage has poured into U.S. waterways as a result of the problem, and Americans are still denied even rudimentary public notice of such contamination in the waters where they swim and fish.

In January 2001, at the end of the Clinton administration, EPA proposed standards that would mandate improved sewer capacity, operation, and maintenance, and require that sewage systems notify the public and public health authorities when overflows occur. These proposed regulations were based on the consensus recommendations, developed over five years, by a federal advisory committee, which included sewer operators. However, upon taking office, the Bush White House froze the Clinton sewer proposal, and more than three years later, no action has been taken.

During this time, EPA has conducted a behind-closed-doors "internal review" on how and whether to draft a Bush version of the standards. Unfortunately, the Association of Metropolitan Sewerage Agencies, the trade association for sewage operators, appears to have the ear of the administration. Citing costs, this group has argued against the Clean Water Act's requirement that all sewage be treated before it is discharged.<sup>21</sup>

Each year, the U.S. experiences about 40,000 overflows of raw sewage and garbage – such as syringes, toxic industrial waste, and contaminated storm water –

### What About Diesel?

When confronted with the Bush administration's abysmal environmental record, the president's defenders invariably point to EPA's proposal<sup>18</sup> to reduce harmful emissions from non-road diesel engines used in construction, agricultural and industrial equipment, which account for almost one-fourth of the country's total emissions of nitrogen oxides.

This indeed would be a significant step forward, preventing more than 9,600 premature deaths annually by 2030, according to EPA. However, at this point it is just a proposal. EPA solicited public comments in the spring and summer of 2003, and has not moved to finalize the rule. The worry is that this is more about election-year politics. Should the president win re-election, EPA could ultimately choose to back off or water down the rule, as industry would like. In the meantime, the president is claiming credit for something that hasn't actually happened.



into rivers, lakes, and coastal waters, and about 400,000 sewage backups pollute the basements of American homes. The vast majority of these overflows, if not all of them, are preventable.

### **Atrazine**

EPA will continue to allow widespread use of the weed killer atrazine despite evidence that it has contaminated certain drinking

water systems at levels 12 times greater than allowed by law.

In January 2003, EPA completed an assessment of atrazine, the most heavily used herbicide in the United States, and found that numerous communities have dangerous levels in their water. Nonetheless, the agency ignored calls for a ban on the product – which studies have linked to cancer in both humans and animals – and instead entered into an agreement with Syngenta, the largest manufacturer of atrazine, in which the company committed to perform increased testing of raw water entering community water systems where atrazine is used.

Syngenta already monitors water for atrazine, yet nearly 200 community water systems, serving more than 3.6 million people, have shown levels of atrazine close to or above the legal limit.

“We’re flabbergasted,” said Jennifer Sass, a senior scientist at the Natural Resources Defense Council. “We’ve reviewed the science on atrazine, and it is clear that it is dangerous at levels the EPA says are harmless.”

EPA performed its assessment of atrazine, which is used mainly on corn, sugarcane and residential lawns, as the result of a lawsuit filed by NRDC.

## **Foxes In the Henhouse**

### **Adam J. Sharp, EPA's associate assistant administrator for the Office of Prevention, Pesticides, and Toxics**

Sharp's office oversaw EPA's decision to allow continued use of atrazine. Previously, Sharp worked as director of governmental relations and regulatory affairs at the American Farm Bureau Federation,<sup>22</sup> which opposed a phase out of Atrazine. There, he focused on environmental law and regulation, pesticides, air quality and biotechnology issues, and testified before Congress in opposition to new air quality standards for the agriculture industry.<sup>23</sup>

### **Linda J. Fisher, former deputy administrator of EPA**

From 1995-2000, Fisher was a top lobbyist for Monsanto, which manufactures atrazine, representing the company's agriculture, biotech, pharmaceutical, environment, finance, and trade interests.<sup>24</sup> Fisher also managed Monsanto's PAC and political contribution funds,<sup>25</sup> doling out \$133,000 to Republican candidates and committees from 1995-2000.<sup>26</sup>

Before Monsanto, Fisher worked at EPA during the Reagan and Bush I administrations (from 1983-1993), eventually heading EPA's Office of Prevention, Pesticides, and Toxic Substances, where, in 1992, she eliminated field tests to measure the impacts of pesticides on wildlife without providing any opportunity for public comment.<sup>27</sup> Fisher resigned unexpectedly in June 2003, shortly after the resignation of EPA Administrator Christine Todd Whitman.

## **Worker Health & Safety**

### **Protections for Miners**

In September 2002, the Bush administration stopped work on a proposed air quality standard to protect underground coal miners, drawing a strong rebuke from the U.S. Court of Appeals for the District of Columbia.

Upon making this decision, the Mine Safety and Health Administration explained that it simply “was the result of changes in agency priorities.” However, the United Mine Workers of America (UMWA) countered with a lawsuit that argued the administration could not just drop an ongoing rulemaking without a full and open justification.

The appeals court agreed, finding that the administration's action was “arbitrary and

capricious” and that MSHA’s explanation was “not informative in the least.” Judge Douglas H. Ginsberg wrote, “Although MSHA’s publication of the proposed Air Quality rule certainly did not obligate it to adopt that rule (or, for that matter, any rule), the agency was not free to terminate the rulemaking for no reason whatsoever.”

If adopted, the standard would require new measures to control hazardous substances, setting exposure limits and testing requirements, and strengthen existing respiratory protections, which have not been updated since 1972.

“Recent science is showing us that the exposure limits to many of the hazardous chemicals and airborne particulates that this rule would have addressed are currently not sufficient to adequately protect a miner’s health,” said UMWA International Secretary-Treasurer Carlo Tarley. “Miners have waited more than three decades for new air quality standards, and we are tired of waiting. The UMWA is very pleased that the Court agreed with us that MSHA should not have stopped this important new rule for the inadequate reason it did.”<sup>28</sup>

Of course, this also calls into question Bush decisions to abandon a host of other rulemakings. For most of these actions, the administration offered virtually no explanation, which has now been found to be illegal.

### **Reactive Chemicals**

The Bush administration has failed to adequately protect workers and communities from the dangers of reactive chemicals.

Spurred by a series of accidents, the U.S. Chemical Safety and Hazard Investigation Board (CSB) recently undertook an extensive study of current regulations governing reactive chemicals. The results of this examination (issued in an October 2002 report) found that reactive chemical incidents occur over a wide range of worksites and are a “significant chemical safety problem,” which “can severely affect workers and the public, as well as cause major economic losses and environmental damage.”<sup>29</sup>

The CSB called on OSHA to “amend the Process Safety Management Standard (PSM) to achieve more comprehensive control of reactive hazards that have caused numerous catastrophic incidents and killed scores of workers over the past two decades.”<sup>30</sup>

Unfortunately, the Bush administration has refused to act. In 2002, OSHA stopped work on a reactive chemicals rule, and in 2003 OSHA announced that it would address the problem solely through outreach and voluntary programs with the chemical industry. In February 2004, the CSB called this response “unacceptable.”

### **Tuberculosis in the Workplace**

The Bush administration has abandoned standards to protect workers from tuberculosis (TB) – a contagious and potentially lethal airborne disease that tends to affect those with more vulnerable immune systems.

OSHA first proposed tuberculosis standards in October 1997 during the Clinton administration, and has sought public comment on the issue a number of times in subsequent years. Meanwhile, the number of TB cases increased in 20 states between 2000 and 2001.<sup>31</sup>

The proposed standards would have required employers to protect workers from TB in hospitals, homeless shelters, nursing homes, and other high-risk facilities through the use of specially ventilated isolation rooms and other control measures; this would also protect against other airborne diseases, such as Severe Acute Respirator Syndrome (SARS). Upon issuing its proposal, OSHA estimated the standards would save more than 130 lives per year, and protect an estimated 5.3 million workers in more than 100,000 work settings with a significant risk of TB infection.

Despite these potential benefits, the Bush administration has closed the door on the issue, announcing in May 2003 that it does not intend to move forward.

### **Exposure to Silica**

Silicosis, a disease resulting from the inhalation of silica dust (the most common mineral in the earth’s surface), caused or

contributed to 13,744 deaths in the United States between 1968 and 1990, according to the American Public Health Association. At special risk are rock drill operators working on surface mines or highways, construction workers who use sand in abrasive blasting, and foundry workers who make sand castings.

Silicosis is entirely preventable with the implementation of conventional public health methods, including the use of less hazardous materials, dust suppression techniques, improved ventilation, and respirator use. However, these preventive measures are under-utilized, and the problem remains.

The National Institute for Occupational Safety and Health has recommended exposure limits that are much lower than current standards, but the Bush administration has failed to act. As a result, this preventable disease will continue to sicken and kill workers.

### **Hexavalent Chromium**

The Bush administration has failed to lower the permissible exposure limit for hexavalent chromium, a dangerous lung carcinogen, despite the fact that hundreds of workers die prematurely of lung cancer due to exposure. OSHA estimates that approximately one million workers are exposed to hexavalent chromium, which is used in chrome plating, stainless steel welding, and the production of chromate pigments and dyes. As many as 34 percent of workers could contract lung cancer if exposed at OSHA's current limit for hexavalent chromium for eight hours a day over 45 years, according to a study conducted for OSHA in 1995.<sup>32</sup>

Recognizing the administration's negligence, a U.S. appeals court, in April 2003, ordered OSHA to issue a new hexavalent-chromium standard no later than Jan. 18, 2006 (a proposal must be issued by Oct. 4, 2004).

### **Payment for Personal Protective Equipment**

Some OSHA rules explicitly require that employers pay for safety equipment that employees must wear; others do

not. Previously, this didn't matter; OSHA required employers to pay for mandatory Personal Protective Equipment (PPE) whether explicitly called for by a rule or not. However, the courts recently struck down this interpretation.

Workers – particularly low-wage immigrant workers who work in the most dangerous jobs – are in great need of a rule clarifying the PPE issue. When workers are left to supply their own equipment, they often purchase gear that is used or less protective, compromising their own health and safety. Employers rather than employees are in the better position to properly select and maintain safety equipment.

In March 1999, the Clinton administration issued a proposed rule requiring employers to pay for all PPE, but the Bush administration has refused to finalize the standard, leaving workers vulnerable to occupational injury, illness and death.

### **Metalworking Fluids**

Metalworking fluids – used mainly for their cooling, lubricating, and corrosion resistant properties during machining operations – include a complex mixture of oils, detergents, lubricants, and other potentially toxic ingredients. These fluids can cause substantially elevated risk of cancer of the pancreas, bladder, larynx, scrotum and rectum, according to a number of epidemiological studies, as well as skin problems, such as contact dermatitis, and various respiratory diseases, including bronchitis.

In 1999, by a vote of 11-4, the OSHA Metalworking Fluids Standards Advisory Committee recommended that OSHA issue a rule to protect workers that handle metalworking fluids.<sup>33</sup> OSHA began developing standards, but action was halted by the Bush administration, and instead, on Nov. 14, 2001, OSHA issued unenforceable guidelines that merely list best practices for working with metalworking fluids. The administration has no plans to make these guidelines mandatory.

## Food Safety

### Listeria

On June 6, 2003, the USDA's Food Safety and Inspection Service (FSIS) issued inadequate standards to control *Listeria Monocytogenes* (commonly known as *Listeria*) – a dangerous food-borne bacterium often found in “ready-to-eat” foods – after several years of delay.

In early 2001, the Bush administration allowed a Clinton-era proposal on *Listeria* to be published for public comment after initially delaying it. However, it had begun to look like the administration had no intention of finalizing the standard.

In the meantime, *Listeria* continued to kill. There are approximately 2,500 victims of *Listeria*-contaminated food each year, 500 of which are deadly, according to the Centers for Disease Control and Prevention.<sup>34</sup> Since 1998, there have been three major *Listeria* outbreaks, causing dozens of deaths and hundreds of illnesses.<sup>35</sup> Most recently, in 2002, contaminated turkey from a Pennsylvania plant resulted in eight deaths, 54 illnesses, and three miscarriages across nine states.

This well-publicized outbreak put pressure on the administration to act, but its final standard was notably weaker than the Clinton proposal, providing no minimum requirements for testing. In its November 2002 newsletter, the National Food Processors Association noted the success of “industry efforts made at the White House level”<sup>36</sup> and that “a number of key [USDA] personnel have bought into much of the industry proposal.”<sup>37</sup>

In particular, the Bush standard does not require plants to automatically test for the disease-causing form of *Listeria* (*Listeria Monocytogenes*) if the nonpathogenic form of *Listeria* is found. “This provision, dropped at the behest of the meat industry weakens public health protection,” said Carol Tucker Forman, director of the Food Policy Institute of the Consumer Federation of America. “The dropped requirement would have

made companies take responsibility for their actions and would concentrate testing where it is clear there is a potential problem.”<sup>38</sup>

Making matters worse, USDA continues to allow labeling that can mislead consumers about the safety of “ready-to-eat” meats. “The bottom line is that consumers should not assume that meat stamped ‘USDA inspected and approved, cooked and ready-to-eat’ is safe,” Foreman stated. “It may harbor pathogens that cause serious illness and can kill 20 percent of people infected. Pregnant women and immune suppressed individuals are especially vulnerable.”

In the interest of accuracy and public safety, Consumer Federation of America recommends that the USDA require these meats to carry a label that says, “If you are pregnant or immune suppressed, reheat this product thoroughly before eating.”<sup>39</sup>

### Salmonella

The U.S. Department of Agriculture does not have the authority to close ground beef plants that fail to meet government standards for salmonella contamination, according to a December 2001 decision by the Fifth Circuit Court of Appeals.<sup>40</sup> This decision removed an important enforcement tool for cracking down on plants that repeatedly violate salmonella limits, and stripped USDA officials of the ability to take prompt action when a plant is found to be producing contaminated meat.

The Bush administration has failed to promote legislation that would restore USDA's enforcement authority and provide clear authority to set pathogen-reduction standards for other hazards in the meat supply. Indeed, Elsa Murano, USDA's undersecretary for food safety, put forth a “vision” document in 2003 that omits previously announced USDA plans to seek additional powers from Congress to close dirty meat-packing plants.<sup>41</sup> Without such legislation, inspectors are forced to apply the USDA seal of approval to meat even if it is produced in a plant that continually exceeds the salmonella standard.

### **The One Good Thing**

The administration has voluntarily completed (without legal prompting) exactly one significant health and safety standard that represents a meaningful step forward – though even this was somewhat weakened from the earlier Clinton-era proposal.

Specifically, on July 11, 2003, FDA issued standards requiring labels to list the amount of trans fatty acids in foods.<sup>42</sup> Trans fatty acids (or “trans fat”), which have been linked with an increased risk of coronary heart disease, are fats found in foods such as vegetable shortening, snack foods, fried foods, and salad dressings.

The new standards require labels to list grams of trans fat, but do not include a provision, contained in FDA’s 1999 proposal, requiring trans fatty acids to be included in the amount and percent Daily Value (%DV) declared for saturated fatty acids (another heart disease promoting fat). Canada requires food manufacturers to label trans fat in this way.

“The new labels will let consumers compare trans fat content from product to product, and that will be a great step forward,” said Margo Wootan, policy director at Center for Science in the Public Interest. “It will be hard, though, for people to tell if a given number of grams of trans fat is a lot or a little. Five grams may not seem like a lot, but it is.”<sup>43</sup>

### **E. Coli Testing**

Since President Bush took office, tens of thousands have suffered life-threatening illnesses from E. coli O157:H7, and there have been 60 recalls of ground beef due to contamination. Testing beef carcasses in the slaughter plant – on top of testing ground beef – can significantly reduce this risk, according to industry data. Nonetheless, the administration has declined to make this a requirement.

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## **Auto Safety**

### **Head and Neck Injuries**

In January 2001, the Clinton administration proposed to upgrade head-restraint standards

for passenger cars, light multipurpose vehicles, trucks, and buses. Head restraints, the uppermost part of seats, protect the head and neck from injuries often suffered in vehicle crashes. According to NHTSA, 805,581 whiplash injuries occur annually, costing about \$5.2 billion each year. The proposal would toughen standards issued in 1969 by adding new strength requirements, limiting the size of gaps and openings in head restraints, and applying to outward-facing back seats.

The Bush administration has had more than three years to review public comments, but has not moved forward with this proposal.

### **SUV Rollovers**

The Bush NHTSA has refused to take action to stop rollovers of light trucks, including SUVs and pickups, despite the increasing severity of the problem. Occupant fatalities increased 2.6 percent between 2001 and 2002 alone, and fatalities from SUV and pickup rollovers accounted for nearly half of this total increase, and for 79 percent of the increase in passenger vehicle rollover fatalities.<sup>44</sup> Meanwhile, occupant fatalities in passenger cars were “essentially unchanged,” according to NHTSA.<sup>45</sup>

SUVs are three times as likely as passenger cars to roll over, while pickup trucks are twice as likely to roll over.<sup>46</sup> Sixty-one percent of SUV occupant fatalities are due to rollover crashes; next in line are pickup trucks at 46 percent.<sup>47</sup> In the past 15 years, the number of SUV rollover fatalities has quadrupled.<sup>48</sup> Light truck rollovers, with one exception, have increased every year between 1991 and 2002, resulting in a 50 percent increase in fatalities – or 1,968 lives lost – from these accidents.<sup>49</sup>

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## **Health Care**

### **Minimum Staffing for Nursing Homes**

HHS reports that over 90 percent of nursing homes are understaffed, leading to overworked employees and a lack of adequate care for residents.<sup>50</sup> In fact,

residents in the nation's lowest staffed nursing home are more likely to lose weight, become dehydrated, develop bedsores, and experience other problems.<sup>51</sup>

The National Academy of Sciences has called for the establishment of minimum staffing standards at nursing homes, yet the Bush administration has failed to act, citing cost concerns.<sup>52</sup>

The administration should adopt standards such as those proposed by Rep. Henry Waxman in the Nursing Home Staffing Act of 2003, which would mandate staffing levels recommended by HHS and would require that all nursing home residents receive at least 4.1 hours of nursing care each day.

## Consumer Product Safety

### Baby Bath Seats

In May 30, 2001, the Consumer Product Safety Commission<sup>53</sup> voted to begin a rulemaking to develop safety standards for baby bath seats. A short time later, President Bush appointed Hal Stratton as the new chairman of the commission to replace President Clinton's appointee. Over the following years, CPSC has failed to issue even a proposed rule on the matter, during which time 10 babies have died. Ninety-six babies have drowned while using these products since 1983.<sup>54</sup>

### All Terrain Vehicles (ATVs)

Between 1993 and 2001, the number of injuries caused by ATV-related accidents more than doubled, with 111,700 ATV accidents occurring in 2001. Injuries suffered by children under 16 increased by 94 percent between 1993 and 2001, climbing as high as 34,800.

CPSC should ban the sale of ATVs to children under the age of 16 and pursue other safety measures as well. The commission held a public hearing on the matter in June of 2003, but has thus far failed to act.

### Product Recall Registration Cards

In March 2003, the commission voted 2-1 to reject a request by Consumer Federation of America to require that product registration cards be included in children's products; these registration cards would improve the effectiveness of recalls.

Stratton, the Bush-appointed chairman, and Commissioner Mary Sheila Gall, appointed by former President George H.W. Bush, both opposed the measure. (President Bush originally nominated Gall to serve as chair, but the Senate rejected the nomination for her unwillingness to hold industry responsible for product safety as discussed in the box below.) Commissioner Thomas Moore, a Clinton appointee, supported the petition.

## Fox In the Henhouse

### Mary Sheila Gall, rejected as chairman of the Consumer Product Safety Commission

Gall was the first Bush nominee to be officially rejected by the Senate. She had served on the CPSC since 1991 (appointed by the president's father) with a hands-off regulatory philosophy and a record of pro-industry actions. She voted against federal efforts to regulate baby walkers, baby bath seats, bunk beds, and frequently blamed children's injuries on parents rather than faulty products. Sen. John Edwards (D-NC) noted that the chair of the commission gives a voice to consumers "and under Mary Gall, that voice would be silent." Although Gall was rejected for the position of chairman, she continues to serve as vice chairman of CPSC.



## Cop Off the Beat

It's now clear that a permissive regulatory environment aided the wave of corporate accounting scandals that came to light in the summer of 2002. There were insufficient protections to ensure independent, objective accounting, and little in the way of government oversight, with the Securities and Exchange Commission woefully underfunded and understaffed. This invited widespread claims of phantom profits, cheating shareholders out of billions.

Unfortunately, these same permissive conditions have crept into other areas of corporate governance – particularly protection of public health, safety, and the environment – and are now being exacerbated as the Bush administration has moved to cut resources for key agencies and curtail regulatory enforcement. For instance, the administration has cut EPA enforcement personnel by 12 percent; the average penalty for willful OSHA violations has fallen by 25 percent; FDA actions against misleading drug promotions have plummeted by almost 80 percent; and tests for mad cow disease were conducted at fewer than 100 of 700 cattle slaughterhouses between 2001 and 2003. With no cop on the beat, corporate abuses are bound to increase.

## Lessons from the SEC

During the 1990s, many in Congress openly scoffed at SEC oversight, and the agency's budget was frozen. In 1995, Congress overrode a veto by President Clinton to restrict lawsuits against companies for misleading their investors, and later rebuffed a proposal from Clinton's SEC chief, Arthur Levitt, to bar accounting firms from both auditing and consulting for the same company. In June 2000, the SEC proposed a draft rule to clamp down on such conflicts of interest – which were later blamed for rosy financial statements – but encountered fierce opposition from the accounting industry and Congress, and ultimately backed down.

For the Bush administration, this situation was just fine. In fact, President Bush's choice to head the SEC, Harvey Pitt, a product of the accounting industry himself, took the job promising an even "kinder and gentler" approach. And at first, that's what he delivered, actually proposing to cut the SEC's budget and then, according to a bipartisan report by the Senate Governmental Affairs Committee,<sup>1</sup> ignoring clear warning signs of widespread accounting fraud that culminated in the collapse of Enron.

Enron's demise, of course, was followed by the discovery of numerous abuses at other prominent companies, including WorldCom,

Global Crossing, Tyco, Adelphia, and Rite Aid. Only then did the administration profess a change of heart. With a banner reading "Corporate Responsibility" as a backdrop, the president unveiled a proposal on July 9, 2002, that he claimed would restore integrity to corporate accounting, mostly by increasing penalties for executives found guilty of financial fraud.

At the time, many dismissed this as nothing more than window dressing, which failed to address systemic problems of oversight, enforcement, and conflicts of interest. Yet as evidence of corporate fraud grew and political pressure mounted, the president eventually came around, and on July 30, 2002, signed comprehensive legislation initiated by Sen. Paul Sarbanes (D-MD). Among other things, the Sarbanes bill directed new standards on conflicts of interest for accounting firms and securities analysts; authorized a 77 percent increase in the SEC's budget; and created an independent oversight board to oversee corporate audits, establish auditing standards, and investigate and enforce compliance by accounting firms.

Underpinning these measures were a series of lessons drawn from the Enron debacle. First, the federal government has an essential role in protecting the public from corporate misbehavior. This includes setting appropriate standards for conduct and

### Mutual Fund Mess

The SEC did not act on tips of wide-ranging mutual fund abuses that came to light in the fall of 2003, and indeed, none of the cases against a dozen mutual fund firms were the result of SEC inspection.<sup>2</sup> Rather, New York Attorney General Eliot Spitzer, relying on the same tips relayed to the SEC, has been at the forefront of exposing these abuses, which cheated investors out of billions.

When the scandal became public, the SEC stepped in and, after barely 10 weeks of investigation, reached its first settlement with Putnam Investments – a deal Spitzer blasted as hasty and inadequate. "Whether

the commission recognizes it or not, the first settlement in a complex investigation always sets the tone for what follows," Spitzer wrote in a New York Times op-ed.<sup>3</sup> "In this case, the bar is set too low."<sup>4</sup>

Having been forced into action by Spitzer, the SEC now appears to be set on minimizing damage to corporate offenders. William Galvin, who as secretary of the commonwealth of Massachusetts investigated the Boston-based Putnam, remarked, "They're not interested in exposing wrongdoing; they're interested in giving comfort to the industry."<sup>5</sup>



vigorously enforcing those standards. Industry self-regulation – which previously governed the accounting industry – is not enough. Second, the government must be provided the necessary resources to do the job. When this commitment is not made, oversight suffers, deterrence is lost, and industry, motivated by profits, will be tempted to ignore the rules. And third, corporate oversight must be free of conflicts of interests, ensuring sound, independent judgment that reflects the best interests of the public.

Of course, these lessons have broad applicability to all of government's regulatory activity, from ensuring a healthy food supply to protecting workplaces and the environment. Yet as documented below and throughout this report, the Bush administration has refused to learn. Indeed, even the Bush SEC has resisted (see box previous page).

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## **Backing Off Polluters**

Environmental enforcement has faltered as the Bush EPA has eliminated key positions, reduced inspections and referrals to the Justice Department, and curtailed fines for violations. From power-plant emissions to industrial discharges in the nation's water to cleanup of hazardous waste sites, the Bush administration has backed off corporate polluters.

### **Axing Enforcement Personnel**

EPA has a backlog of more than 1,500 uncompleted investigations into suspected violations of environmental laws.<sup>6</sup> Yet each year since taking office, President Bush has pushed to slash the agency's already inadequate enforcement budget.

This has included requests to eliminate 270 inspection and civil enforcement positions in FY 2002, 225 positions in FY 2003,<sup>7</sup> and 54 positions in FY 2004.<sup>8</sup> The Senate has resisted these requests, but the administration has gone forward with staffing reductions anyway by transferring enforcement positions to counter-terrorism efforts<sup>9</sup> (even though Congress provided

separate funds for such purposes) and declining to fill vacancies created by staff departures. (This hiring freeze began in 2001 and has continued even though in EPA's FY 2003 appropriations, Congress ordered staffing levels restored.)

These tactics have reduced EPA enforcement personnel by 12 percent, bringing staffing levels in the Office of Enforcement and Compliance Assurance to their lowest point since establishment of the agency.<sup>10</sup> Adding insult to injury, a number of special agents within EPA's Criminal Investigation Division were also diverted to former Administrator Whitman's personal security detail, where their tasks included personal errands, such as returning a rental car and holding a table at a restaurant.<sup>11</sup>

Needless to say, none of this has helped the investigative backlog, and indeed, enforcement actions are in sharp decline.

### **Curtailing Enforcement Actions**

The Bush administration is pursuing and punishing far fewer polluters than the two previous administrations, according to an investigation by the Philadelphia Inquirer.<sup>12</sup>

The newspaper obtained 15 years of environmental records for 17 different categories and subcategories of enforcement activity through Freedom of Information Act requests. In 13 of these categories, the Bush administration had lower average numbers than the Clinton administration, according to the Inquirer, and in 11 categories, the 2003 average was lower than the 2001 average, revealing a downward trend.

For instance, the monthly average of violation notices, which are a key enforcement tool, has dropped 58 percent since the Bush administration took office compared to the monthly average under President Clinton, according to the Inquirer. The Bush administration has issued an average of just 77 citations each month, well below the Clinton and Bush I administrations, which averaged 183 and 195 citations a month respectively.

## Foxes In the Henhouse

### **John Peter Suarez, assistant administrator for EPA's Office of Enforcement and Compliance Assurance**

Suarez, who oversees EPA enforcement actions, spent seven years as assistant U.S. attorney for the New Jersey district and prior to that served as assistant counsel to then-Governor Christie Todd Whitman. Not only does Suarez lack environmental law experience, there is nothing distinguishing in his record. In fact, while serving as a federal prosecutor, Suarez filed fewer cases, won fewer convictions, took more time and obtained shorter sentences than the average prosecutor in both his district and the country.<sup>13</sup>

### **John Ashcroft, attorney general**

As Missouri senator, John Ashcroft repeatedly opposed funding for clean air and water as well as increased funding to cleanup toxic waste sites.<sup>14</sup> He earned a lifetime rating of 5 percent from the League of Conservation Voters for votes on key environmental legislation from 1995 to 2000.<sup>15</sup> He must now be counted on to prosecute environmental crimes.

### **Thomas Sansonetti, assistant attorney general for environment and natural resources**

Sansonetti is responsible for defending the nation's environmental laws and defending legal challenges to the

government's environmental programs and activities. After the administration weakened power-plant emissions standards, he assured Congress that the action would not effect ongoing litigation initiated by the Clinton administration.<sup>16</sup> However, this turned out not to be true. For example, in October 2003, the Justice Department backpedaled in the middle of a case against an Illinois plant owned by Dynegy Midwest Generation Inc. "In light of EPA's change of position as to its interpretation of the Clean Air Act," the Justice Department stated, "the United States does not rely on any prior statements it has made to this Court that a very narrow construction of the 'routine maintenance' exemption is required by the Clean Air Act itself."<sup>17</sup>

Previously Sansonetti worked for the law firm Holland & Hart, where he specialized in environmental law and lobbied on behalf of corporate mining interests, including Arch Coal, Peabody Coal, and the National Mining Association.<sup>18</sup> Before that, Sansonetti worked with Gale Norton, the current Interior secretary, serving as Interior's associate solicitor in the 1980s. He also has been a member of the Federalist Society, a conservative legal network that staunchly opposes federal environmental regulation.

"It's a sign that this administration is flat-out falling down on the job," said Dan Esty, a deputy assistant EPA administrator during the first Bush administration and now director of the Yale University Center for Environmental Law and Policy.<sup>19</sup>

Other important indicators also show that the administration is neglecting enforcement. Specifically:

- On-site inspections by EPA dropped from an average of 21,807 per year over the last three years of the Clinton administration to an average of 18,036 over the first three years of the Bush administration.<sup>20</sup>

- Civil investigations declined from 660 in FY 2000 to 344 in FY 2003.<sup>21</sup>

- In FY 2002, EPA recovered \$51 million in civil penalties compared to \$140 million in FY 1999, \$85 million in FY 2000, and \$95 million in FY 2001. Notably, two-thirds of the civil penalties collected in FY 2001 – the last eight months of which were presided over by President Bush – were the result of complaints lodged during the Clinton administration.<sup>22</sup>

In 2003, Public Employees for Environmental Responsibility surveyed 120

EPA investigators and enforcement attorneys. Nearly 70 percent disagreed or strongly disagreed with the statement, "The EPA criminal program is headed in the right direction."<sup>23</sup>

### **Covering Up Lax Enforcement**

Disturbingly, the administration's enforcement record might be even worse than it appears. According to an investigation by the Sacramento Bee, the Bush EPA has misrepresented its record of criminal enforcement and overstated its successes in cracking down on polluters.<sup>24</sup>

Specifically, in its 2002 performance report to Congress, the agency included 190 counterterrorism-related investigations in a count of criminal investigations. One-time phone conversations between EPA and FBI agents were considered criminal investigations for reporting purposes as well. As one EPA agent told the Bee, "I called the FBI and said, 'If you need us, give us a call.' That warranted a (criminal) case number. There was no investigation."

On top of this, agents are also being pressured to open cases that have little or no chance of prosecution instead of pursuing the most egregious violations, agency sources told the Bee.

EPA has also exaggerated the length of prison terms imposed on environmental criminals, boasting that offenders of environmental crimes were sentenced to 471 prison years in 2001 and 2002. However, in an email to top EPA officials, Mike Fisher, an attorney with the agency's Mid-Atlantic office, called this number "seriously misleading," saying, "The press and public deserve the truth about the Criminal Investigation Division's enforcement accomplishments." Specifically, the figure includes sentences stemming from other agencies' narcotics cases, where hazardous waste charges were brought against methamphetamine lab operators.

### **Dropping Action Against Power Plants**

In the fall of 2003, the Bush administration decided to stop investigating 70 power plants suspected of violating clean air standards,<sup>25</sup> and

considered dropping 13 other cases that were referred to the Justice Department for action.<sup>26</sup>

This followed the administration's decision to substantially weaken EPA's New Source Review (NSR) program, which governs power-plant emissions. Later, on Dec. 24, 2003, a federal appeals court intervened and temporarily blocked the administration's rollback pending the result of litigation.

The administration then announced it would resume cases against violators of the old – and now current – standard. Unfortunately, this decision appears to be contingent on whether the NSR rollback is struck down permanently. If it is upheld, the administration seems likely to revert as well, meaning that violations from years ago would be judged by the new, weaker NSR standards – even though these standards were not in place at the time.<sup>27</sup>

Before making the initial decision to halt investigations, EPA had already notified roughly two-dozen plants under investigation that it had uncovered environmental violations, according to an agency official. Those plants would have been let off the hook if not for the federal appeals court. "I don't know of anything like this in 30 years," one EPA enforcement lawyer remarked at the time.<sup>28</sup>

"First the administration weakens our clean-air law, and now it won't enforce it," responded Sen. James Jeffords (I-VT), the ranking member on the Senate Environment and Public Works Committee. "Instead of fighting pollution, this administration is at war with the Clean Air Act. Innocent bystanders such as children, the elderly and the infirm will be the principle casualties."

### **Ignoring Clean Water Violations**

An internal EPA study, completed in February 2003 and leaked to the Washington Post, found that 25 percent of major industrial facilities are in significant noncompliance with permits issued under the Clean Water Act, and the majority of these facilities receive little or no disciplinary action.<sup>29</sup>

The study focused on major facilities, defined as those that discharge at least one

### Going Soft on Polluters

In December 2002, the Bush administration allowed Kentucky-based Addington Enterprises, one of the largest coal operators in the country, to continue mining despite its lack of a federally mandated reclamation bond. Such bonds are used to ensure that mining companies fix environmental damage caused by the removal of coal.

The Department of Interior first granted the company a 90-day grace period, and followed up with an additional three-month extension when the company failed to obtain the required insurance. Notably, Addington's CEO, Larry Addington, is a major Republican donor, having contributed \$500,000 to the National Republican Senatorial Committee between 1998 and 2000.<sup>30</sup>

The Justice Department has also been faulted for cutting a deal with Koch Industries, the largest privately held oil company in the United States.

In September 2000, a federal grand jury in Corpus Christi, Texas, returned a 97-count indictment against Koch Industries, charging the company and four employees with environmental crimes – namely, the intentional release of large amounts of cancer-causing benzene from Koch's West Plant refinery near Corpus Christi, followed by an attempted cover up.<sup>31</sup>

However, this case was short-circuited when, on April 9, 2001, the Justice Department announced a \$20 million settlement with the company, boasting that it was "a record amount imposed in an environmental

prosecution."<sup>32</sup> Yet some charge that this was actually a favor to Koch, which faced penalties of up to \$352 million if convicted.<sup>33</sup>

Koch Industries' PAC and company employees donated \$800,000 to Republican candidates and organizations during the 2000 cycle, half of which came from David H. Koch, the company's executive vice president.<sup>34</sup>

### Fox In the Henhouse

**Jeffrey D. Jarrett, director of Interior's Office of Surface Mining Reclamation & Enforcement**

Jarrett is responsible for ensuring that companies involved in surface mining, such as Addington, comply with environmental rules. Previously, Jarrett served as deputy secretary for mineral resources management at the Pennsylvania Department of Environmental Protection. Before that, he worked for several coal companies (including Cravat Coal Co. and Drummond Coal), and from 1988 to 1994, served as deputy assistant director of the Office of Surface Mining, where former coal-industry lobbyist J. Steven Griles – now deputy secretary of Interior – was his boss for much of that time.

According to the Citizens Coal Council, Jarrett and Griles weakened environmental standards and citizens rights, harassed OSM staff who enforced the law and forced some out through early retirement or reassignment.<sup>35</sup> The Appalachian Focus Mining News also reported that an internal OSM memo explained that Jarrett is against enforcement or any state action that will increase requirements on operators.<sup>36</sup>

million gallons per day. Of the 6,652 facilities examined, EPA found 1,670 in significant noncompliance. In 2001, 50 percent of violators exceeded the limit for toxics by 100 percent, and 13 percent were over by 1000 percent. For conventional pollutants, 33 percent of violators exceeded their discharge permits by 100 percent, and 5 percent by over 1000 percent.

Given the large number of violators, EPA's enforcement has been severely lacking. In 2001 and 2002, EPA took enforcement action against only 24 percent of those

in significant noncompliance, 27 percent in "repeat significant noncompliance," and 32 percent in "perpetual significant noncompliance." Less than half of these violators ended up paying fines, which averaged a paltry \$6,000.

U.S. PIRG similarly found widespread problems in a study that examined compliance rates of major facilities from January 2002 to June 2003.<sup>37</sup> Specifically, 60 percent discharged pollution in excess of their permit limits at least once over the 18-month

### **Facilitating Pesticide Use in Water**

In guidance issued July 11, 2003, EPA declared that applying pesticides directly in or above U.S. waters for the purpose of controlling insects does not require a pollutant discharge permit under the Clean Water Act.<sup>38</sup> Rather, pesticide use must only meet the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

EPA issued the guidance after a couple sued the town of Amherst, N.Y., for not obtaining a permit for its application of pesticides to wetlands as part of a mosquito control program.<sup>39</sup> In response, the U.S. Second Circuit Court of Appeals ruled that EPA should articulate a clear interpretation of permitting requirements. Previously, the Ninth Circuit held that applying herbicide to canals without a permit was a violation of the Clean Water Act.<sup>40</sup>

period; 436 exceeded their permit limits for at least 10 of the 18 reporting periods during this time; and 35 facilities exceeded their permit limits every reporting period.

"We need strong action to address this illegal pollution, but the Bush administration has instead proposed slashing the Environmental Protection Agency's enforcement budget and weakening critical Clean Water Act programs," said U.S. PIRG environmental advocate Richard Caplan.

### **Slowing Cleanup of Hazardous Waste Sites**

The number of toxic waste sites cleaned up under EPA's Superfund program declined for three straight years under the Bush administration,<sup>41</sup> leaving millions of Americans at risk.

In fiscal year 2003, EPA completed work at just 40 toxic waste sites, falling from 42 in FY 2002 and 47 in FY 2001. In the last four years of the Clinton administration, EPA completed an average of 87 cleanups per year.<sup>42</sup>

Listings to the National Priorities List – which identifies the most dangerous sites for cleanup – have also dropped nearly 15 percent during the Bush administration.<sup>43</sup> "We

just have fewer dollars to start new projects," said Marianne Horinko, an EPA assistant administrator who oversees toxic cleanup.<sup>44</sup>

The Superfund program, which was established to locate, investigate and clean up the nation's worst toxic waste sites, is funded primarily by an industry-financed trust fund. This fund – after which the program is named – was created through a tax imposed mainly on chemical and petroleum companies, the idea being that they should have to cover the costs of cleaning up their own pollution.

Since the tax expired in 1995, the program's funds have dwindled. Yet contrary to its predecessors, the Bush administration has opposed reauthorization of the tax, leaving Superfund strapped for cash. In fact, the trust fund was projected to run out of money in October 2003, according to the General Accounting Office.<sup>45</sup> President Bush proposed a \$150 million increase for the Superfund program in his FY 2004 budget request, but this falls well short of what is needed to rescue the program. Indeed, in January 2004, EPA's inspector general concluded that there was a \$175 million shortfall over the previous year for Superfund cleanups.

"We teach our children that they are responsible for cleaning up the messes that they make," said Carl Pope, executive

## **Fox In the Henhouse**

### **Marianne Horinko, Assistant Administrator for the Office of Solid Waste and Emergency Response**

Horinko is in charge of the Superfund program, and also served for a time as EPA's acting administrator following the departure of Christie Todd Whitman. Previously, she was president of Don Clay Associates, an environmental consulting firm whose clients included the Chemical Manufacturers Association, the Koch Petroleum Group and several other interests who benefit from the expiration of the Superfund tax.<sup>46</sup> Before that, Horinko was an attorney at Morgan, Lewis & Bockius, where she represented industry in Superfund and clean air cases.

director of the Sierra Club. "The Bush administration should demand no less of corporate polluters."<sup>47</sup>

## Jeopardizing Worker Health and Safety

The story is no different for worker health and safety. The Bush administration has pushed to cut funding for enforcement, eliminated enforcement personnel, spent less time on inspections, and curtailed fines for violations.

Workplace injuries and deaths have been steadily declining since the creation of the Occupational Safety and Health Administration in 1970<sup>48</sup> even as the workforce has expanded. However, the numbers still remain unacceptably high. In 2001, there were nearly six million workplace injuries and illnesses and 5,900 deaths,<sup>49</sup> not counting the estimated 50,000 to 60,000 workers who die each year from occupational diseases. OSHA's past success and the seriousness of the problem should encourage a greater commitment of resources; unfortunately, the administration is moving in the other direction.

### Insufficient Resources

Less than 1 percent of all workplaces are inspected for safety and health violations each year. At current staffing and inspection levels, it would take OSHA 115 years to inspect each workplace (under federal jurisdiction) once. Nonetheless, the Bush administration has continually pushed to cut OSHA's budget. Congress has fortunately blocked this effort – and in fact, increased funding for FY 2002 and 2003 – but the administration still managed to eliminate 57 OSHA positions over its first two years.<sup>50</sup>

In his FY 2004 budget request, President Bush proposed to cut OSHA's budget by \$3.2 million and eliminate an additional 77 positions<sup>51</sup> – including 64 enforcement positions, 10 for developing new safety and health standards, and five for statistics; the president proposed to add two positions for providing regulatory compliance assistance

## Foxes In the Henhouse

**Michael F. Duffy & Stanley Suboleski, Federal Mine Safety and Health Review Commission (FMSHRC)**

The commission is an independent agency set up to resolve legal disputes – mostly involving civil penalties – between MSHA and mining companies under the Mine Safety and Health Act.

President Bush appointed Michael Duffy to the commission on Dec. 2, 2002, and Duffy later became chairman on Feb. 12, 2003. Previously, Duffy served as the former deputy general counsel to the National Mining Association, which represents the interests of the mining industry. Duffy also served as senior counsel to the American Mining Congress, a predecessor of the NMA, from 1979 to early 1987.

Suboleski was appointed to the commission in June 2003. Previously, he served as executive vice president and interim chief operating officer for Massey Energy, a company with an abysmal record on worker safety, with at least 12 fatalities at Massey operations since 1997.<sup>52</sup> In October 2000, a coal sludge spill at a Massey subsidiary (Martin County Coal in Kentucky) sent an estimated 306 million gallons of water and black coal slurry into the Big Sandy River and its tributaries – 28 times the amount spilled in 1989 by the Exxon Valdez.<sup>53</sup> In this case, higher ups at the Mine Safety and Health Administration – including the head, former mine-industry executive David Lauriski – allegedly cut off the agency's investigation and pressured investigators to produce an inaccurate report about the cause of the spill.<sup>54</sup>

to industry.<sup>55</sup> The president also sought cuts of nearly \$8 million in worker safety and health training programs, which Congress has previously rejected. These cuts were largely offset (and masked) by proposed increases in compliance assistance.

Likewise, the president proposed to cut MSHA's coal enforcement activities by more than \$6 million. This came at a time when mining-related deaths were on the rise.<sup>56</sup>

In one case, in January 2003, an explosion rocked the McElroy mine in Cameron, W.Va., killing three and injuring another three. The MSHA district manager for the area reportedly requested additional inspectors and resources, but was granted less than half of his request because of personnel shortages, highlighting the dire need for staffing increases.

"Between December 2001 and January 2003, when the McElroy Mine should have had six surface inspections, it had been inspected only once," Sen. Robert Byrd (D-WV) said. "No underground inspections were performed."<sup>57</sup> Unfortunately, the Bush administration has pushed cuts that would make matters worse.

### **Inadequate Inspections and Penalties**

Although lacking in staff, OSHA's recorded inspections under the Bush administration have been roughly on par with previous years – that is to say, still woefully inadequate.<sup>58</sup> However, inspections have become less thorough, potentially allowing violations to go undetected. Specifically:

- The average time spent on safety inspections decreased from 22 hours in FY 1999 and 2000 to 19.1 hours in FY 2002.

- The average time spent on health inspections declined from 40 hours in FY 1999 and 35 hours in FY 2000 to 32.7 hours in FY 2002.
- The number of citations issued for "willful" violations plunged from 607 in FY 1999 and 524 in FY 2000 to 392 in FY 2002.

The average penalty for willful violations also fell by 25 percent, while total penalties declined from \$86.5 million in FY 2000 to \$70.7 million in FY 2002.<sup>59</sup> Of course, OSHA has always been soft on willful violators. From 1982 to 2002, OSHA investigated 1,242 cases in which the agency concluded that willful violations resulted in workplace deaths; however, OSHA declined to seek prosecution in 93 percent of those cases, according to an investigation by the New York Times.<sup>60</sup> What's more, at least 70 employers committed repeat willful violations resulting in scores of additional deaths, but were still seldom prosecuted. The Bush administration is making a bad problem worse.

This trend is particularly disturbing since low penalties reduce the incentive for companies to change their ways. Often, it

### **Tragedy in an Alabama Mine**

In September 2001, a series of explosions in a coal mine in Brookwood, Ala., claimed the lives of 13 miners. An investigation into the tragedy revealed that MSHA's failure to fully enforce mining standards permitted the hazardous conditions that led to the disaster.<sup>61</sup>

MSHA approved mining plans that were inadequate to control the mine's roof (which fell), ventilation system (which was insufficient), and float coal dust (which fueled one of the explosions). Plans approved by the agency for emergency evacuation were also found to be deficient.<sup>62</sup> Twelve miners, lacking proper direction and information, were killed when they attempted to rescue trapped co-workers.

Prior to this catastrophe, MSHA inspectors misleadingly cited serious violations as "non-significant and substantial" and failed to issue "unwarrantable failure" closure orders for repeated violations. The agency kept penalties against the company to a minimum by claiming that most violations threatened only one miner. MSHA also helped the company, Jim Walter Resources, avoid costly fines by failing to follow up on past violations to learn if they were corrected by MSHA-imposed deadlines.<sup>63</sup>

MSHA found that eight safety violations contributed directly to the miners' deaths and fined the company \$435,000, the maximum fine allowable. However, in June 2003, the agency discovered 18 new safety violations by the company, but issued a mere \$8,335 in fines.<sup>64</sup>

may be cheaper for a company to pay a fine than implement the changes necessary to achieve compliance.

Consider, for example, McWane Inc., a company based in Birmingham, Ala., that is one of the world's largest manufacturers of cast-iron sewer and water pipe. Nine workers have been killed in McWane plants since 1995, and OSHA investigators have concluded that three of those deaths resulted directly from deliberate violations of federal safety standards.<sup>65</sup> According to current and former managers at McWane, company executives view penalty costs as far less burdensome than the cost of fully complying with health and safety standards.<sup>66</sup> Shortly after the death of a McWane employee, company budget documents revealed that McWane had calculated down to the penny the cost of OSHA fines.<sup>67</sup>

Enforcement by the Bush Mine Safety and Health Administration has also been lax. In particular, MSHA's practice of "conferencing" – whereby MSHA officials informally meet with mine operators to review citations and frequently to reach settlements – has "neutered" enforcement, according to the United Mine Workers of America, leaving both miners and inspectors frustrated. In many cases inspectors are not even allowed to defend their citations during these meetings.<sup>68</sup>

Not surprisingly, there has been a decline in tough enforcement actions (such as "significant" and "substantial" violations and "unwarrantable failure" citations<sup>69</sup>) under the Bush administration – a hands-off approach that can have deadly consequences for workers (see box on previous page).

and unsanitary conditions at food production facilities, while FDA faces budget shortfalls – which the administration threatens to exacerbate – that prevent it from carrying out needed inspections. As a result, contaminated food continues to pose a significant risk to American consumers, causing an estimated 76 million illnesses each year, including 325,000 hospitalizations and 5,000 deaths, according to the Centers for Disease Control and Prevention.

### Inaction on Mad Cow

For two and a half years, the Bush USDA virtually ignored the threat of mad cow disease (see box on next page) – which has killed 137 people, mostly in Great Britain – and then declined to significantly increase testing when, in December 2003, it was discovered in Washington state. Instead, Secretary Ann Veneman misled the public about the Washington case and the likely effectiveness of USDA's testing program in an apparent effort to prop up the meat industry, which has close ties to the administration.

At issue is whether the infected cow was a "downer," meaning that it was unable to walk. Contrary to Veneman's contention, three eyewitnesses say that the cow was able to walk and did not appear to be sick at all,<sup>70</sup> which is bolstered by the fact that the USDA veterinarian on the scene did not perform tests required for downer cattle, according to agency documents obtained by United Press International.<sup>71</sup>

This is of critical importance because USDA has based its testing and surveillance program for mad cow by sampling only downer and other sick animals, which account for a small fraction of the 36 million U.S. cattle slaughtered each year; in 2003, USDA tested just 20,000 downers for mad cow. At first, Veneman argued that the discovery of the infected cow was proof of the system's effectiveness, and that more expansive testing of healthy cattle was unnecessary. Instead, she chose to expand testing of downer cattle to farms and feedlots (in addition to those taken to slaughter), which would have doubled testing.

## Neglecting Food Safety

Both the U.S. Department of Agriculture and the Food and Drug Administration, the main entities that oversee food safety, have failed to properly enforce federal standards during the Bush administration. USDA has looked the other way on mad cow disease



## A Woeful Inspection Record

In May 2003, a case of mad cow was discovered in Alberta, Canada, close to the Washington border. However, USDA failed to respond through increased testing, performing no tests on commercial cattle in Washington from May through July, according to agency data turned over to the United Press International in response to a Freedom of Information Act request.<sup>72</sup>

In fact, USDA did not test any commercial cattle in Washington state for mad cow during the first seven months of 2003. "This includes Washington's biggest slaughterhouse, Washington Beef in Toppenish – the 17th largest in the country, which slaughters 290,000 head per year – and two facilities in Pasco that belong to Tyson, the largest beef slaughtering company in the United States," according to UPI.

Nationwide, tests were conducted at fewer than 100 of 700 cattle slaughterhouses between 2001 and 2003, and some of the biggest slaughterhouses were not tested at all. Of cows tested, only 11 percent came from the top four beef producing states, which account for nearly 70 percent of cattle slaughtered each year.

Making matters worse, there are limited protections to stop the disease from spreading. In 1997, FDA banned cow bits from being fed back to other cows, which was commonplace at the time. However, enforcement of this standard has been lax, and it contains a number of loopholes in any case. For instance, cow bits can be fed to other livestock, which can then be fed to cows.

As a result, USDA's advisory committee of foreign experts concluded that cattle in the United States have likely been "indigenously infected" (the Washington cow was imported from Canada), despite the Bush administration's assurances to the contrary. "That was the pattern in Europe," said Dr. Michael Hansen, who studies food safety for Consumers Union. "Blanket denials, then you

find one, then once you go to widespread testing, you find more and more."<sup>73</sup>

Donald Berry, chairman of the biostatistics department at the University of Texas Cancer Research Center in Houston, has estimated that two positives for mad cow out of 40,000 tests would suggest a total of about 1,750 infected animals in the United States.<sup>74</sup>

In response to such claims, Veneman has assured the public that U.S. meat is safe regardless because there are necessary precautions in place to make sure that brain and spinal chord tissue – where the disease is found – do not enter the food supply.

However, many meatpacking plants now use "advanced meat recovery" systems

that cut close to the bone and spinal chord, which increases the chances that tissue from an infected animal's central nervous system could end up in hamburgers and other processed meat. In 2002,

USDA tested meat from plants that use such systems, and 35 percent of it contained central nervous tissue.<sup>75</sup> "Are they interested in making people sick? Certainly not," said Trent Berhow, a USDA inspector from Denison, Iowa. "But their main motivation is money. They are interested in getting every ounce of flesh off an animal."<sup>76</sup> Veneman has said the USDA would pursue a new standard for "verification testing" to ensure that nerve tissue doesn't get into processed meat, but so far there are only protections in place for animals under 30 months.

In the meantime, there are insufficient inspections to catch mad cow; there are inadequate protections to stop it from spreading among cows; and there is meat making it into the food supply that has central nervous tissue. This combination spells danger for the American consumer, especially given the Bush administration's cozy relationship with the meat packing industry, which gave the president \$76,000 for the 2000 campaign, and \$1.2 million to Republican candidates and committees (89 percent of its total contributions).<sup>77</sup>

**There are insufficient inspections to catch mad cow, inadequate protections to stop it from spreading among cows, and central nervous tissue is making it into the food supply. This spells danger for the American consumer.**

## Fox In the Henhouse

### **Jim Moseley, deputy secretary of Agriculture**

Prior to joining USDA in 2001, Moseley was half owner of a hog farm, AgRidge Farms and Infinity Pork.<sup>78</sup> At USDA, he was in a position to influence the agency's testing policy over mad cow.

However, infected cattle frequently do not show any symptoms of mad cow. Indeed, European inspectors have found hundreds of infected cows without any symptoms.<sup>79</sup> This appears to have been the case in Washington as well.

A bipartisan investigation by the House Government Reform Committee found that USDA made its discovery only because of an agreement with the plant where the cow was slaughtered to accept samples from nondowner cattle.

"If the information we have received is true, a key premise of the USDA [mad cow] testing program is subverted," wrote Reps. Tom Davis (R-VA), chairman of the Government Reform Committee, and Henry Waxman (D-CA), the ranking Democrat, in a letter to Veneman.<sup>80</sup>

This bolstered the case of importers of American beef, including Japan and South Korea, which have argued that USDA's testing program is insufficient, and should also sample seemingly healthy cows (something strongly opposed by the beef industry).

Likewise, a USDA advisory body, comprised of foreign experts who have dealt with mad cow, concluded in February 2004 that USDA's surveillance program "must be significantly extended in order to measure the magnitude of the problem," and that the agency should strongly consider randomly sampling healthy cattle,<sup>81</sup> as other countries are currently doing. For example, France tests about half of the six million cattle it slaughters each year, and Japan tests all of its 1.3 million.<sup>82</sup>

After substantial pressure, Veneman reluctantly announced in late February 2004 that USDA would begin testing some non-downer cattle. To that point, Veneman and other USDA officials had ignored information

that did not support their predetermined policy. On Jan. 6, 2004, the co-manager of the Washington slaughterhouse where the infected cow was discovered wrote to USDA to warn that the cow was not a downer; however, USDA continued to publicly insist that it was.

As a result, wrote Davis and Waxman, "public confidence in USDA may suffer. Confidence in the food supply requires that the public be able to rely on statements of USDA officials."

### **Meat Inspection Breakdown**

The Bush administration claims it is seeking "record level support" for USDA's food safety programs in the FY 2005 budget.<sup>83</sup> In fact, the president's budget would rely on \$124 million in industry "user fees" to support a major portion of the meat inspection budget.<sup>84</sup> The year before, the president likewise proposed to cut direct federal funding by \$90 million in favor of industry "user fees."

Congress has repeatedly rejected such user fees – in which companies pay for inspections – out of fear that inspectors would become beholden to meat-plant owners as the source of their paychecks.<sup>85</sup> Indeed, USDA already has a too-cozy relationship with the meat industry, and is notorious for going soft on violators. This problem did not begin with President Bush, but the administration has done nothing to remedy the situation.

In 2001, USDA routinely allowed negligent companies to sell meat and poultry to American consumers, according to the General Accounting Office, undermining the new food safety regime – the Hazard Analysis and Critical Point (HACCP) system – established in 1998.<sup>86</sup>

HAACP replaced the decades-old practice of "poke and sniff" inspections (which could only catch rotten or clearly damaged meat) with science-based standards and testing – requiring meat and poultry plants to develop comprehensive safety plans, and check for Salmonella and other dangerous bacteria. On its face, this should ensure a significantly safer food supply, but the Bush administration

has fallen far short in implementation. Among other things, GAO found:

- USDA did not suspend a plant's operations when violations were detected (even though Secretary Ann Veneman has pledged that the department would do so<sup>87</sup>). Instead, suspensions were almost always put on hold, or "placed in abeyance," allowing the offending plant to continue production. This was the case for 57 of 60 administrative enforcement cases examined by GAO.
- USDA did not take necessary steps to eliminate repeat violations, "particularly

those relating to 'zero tolerance' for visible feces." Plants are required to take corrective action each time a violation is cited. However, "the number of repetitive violations in various plants – 109 in one plant alone – shows that [the department] has not ensured that recurring violations were eliminated."

- USDA did not require plants to take timely action to control Salmonella contamination. "At the plants that failed two consecutive sets of tests for Salmonella, an average of 20 months elapsed from the date of the failure of the first set until the plants completed and passed a third set," according to GAO.

## Foxes In the Henhouse

### **Ann Veneman, secretary of USDA**

Veneman previously sat on the board of directors for Calgene (merged into Monsanto in 1997, now Pharmacia), the first company to bring genetically engineered food to supermarket shelves.<sup>88</sup> As secretary, she has actively promoted Calgene/Monsanto's position on international trade of genetically modified food<sup>89</sup> while opposing consumer labeling.<sup>90</sup>

While campaigning for President Bush before the 2000 election, Veneman assured California farmers that they would no longer be subjected to "unnecessary and burdensome" environmental regulations.<sup>91</sup> She was also forced to recuse herself from the decision to triple logging in the Sierra Nevada range (see page 32) because of her prior representation of loggers.

### **Elsa Murano, USDA undersecretary for food safety**

Murano has consistently downplayed the potential dangers of food irradiation since her days as director of the Center for Food Safety at Texas A&M University. The Center had a multi-million dollar research and development deal with the Titan Corporation, a military contractor seeking new uses for its "Star Wars" E-beam technology to irradiate food.<sup>92</sup>

In March 2001, USDA announced plans to irradiate school lunches and stop salmonella testing instituted by the outgoing Clinton administration (which meat packers had opposed as too expensive).<sup>93</sup> However, after a public uproar, the plans were dropped; White House spokesman Ari Fleischer blamed the decision on "the lower level of the Department of Agriculture." Later, in May 2003, USDA published specifications for irradiating ground beef in school lunches, but made it voluntary and said testing would continue.<sup>94</sup> USDA's School Food Program (now run by Peter Murano, the secretary's husband) formerly banned irradiated foods from the nation's schools.

USDA has also moved to apply the HACCP model of industry self-testing to slaughterhouses, where the agency currently inspects carcasses. However, in December 2001, GAO reported that a USDA pilot program to test this system was too scientifically flawed and unreliable to justify replacing federal meat inspectors with plant employees. Murano disagreed and asked GAO to change the report's title from "Food Safety: Weaknesses in Meat and Poultry Inspection Pilot Should be Addressed Before Implementation" to "Meat and Poultry Inspection Needs Enhancement Prior to Implementation."<sup>95</sup> GAO declined.

- Inspectors did not document any HACCP violations in 55 percent of all plants during 2001. Department officials told GAO “they were surprised at the large numbers and said the absence of violations was unusual.”
- In about 91 percent of the plants GAO sampled, “inspectors had failed to document deficiencies in basic requirements,” including whether plants had “adequate documentation to support the analysis of hazards in their HACCP plans.” USDA “is not ensuring that all plants’ HACCP plans meet regulatory requirements and, as a result, consumers may be unnecessarily exposed to unsafe foods that can cause foodborne illnesses,” GAO concluded.
- Only about 1 percent of plants have been subjected to in-depth reviews to verify that HACCP plans are based on sound science.
- USDA has only about 6 percent of the consumer safety officers it needs; “managers in two large districts expressed concern that it may take years to assess the plans for all plants in their districts.”

As discussed below, this lax approach to food safety has permitted a number of serious outbreaks during the Bush administration.

### Listeria Overlooked

USDA ignored repeated food safety violations at a Wampler Foods plant in Fraconia, Penn.,<sup>96</sup> and in 2002, listeria-contaminated turkey meat from the plant killed eight, sickened more than 50, and caused several miscarriages and stillbirths, prompting the recall of 27.4 million pounds of ready-to-eat poultry products, the largest recall in U.S. history.

The lead USDA inspector for the plant knew about listeria contamination and other filthy conditions prior to the outbreak, but the agency declined to take action, according to individuals who worked inside the plant.<sup>97</sup> On the contrary, USDA gave advance notice of listeria testing, which is supposed to be

unannounced, allowing the plant time to perform special cleanups.<sup>98</sup>

Vincent Erthal, a USDA inspector who worked the night shift at Wampler, requested enforcement action in August 2002 and provided two years of documentation of widespread sanitary problems at the facility.<sup>99</sup> Unfortunately, agency higher-ups looked the other way.

### Shielding ConAgra

In the summer of 2002, the meatpacking giant ConAgra Corporation<sup>100</sup> recalled 19 million pounds of ground beef – the third largest recall in U.S. history – after lab tests found E. coli O157:H7 contamination.<sup>101</sup>

USDA quickly announced that no contaminated meat had made its way to market, but the Centers for Disease Control and Prevention later contradicted this assertion, linking the ConAgra beef to at least one death and 35 illnesses during the first month after the recall.

From the beginning, USDA seemed more concerned with protecting ConAgra than the public. In January 2002, six months before the recall, John Munsell, owner of the family business Montana Quality Foods, Inc., alerted USDA that ConAgra had shipped him meat contaminated with E. coli. Yet instead of taking action against ConAgra, USDA blamed Munsell and ordered him to rewrite his HACCP plan 14 times while suspending his privileges to grind his own beef, according to an investigation by the Government Accountability Project (GAP).<sup>102</sup> This placed Montana Quality Foods under tighter surveillance than any other plant in the beef industry, and Munsell was ultimately forced to sell his business.

As for ConAgra, USDA looked the other way. While Munsell was ordered to recall 270 pounds of ground beef, the agency declined to interfere with ConAgra even after February 2002 lab tests confirmed E. coli contamination in beef produced on Aug. 30, 2001, at ConAgra’s plant in Greeley, Colo.

At the time, USDA inspectors argued that the agency was ignoring the real public health threat; one expert in the agency’s

Food Safety and Inspection Service wrote to agency officials, "It would be a shame if an unsuspecting consumer got sick, or even worse, because we failed to take appropriate measures to prevent it... The chances are pretty good that ConAgra is the source and there's probably more of this 'suspect' product out in distribution like a ticking time bomb." Nonetheless, agency higher-ups in Washington, D.C., and at the district office with jurisdiction over the matter overruled action against ConAgra and came down on Munsell instead.

### **Contaminated School Lunches**

In 2002, USDA failed to notify state and local officials about food contaminated by ammonia, and allowed dangerous beef patties, chicken tenders and potato wedges to be shipped to school lunch programs across the state of Illinois.<sup>103</sup>

Forty-two children and teachers at an elementary school in Joliet, Ill., were sickened and rushed to the hospital in November 2002 after eating contaminated chicken tenders – which were found to contain 133 times the accepted level for ammonia, caused by an ammonia leak a year earlier at a Gateway Cold Storage in St. Louis.

A USDA inspector was stationed at the food storage facility at the time of the leak but did not inform schools or health officials of the incident. USDA officials maintained that it was Gateway's responsibility to notify affected entities.

State and local officials quarantined food shipments from the facility after cafeteria workers complained of conspicuous odors. However, these officials claimed their efforts were undermined because USDA allowed Gateway to continue shipping the ammonia-soaked products (an allegation the agency denied).

### **Cuts for the Food & Drug Administration**

While USDA handles meat safety, FDA handles everything else, including seafood, eggs, and vegetables. In his FY 2004 budget request, President Bush called for a \$14

million cut from FDA's food safety efforts<sup>104</sup> even though the agency already lacks resources to adequately protect the public.

FDA receives just 28 percent of food safety resources, but is responsible for 78 percent of the food supply,<sup>105</sup> which accounts for two-thirds of recorded outbreaks of food-related illness.<sup>106</sup>

Currently, the agency has 770 food inspectors for 57,000 plants, meaning a single inspector has responsibility for an average of 74 plants. As a result, FDA inspects food establishments under its jurisdiction just once every five years,<sup>107</sup> and tests only 2 percent of the estimated five million shipments of imported food each year, with a mere 150 inspectors devoted to the task.<sup>108</sup> By contrast, USDA has approximately 7,600 inspection personnel for about 6,500 meat and poultry plants,<sup>109</sup> which are inspected daily.

## **Backing Off Drug Companies**

FDA enforcement actions against improper drug advertising have dropped dramatically during the Bush administration, coinciding with a policy issued at the end of 2001 that positioned the agency's Office of Chief Counsel as a clearinghouse for all notices of violations.<sup>110</sup>

From December 2001 to September 2002, FDA issued just 19 "notice of violation" or "warning" letters (an average of just two per month).<sup>111</sup> In the three previous years, FDA sent 253 of these letters to manufacturers, or almost 85 per year.

This decline came at the same time drug advertising skyrocketed. Ads aimed at doctors increased by nearly 20 percent in 2002, yet FDA actions directed at such promotions decreased by almost 80 percent.<sup>112</sup> Likewise, direct-to-consumer advertisements submitted for FDA review increased by 75 percent in 2002, yet FDA enforcement actions in this area decreased by nearly 50 percent.

Daniel Troy, FDA's chief counsel, explained this discrepancy by claiming the

## Fox In the Henhouse

### **Daniel Troy, FDA's chief counsel**

Enforcement actions against improper drug advertising plummeted after Troy made his office the clearinghouse for violation notices. Previously Troy worked as an attorney representing industry in cases against FDA. For example, in 1998, he won a fight with FDA that permitted drug companies to provide doctors with information about "off-label" uses of their drugs.<sup>113</sup> Troy also successfully defended the tobacco industry against FDA's efforts to regulate tobacco advertising.

agency's oversight is focused on fewer, more complicated cases; however, when pressed by a Boston Globe reporter, he could not offer a specific example.<sup>114</sup>

Meanwhile, complaints submitted to FDA regarding false and/or misleading advertisements have remained relatively constant; the lack of enforcement seems to

have little to do with greater compliance with the law.

Indeed, in September 2002, four independent experts<sup>115</sup> convened by the Democratic staff of the House Government Reform Committee found significant problems in their review of more than 100 direct-to-consumer television advertisements from the preceding year.<sup>116</sup>

"The advertisements I reviewed contained numerous problems (errors, omission or misleading statements/images) and ... as a group they are often intended to mislead a consumer about the drug's effectiveness or the seriousness of their medical condition (creating fear and concern over conditions that are ordinary and have no impact on quality or quantity of life)," wrote Dr. Michael Wilkes of the University of California, Davis. "I am also bothered by drugs that insinuate or actually claim they are better than other drugs or classes of drugs where there is no data to support such a claim."<sup>117</sup>



## Sworn to Secrecy

*"Knowledge will forever govern  
ignorance, and a people who mean to be  
their own governors, must arm themselves  
with the power knowledge gives."*

--James Madison, 1822

The Bush administration has moved to broadly restrict information that might interfere with its political agenda and point to stronger health, safety and environmental protections.

Perhaps most significant for its scope, Attorney General John Ashcroft has reversed past policy under the Freedom of Information Act, and in essence instructed federal agencies to withhold information whenever possible. Meanwhile, the administration has cracked down on government whistleblowers and continually thumbed its nose at Congress – for example, refusing to turn over documents related to the corporate-dominated Cheney energy task force.

Sept. 11 has also regularly been invoked to advance the cause of secrecy. In particular, the administration has withheld information on "critical infrastructure" and power companies, and removed tens of thousands of documents from the web, including information on chemical facilities. While the specific reasons for these restrictions are murky at best, the one clear effect has been to shield the administration and its corporate allies from public scrutiny.

## Turning FOIA on its Head

On Oct. 12, 2001, Ashcroft issued a memorandum<sup>1</sup> that urges federal agencies to exercise greater caution in disclosing information requested under the Freedom of Information Act, which is a primary tool for obtaining health, safety and environmental information, and much more.

The memo affirms the Justice Department's commitment to "full compliance with the Freedom of Information Act," but then immediately states it is "equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy."

This new policy supersedes a 1993 memorandum from then-Attorney General Janet Reno that promoted disclosure of government information under FOIA unless it was "reasonably foreseeable that disclosure would be harmful." This standard of "foreseeable harm" is dropped in the Ashcroft memo. Instead, Ashcroft advises, "When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis..."

In a number of cases, agencies have expanded on the Ashcroft memo, affirming that the benefit of doubt no longer goes to disclosure, according to an audit covering 33 federal departments and agencies by the National Security Archive,<sup>2</sup> which files thousands of FOIA requests annually.

The Department of Interior, for instance, circulated the Ashcroft memo in an email entitled, "News Flash – Foreseeable Harm is Abolished." Interior later developed implementing guidance that stated, "We wish to emphasize that the shift related to release of information under the FOIA has moved from a presumption of

'discretionary disclosure' of information to the need to safeguard institutional, commercial, and personal privacy interests."<sup>3</sup> In other words, we are moving from disclosure where possible to secrecy where possible.

As viewed by EPA's general counsel office, "[I]n order to justify withholding a record, the agency no longer needs to be able to articulate a foreseeable harm that will befall us if the record is released."<sup>4</sup> This means that not only is the agency less likely to disclose, it won't even provide an explanation for why it is withholding.

### Auto Safety

In one of the most egregious examples, the Department of Transportation is withholding "early warning" data about auto safety defects, including warranty claim information, auto dealer reports, consumer complaints, and data on child restraint systems and tires. Congress required reporting of this information in response to the 2000 Firestone Tire debacle (in which faulty tires resulted in 271 deaths), potentially creating a powerful tool for the public to hold manufacturers and the government accountable.

Unfortunately, in July 2003, DOT issued a rule that claimed disclosure could "cause substantial competitive harm" – an allowable exemption under FOIA – even though similar defect information has been routinely made public before.

## Fox In the Henhouse

### Jacqueline Glassman, NHTSA's chief counsel

Glassman spearheaded the decision to withhold early-warning auto safety information from the public. Prior to her appointment in 2002, Glassman was senior counsel for the DaimlerChrysler Corporation, where she spent seven years. The Alliance for Automobile Manufacturers, which represents DaimlerChrysler, as well as eight other manufacturers, strongly opposed disclosure of the early-warning information.



"The DOT is trying to slip a vast exemption to the Freedom of Information Act in the back door," said Amanda Frost, an attorney with Public Citizen, which filed suit in March 2004 to force the administration to make the information available. "The agency has failed to show how disclosure would harm manufacturers, but this exemption would surely harm consumers."

### **Gun Safety**

The Bush administration has also fought a legal challenge by the city of Chicago to obtain records on gun purchases under FOIA. Chicago requested these records from the Bureau of Alcohol, Tobacco, and Firearms (ATF) to support a civil suit against several manufacturers, wholesalers and dealers for allegedly promoting and facilitating the unlawful possession of firearms. However, the Justice Department, backed by the National Rifle Association, argued that such disclosure is exempt from FOIA because it would interfere with law enforcement proceedings and violate personal privacy interests.

Early in 2003, the Seventh Circuit Court of Appeals, based in Chicago, ruled in favor of the city and ordered ATF to turn over its gun trace and sales databases, rejecting the administration's arguments as overly broad. According to the court, ATF can withhold particular records that might interfere with a specific investigation, but cannot claim a blanket disclosure exemption for the entire databases. Likewise, the public interest outweighs ATF's sweeping claim of personal privacy in concealing the names and addresses of gun purchasers. In fact, privacy advocates such as the Electronic Privacy Information Center strongly backed disclosure, arguing for more tailored privacy protections.

This information will help identify patterns to determine whether firearms used in crimes are sold by particular retailers or sold to particular purchasers, while allowing for an evaluation of ATF's effectiveness in monitoring unlawful sales and tracing crime guns.<sup>5</sup>

The Bush administration appealed the circuit court's decision to the Supreme Court, which accepted the case. Yet just days before oral arguments were set to begin, Congress approved an appropriations rider that prohibits the ATF from using any funds to comply with FOIA requests for the records in question. In response, the Supreme Court vacated the decision and remanded the case, instructing the Seventh Circuit to reconsider in light of Congress' action.

## **Stonewalling Congress**

The Bush administration clearly does not want to answer to Congress. Vice President Cheney's showdown with GAO was just the most high profile case in what's emerged as a pattern of stonewalling. From "Clear Skies" to drinking water contamination to Medicare reform, the administration has been unwilling to deal with Congress honestly, and instead has sought to advance its agenda by withholding information that might spark open debate. Such secrecy subverts democratic decision-making and undermines public accountability.

### **The Cheney Energy Task Force**

During the early months of the Bush administration, Vice President Cheney convened an energy task force whose ultimate recommendations, issued May 18, 2001, conspicuously reflected the interests of oil, gas and coal companies.

At the time, President Bush said, "I can assure the American people that mine is an administration that's not interested in gathering dust. We're interested in acting." As discussed earlier, this has meant weaker environmental standards and more extensive drilling and mining on public lands.

Given this profound effect on administration policy, members of Congress and other interested parties began to raise questions about the nature and composition of the Cheney task force, which took on increased urgency following the collapse

of energy-giant Enron. Unfortunately, the administration refused to provide even the most elementary answers, triggering a number of hard-fought lawsuits.

Most troubling was the administration's unwillingness to cooperate with the General Accounting Office, the research and investigative arm of Congress. GAO tried for months to obtain access to the names of task force participants, including anyone consulted outside government, as well as basic meeting records, including dates and topics.<sup>6</sup> However, persistent stonewalling by Vice President Cheney forced GAO to launch its first-ever lawsuit against a federal official on Feb. 22, 2002.

In announcing the decision to sue, David M. Walker, GAO's comptroller general, wrote, "Failure to provide the information we are seeking serves to undercut the important principles of transparency and accountability in government. These principles are important elements of a democracy. They represent basic principles of 'good government' that transcend administrations, partisan politics, and the issues of the moment."<sup>7</sup>

Meanwhile, a number of other interested parties had already initiated legal action of their own. On Feb. 21, 2002, just as GAO was preparing its suit against Cheney, a federal district court ordered the Department of Energy to hand over task-force documents to the Natural Resources Defense Council. "Despite being heavily censored, the documents show how the administration allowed energy companies and their lobbyists to help write our nation's national energy plan," NRDC reported. "For example, the records reveal that Energy Secretary Spencer Abraham met privately more than 100 times with industry executives and lobbyists – many of whom were major financial supporters of President Bush's campaign. Yet Secretary Abraham refused to meet with environmental organizations."<sup>8</sup> These documents also revealed that Enron had contact with the task force four times, in addition to the six times company officials, including former chairman Kenneth Lay, reportedly met with Vice President Cheney.<sup>9</sup>

The Sierra Club and Judicial Watch (best known for its numerous lawsuits against Clinton administration officials) were joined in another lawsuit against the task force – officially called the National Energy Policy Development Group – to gain access to White House documents, just as GAO was trying to do. In August of 2002, U.S. District Judge Emmet G. Sullivan ordered these documents turned over, but the White House failed to comply, drawing a strong rebuke from Sullivan, who reaffirmed his order that October.

Not surprisingly, the White House continued to resist disclosure as it appealed the case. On Dec. 6, 2002, a federal appeals court issued a two-page order indefinitely delaying the Dec. 9 disclosure deadline set by Sullivan.

Three days later, a Bush-appointed district court judge threw out GAO's case, finding that GAO lacked standing to sue, regardless of whether Congress was entitled to the documents. At the time, GAO seemed certain to appeal. But then congressional Republicans started to put the squeeze on, threatening to slash GAO's budget if it didn't drop the lawsuit.<sup>10</sup> In a statement on Feb. 7, 2003, GAO announced that it would not appeal, even though it strongly disagreed with the judge's ruling.<sup>11</sup>

"[I]n the world's greatest democracy, we should lead by example and base public disclosure on what is the right thing to do rather than on what one believes one is compelled to do," Walker said at the time.

Unfortunately, the administration has been more interested in preserving its "right" to secrecy. The appeals court ultimately affirmed Sullivan's decision on July 8, 2003, but just over five months later, on Dec. 15, 2003, the Supreme Court granted the administration's request to review the ruling, further delaying release of the task force documents. Unfortunately, whatever the outcome of this case (which is expected to be decided by July 2004), there is now little stopping the administration from withholding information from GAO virtually as it pleases,

striking a severe blow against transparency and accountability.

### **No Answers for the Minority Party**

In one of its more brazen moves, the administration announced that it would not answer any questions from the minority party (which happens to be the Democrats in both the House and Senate). In an email sent Nov. 5, 2003, to majority and minority staff on the House and Senate appropriations committees, Timothy A. Campen, director of the White House Office of Administration, explained, "Given the increase in the number and types of requests we are beginning to receive from the House and Senate, and in deference to the various committee chairmen and our desire to better coordinate these requests, I am asking that all requests for information and materials be coordinated through the committee chairmen and be put in writing from the committee."<sup>12</sup>

This would effectively give the Republican majority, which controls congressional committees, veto authority over inquiries from the Democratic minority. "I have not heard anything like that happening before," said Norman Ornstein, a congressional specialist at the American Enterprise Institute. "As far as I know, this is without modern precedent."<sup>13</sup>

### **The Clear Skies Initiative**

EPA withheld analysis showing that the administration's plan to reduce power plant emissions – the "Clear Skies Initiative" – is far less effective than alternative bipartisan legislation and only marginally less expensive.<sup>14</sup> Clear Skies does not address carbon dioxide emissions – a major contributor to global warming – unlike the competing bill, which was introduced by Sen. Thomas Carper (D-DE) and is co-sponsored by Republican Sens. Judd Gregg (NH) and Lincoln Chafee (RI). EPA gave Carper an analysis that found his bill would also more quickly and dramatically reduce power-plant emissions of sulfur dioxide, nitrogen oxide and mercury. However, the

agency withheld information, later leaked, that these cuts could be achieved relatively cheaply – increasing electricity prices by two-tenths of a cent per kilowatt hour more than the Clear Skies Initiative. "All we're interested in is having a full and honest debate so we can make a well-informed decision," Carper said. "I don't believe that's too much to ask."<sup>15</sup>

### **Drinking Water and Lettuce Contamination**

EPA has prevented regional offices from speaking to congressional staff about perchlorate contamination. Perchlorate is found in rocket fuel and has contaminated drinking water near Department of Defense sites in at least 22 states. On Jan. 15, 2004, Reps. John Dingell (D-MI) and Hilda Solis (D-CA) released a GAO report that found the Pentagon had made little progress in cleaning up these sites.<sup>16</sup> Democratic staff of the House Commerce Committee, where Dingell is the ranking Democrat, followed up with further investigation, but discovered that regional officials "had been instructed by an EPA headquarters official not to speak with committee staff."<sup>17</sup> Dingell and Solis responded in a letter to EPA Administrator Mike Leavitt, stating, "There is no need to interject another level of Headquarters bureaucracy into the process unless there is a decision on your part to delay and hamper EPA employees from providing information about the contamination of actual and potential drinking water supplies and the health impacts for the public."

Previously, the administration imposed a gag order on EPA scientists and regulators from publicly discussing perchlorate after two independent studies from the spring of 2003 strongly suggested that it is contaminating the nation's lettuce supply.<sup>18</sup> An internal agency study – completed but bottled up – suggests that perchlorate concentration in much of the nation's lettuce could range as high as 90 parts per billion, more than four times EPA's current recommended daily dose.<sup>19</sup> In 2002, EPA found that perchlorate in drinking water poses a threat to human health, particularly

infant development, at concentrations above one part per billion. Defense contractors and the Pentagon, which potentially face hefty compliance costs should EPA adopt a new perchlorate standard, challenged the agency's findings, and have apparently won out with the White House.

In response, the Natural Resources Defense Council launched a legal challenge to force the administration to reveal documents regarding industry and White House influence over EPA's approach to perchlorate. (The administration had previously denied NRDC's request for these documents under the Freedom of Information Act.)

"It appears that the White House and Pentagon have joined forces with a handful of defense contractors to stop EPA from doing its job," said Erik Olson, a senior attorney with NRDC. "They want EPA out of the business of protecting the public from this dangerous tap water toxin because it would cost the Pentagon and industry polluters millions of dollars to clean it up."<sup>20</sup>

### Medicare Reform

In June of 2003, Bush Medicare chief Tom Scully threatened to fire his top actuary, Rick Foster, if Foster released calculations to House Democrats that called into question the administration's prescription-drug plan to introduce private managed care

into Medicare.<sup>22</sup> As provided by legislative language approved in 1997, Democrats requested updated calculations based on changes in an administration-backed Medicare reform bill. Yet Scully refused to hand over Foster's analysis, saying he would release it "if I feel like it."<sup>23</sup>

Testifying before the House Ways and Means Committee in March 2004, Foster said he had estimated at the time that the president's plan – which was signed into law in November 2003 – would cost \$500 to \$600 billion over the next decade, substantially higher than the \$395 billion forecast by the Congressional Budget Office and the \$400 billion the president said he would spend. "We know you would not have had the votes to pass this bill if the true cost of the bill was known," Rep. Charlie Rangel (D-NY), the committee's ranking Democrat, said to Republican members, adding he was amazed "how far the majority party was willing to go to keep the Congress in the dark."<sup>24</sup>

### Justice Department Secrecy

On March 27, 2003, the Justice Department issued a directive that seeks to tighten control over communication between department employees and Congress. Specifically, employees are to inform the department's Office of Legislative Affairs "ahead of time and as soon as possible – of all potential briefings on Capitol Hill and significant, substantive conversations with staff and members on Capitol Hill," including phone calls. Legislative Affairs, in turn, must clear the contacts and accompany employees to briefings.

Sen. Charles Grassley (R-IA), co-sponsor of legislation to enhance whistleblower protections, called the directive "an attempt to muzzle whistleblowers" and "a very inappropriate interference," adding that he has already observed a chilling effect.<sup>25</sup>

Rep. James Sensenbrenner (R-WI), for one, has contended that the Justice Department has failed to share enough information on the implementation of the USA Patriot Act, which greatly expanded the government's ability to conduct domestic

## Fox In the Henhouse

### Tom Scully, former administrator of Centers for Medicare and Medicaid

Prior to his appointment as CMS administrator, Scully served as president and CEO of the Federation of American Hospitals, the trade association representing for-profit hospitals. He also served on the board of Oxford Health Plans and DaVita Corporation, two of the nation's largest health care service providers. Months before Scully resigned in December 2003, he obtained a waiver from HHS officials permitting him to work on Medicare legislation while negotiating with potential employers whose work would be affected by it.<sup>21</sup>

surveillance. The act is set to sunset in 2005, and Congress must be able to give a fair evaluation in deciding whether to reauthorize.

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## Cracking Down on Whistleblowers

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Government whistleblowers perform an essential societal function. They alert the public to problems that would otherwise be allowed to fester in secret, and in doing so, create pressure to solve those problems. Frequently, lives are at stake. During the Bush administration, for example, a USDA meat inspector warned of listeria contamination; two Department of Energy employees testified on rampant mismanagement at Yucca Mountain, which is set to become the country's nuclear waste dump; and an FAA employee publicly complained about the rigging of mock terrorist raids, which left a false impression of readiness. Unfortunately, instead of acting on this information, the administration sought to punish each one of these whistleblowers for speaking out.

### Yucca Mountain Nuclear-Waste Dump

In May of 2003, the Department of Energy intimidated and silenced two potential whistleblowers from testifying before Congress on politicized scientific reports and rampant mismanagement at Yucca Mountain, which Energy is pushing to make the nation's nuclear-waste dump.<sup>26</sup> Remarked Sen. John Ensign (R-NV), "It is disturbing that responsible workers who uncover problems with Yucca Mountain procedures are being retaliated against by the Department of Energy and its contractors. Their attempts to silence critics of the project have amplified our concerns about their commitment to quality assurances at Yucca Mountain."<sup>27</sup> Previously, in fall of 2002, DOE transferred the project's director of quality assurance and ordered the firing of another quality assurance manager because of their aggressiveness in identifying

technical deficiencies in the project.<sup>28</sup> A Labor Department investigator deemed this termination "extraordinarily egregious."<sup>29</sup>

### Cleanup of Nuclear Waste

EPA ombudsman Robert J. Martin alleges that former EPA Administrator Christie Todd Whitman punished him for opposing a number of nuclear-waste cleanup settlements that appeared to be industry giveaways. This included a settlement with Citigroup – a principal investor in the venture

## Fox In the Henhouse

### Robert Card, DOE's undersecretary for energy, science and environment

Card is the lead federal official in charge of developing the multi-billion dollar Yucca Mountain nuclear waste dump, where the administration plans to ship 77,000 tons of spent nuclear fuel from the nation's nuclear electricity plants and bury it for tens of thousands of years.

Previously, beginning in 1995, Card was director and senior vice president of CH2M-Hill, a large science, engineering, construction, and operations firm, which is under DOE contract to clean up the Hanford (Washington) nuclear weapons site. Card also served as president and CEO of Kaiser-Hill – founded by CH2M-Hill – which has a 10-year \$7 billion DOE contract to clean up and close the Rocky Flats (Colorado) nuclear weapons site. Both contracts fall under Card's purview as undersecretary.

At Rocky Flats, DOE has fined and reprimanded Kaiser-Hill for poor management and "serious deficiency" in safety performance, and the company had to pay restitution after revelations that \$200,000 in federal contract money had been diverted to fight a whistleblower.<sup>30</sup> Parent company CH2M-Hill has also been fined or penalized more than \$725,000 since 1996 for numerous worker safety, procurement, and other contract violations, and a House subcommittee found it overcharged the EPA Superfund millions of dollars for environmental cleanups.<sup>31</sup>

capital firm of Whitman's husband – that limited the financial giant's liability for a Superfund site in Denver to \$7.2 million, leaving taxpayers with a potential \$93 million tab for the remaining cleanup costs, according to Martin.<sup>32</sup> Whitman decided to move Martin to EPA's Office of Inspector General after this dispute. However, Martin refused the transfer and resigned on April 22, 2002, because "I will not continue to serve as an independent ombudsman but will merely answer a telephone."<sup>33</sup>

### **Listeria-Contaminated Food**

Vincent Erthal, a USDA inspector who worked the night shift at a Wampler Foods plant in Franconia, Penn., repeatedly reported food safety violations at the facility – including Listeria contamination – and requested enforcement action in the fall of 2001.<sup>34</sup> Yet USDA ignored these warnings and 10 months later the plant was linked to a listeria outbreak that killed eight people and sickened more than 50, resulting in the recall of 27 million pounds of ready-to-eat poultry products. When the Wampler story received media attention, USDA Undersecretary for Food Safety Elsa Murano attempted to discredit Erthal, claiming "he has not produced any proof, any evidence"<sup>35</sup> of USDA negligence (leaving aside the fact that inspectors are prohibited from removing government documents from inspected establishments<sup>36</sup>), and seemed to imply that he was responsible for the outbreak because he didn't push "harder to blow the whistle."<sup>37</sup>

### **Hunting Around Yellowstone**

At the beginning of the Bush administration, Bob "Action" Jackson, a long-time seasonal ranger at Yellowstone National Park, raised concerns over lax enforcement of wilderness rules. In particular, he turned the spotlight on hunters who use salt to lure elk out of the park and then leave behind carcasses that attract endangered grizzly bears, which are frequently shot when they come into contact

with hunters. The Park Service initially put a "gag order" on Jackson, prohibiting him from talking to the press, and then retaliated by refusing to rehire him for the summer of 2002.<sup>38</sup> Fortunately, as a result of a whistleblower complaint, Jackson was able to negotiate his reinstatement for the summer of 2003.<sup>39</sup> "He's been through the wringer for no apparent reason other than speaking the truth," Sen. Grassley said. "I'm glad the National Park Service finally came to its senses."

### **Airport Security**

The Federal Aviation Administration transferred Bogdan Dzakovic, who formerly led mock raids on airports, to bureaucratic Siberia after he publicly faulted the agency for suppressing warnings and rigging security tests.<sup>40</sup> "The more serious problems in aviation security we identified, the more the FAA tied our hands behind our backs and restricted our activities," Dzakovic told the National Commission on Terrorist Attacks Upon the United States, in testimony May 23, 2003. "All we were doing in their eyes was identifying and 'causing' problems that they preferred not to know about." Dzakovic further described his reassignment to the new Transportation Security Agency: "During most of 2002, my primary job was punching holes in paper and putting orientation binders together (and other menial work) for the hundreds of newly hired TSA employees. My current job is even further removed from keeping bombs, weapons, and terrorists off planes."

Dzakovic also warned that his fate could have been worse under the new law pushed by the Bush administration that restricts critical infrastructure information (discussed below): "If an employee blows the whistle with this unclassified CII evidence, it is a criminal act subject to immediate termination from the government, and up to a year in jail... If it had been law when I blew the whistle, I could have been fired and be sitting in jail instead of being vindicated and testifying today."

Far from being a threat, such whistleblowing is essential to protecting the public. As Dzakovic put it, "Lack of personal accountability for ALL levels of government service; repression of government professionals exercising the freedom to warn of security breakdowns caused by mismanagement; and abuses of secrecy as an excuse to cover up the government's own misconduct are three strikes against public safety."

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## Hiding Information in the Name of 9/11

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In the aftermath of 9/11, the administration has moved to broadly restrict access to information, including, for example, data on power plants and chemical facilities. In the past, the public has used such information to hold corporate interests and government accountable to achieve significant safety improvements. However, the administration has declined to even consider the idea that disclosure can actually make us safer, while upholding our democratic values. Instead, secrecy has taken root through a host of misguided policies, whose clearest effect has been to shield the administration's corporate allies from public scrutiny.

### A Black Hole for Corporate Secrets

To protect our nation's communities we need to ask ourselves some tough questions. Are bank computer systems safe from hackers? What threat is posed by hazardous chemicals stored near population centers? How secure are state water supplies or electrical power facilities? Are local health systems adequately prepared to respond to a community emergency?

Unfortunately, the answers to these questions are now more elusive thanks to a new exemption to the Freedom of Information Act, which was pushed by the Bush administration as part of the law that created the Department of Homeland Security.

Under this expansive exemption, which also preempts state disclosure laws, companies can permanently inoculate such "critical infrastructure information" by

voluntarily handing it over to Homeland Security. This information cannot be disclosed to the public, and crucially, it cannot be used in any civil action, private or governmental, even if the action concerns a violation of legal standards. Any government official who "leaks" such information is further subject to criminal prosecution and up to a year in prison.<sup>41</sup>

Purportedly, this is supposed to give an incentive to companies to report information on possible security vulnerabilities. Yet in the process, it creates an enormous loophole to dodge public accountability for corporate wrongdoing. Indeed, companies themselves are allowed the chief responsibility for determining what constitutes "critical infrastructure information," with virtually no criteria for government validation.

As a result, potential abuses are not hard to imagine – especially if interpreted broadly by the increasingly corporate-friendly courts. For instance, suppose a manufacturer begins using a new unregulated chemical in its production process that is highly flammable and can cause acute respiratory distress, endangering workers and the surrounding community. Under the new law, the manufacturer could head off inquiries from federal regulators – and stop workers and the public from being alerted – by disclosing potential vulnerabilities associated with the chemical to Homeland Security. In the process, it would block the information from being used in a civil action should something ever go wrong, resulting in injuries or deaths.

Needless to say, this removes important incentives for fixing the problem, making us less safe as a result. Homeland Security may be alerted to the danger, but its hands would be tied to do anything about it. Meanwhile, everyone else is left permanently in the dark, removing the threat of public pressure and embarrassment – which has always been a crucial factor in changing corporate behavior – as well as civil action against company negligence.

In the lead-up to passage, Sen. Robert Bennett (R-UT), a key co-sponsor of the

legislation, originally reached a compromise with Sens. Carl Levin (D-MI) and Patrick Leahy (D-VT) that stripped out the most troubling provisions – preempting state disclosure laws, granting civil immunity, and subjecting government officials to criminal penalties for leaks. The Governmental Affairs Committee approved this version on May 22, 2002, but during the lame-duck session following the 2002 elections, the Bush administration insisted that these provisions be restored.

Not surprisingly, a number of powerful corporate interests urged this decision. Born in the aftermath of the “Y2K” problem, the idea originated with the computer industry over concerns about cyber security, but quickly drew interest from the traditional manufacturing sector, such as the Edison Electric Institute, a trade association for electric utilities.<sup>42</sup>

In fact, as Maryland Law Professor Rena Steinzor conveyed, “EEL’s advocacy was so pronounced that, during a fall 2001 visit to [Bennett’s office], I was startled to discover that an EEL lobbyist named Larry Brown had been invited to the meeting to explain how the prospective law was intended to operate. Although Mr. Brown assured me that my comments about the legislation’s overly broad language were ‘paranoid,’ it rapidly became clear that none of the bill’s industry supporters had any interest in making revisions to address such concerns.”<sup>43</sup>

Likewise, Homeland Security’s implementing rule<sup>44</sup> provides no clarity for validating claims and no process to “declassify” critical infrastructure information, setting up the Bush administration as a black hole for corporate secrets.

### **Cloaking the Power Industry**

FERC, lead by Bush appointees, has made it more difficult for the public to evaluate problems with our electrical supply, which is especially troubling given the commission’s recent lackluster performance. Between November 2000 and May 2001, California endured rolling blackouts to compensate for what power companies said were electricity

shortages caused by soaring demand. As details emerged, however, it became clear that these companies had purposely caused the shortages to drive up prices and pad their bottom line – taking advantage of the state’s deregulation of electricity two years earlier.

In a plea agreement, the head of Enron’s western trading desk, Timothy Belden, acknowledged that between 1998 and 2001, he and “other individuals at Enron agreed to devise and implement a series of fraudulent schemes” in the California market designed to “obtain increased revenue for Enron from wholesale electricity customers and other market participants...”<sup>45</sup>

This market manipulation should have been obvious to the Federal Energy Regulatory Commission, which repeatedly refused to take action to protect consumers. As stated in a report by the Senate Governmental Affairs Committee on Nov. 12, 2002, “On a number of occasions, FERC was provided with sufficient information to raise suspicions of improper activities – or had itself identified potential problems – in areas where it had regulatory responsibilities over Enron, but failed to understand the significance of the information or its implications. Over and over again, FERC displayed a striking lack of thoroughness and determination with respect to key aspects of Enron’s activities – an approach seemingly embedded in its regulatory philosophy, regulations, and practices.”<sup>46</sup>

Now FERC is insisting that it be trusted, absent public disclosure, to appropriately monitor and deal with information on the country’s power companies. On March 3, 2003, FERC completed a rule that exempts “critical energy infrastructure information” from the Freedom of Information Act. This exemption, which is legally questionable under FOIA, includes anything deemed potentially useful to a person planning an attack on “production, generation, transportation, transmission or distribution of energy.”

Needless to say, this is incredibly broad. For example, FERC no longer discloses “historical transmission planning reports,”<sup>47</sup> in which utilities describe their power flow,



transmission plans and reliability, and present a detailed evaluation of system performance.<sup>48</sup> This sort of information could be especially important as the country moves to address deficiencies in the electrical grid following the massive power outage that swept through New York, parts of New Jersey, Ohio and Michigan in August 2003.

In an amazing provision of the rule urged by the power industry, utilities also no longer have to publicly disclose plans for building a new plant – leaving no opportunity for public questioning at any point. Likewise, FERC is withholding maps on proposed pipelines, which carry high-pressure explosive gas, including one that would run through 12 New York counties.<sup>49</sup>

## Foxes In the Henhouse

**Nora Mead Brownell, Patrick Henry Wood III, and Joseph T. Kelliher, Federal Energy Regulatory Commission**

Enron CEO Kenneth Lay successfully lobbied President Bush to appoint Brownell and Wood, both of whom are strong proponents of energy deregulation.<sup>50</sup>

Brownell, chair of the commission, previously served as a utility regulator with the Pennsylvania Public Utility Commission (PPUC). In this capacity, she helped Enron move into Pennsylvania, earning herself the nickname “Nora Mead Brownout.” Before her appointment to the PPUC, Brownell was senior vice president for corporate affairs at Meridian Bancorp, a Philadelphia financial institution, and had no experience in public utility management.

Wood is former chairman of the Public Utility Commission in Texas and previously worked at Baker & Botts, a big Texas oil law firm.

Kelliher previously worked at Public Service Electric and Gas Company as manager of federal affairs, and before that worked for the American Nuclear Energy Council in the late 1980s. Just prior to his nomination, Kelliher served as a senior policy advisor to Energy Secretary Spencer Abraham and sat on the Bush-Cheney presidential transition team.

FERC actually removed such information from its web site before completing the rule and just after the terrorist attacks of Sept. 11, 2001. In the process, the commission assumed that “all oversized documents” contained information that should not be disclosed. No review was undertaken to confirm the truth of this assumption.

FERC, in its words, “next identified and disabled or denied access to other types of documents dealing with licensed or exempt hydropower projects, certified natural gas pipelines, and electric transmission lines that appeared likely to include critical energy infrastructure information” – again, automatically yanking them from public view with no systematic review. According to FERC, this affected “tens of thousands of documents,” which the commission laughably asserts was “undertaken as cautiously and methodically as possible.”<sup>51</sup> With the new rule – which was strongly backed by power companies, including their trade association, the Edison Electric Institute – these once widely disseminated documents may be off limits even through a FOIA request.

### Information on Government Web Sites

Following the terrorist attacks on Sept. 11, 2001, federal agencies began summarily removing tens of thousands of documents from their web sites, purportedly because they might be useful in preparing another attack. Yet in yanking this information, the Bush administration failed to consider the substantial benefits of disclosure, depriving communities of critical information to protect themselves (see examples on next page).

This information can be scary, to be sure, but its removal doesn’t solve the problem. In fact, it removes important incentives for change – namely public pressure and embarrassment – and may invite complacency and a false sense of security, which is exactly what we don’t need. In this way, disclosure can be a potential tool to fight terrorism (along with everyday health and safety concerns) while upholding our democratic values.

Of course, in some cases, it may make sense to withhold information for security reasons. For instance, there is no compelling reason to provide detailed floor plans of chemical or nuclear facilities. Yet where health and safety are concerned, the presumption should lie with disclosure. The Bush administration has unfortunately gone the other way, keeping the public in the dark and potentially making us less safe as a result.

On March 19, 2002, White House Chief of Staff Andrew Card affirmed the practice of withholding information from web sites in a memo to all federal agencies ordering them to “safeguard” information that is “sensitive but unclassified.”<sup>52</sup> This new category broadly includes, in the agency’s judgment, “information that could be misused to harm the security of our nation and the safety of our people” – a virtual catchall since most information (even the phone book, for instance) at least carries the potential to be used for harm.

Shortly after Card’s memo, a provision codifying the “sensitive but unclassified” category – labeled “Sensitive Homeland Security Information” – was slipped into the Homeland Security Act (which created the Department of Homeland Security), drawing no attention or debate.<sup>53</sup> The president now has the legal authority to “prescribe and

implement procedures” for suppressing such information, which is truly an ominous development given the administration’s penchant for secrecy.

### Information on Chemical Hazards

In 1984, a Union Carbide plant in Bhopal, India, released 40 tons of the toxic chemical methyl isocyanate into the surrounding community, killing more than 2,000 and injuring over 300,000, many of whom still suffer long-term effects.<sup>54</sup> After this catastrophe, Americans began wondering whether such an accident could happen here – and the answer demanded action.

A study commissioned by EPA in 1990 found that since 1980 there were at least 15 accidents in the United States that exceeded Bhopal in volume and toxicity of chemicals released.<sup>55</sup> Only circumstances such as wind conditions, containment measures, and rapid evacuations prevented disastrous consequences from taking place.

Congress responded to this danger through a series of actions designed to make chemical facilities more accountable to the public. In particular, as part of the 1990 amendments to the Clean Air Act, Congress directed each facility to develop a “Risk Management Plan,” which EPA is to make available for public scrutiny.

### Information Yanked from Government Web Sites

- Chemical-facility Risk Management Plans.
- Report on chemical site security that concluded “security around chemical transportation assets ranged from poor to non-existent.”<sup>56</sup>
- Data on enforcement actions by the Federal Aviation Administration.<sup>57</sup>
- Maps from the Office of Pipeline Safety that show the location of pipelines and whether and when they have been inspected.
- Report by the Department of Energy on the dangers of liquefied gas fuel.
- Maps from the International Nuclear Safety Center allowing users to click on the location of a nuclear plant to learn more about it.
- For a time, the entire Nuclear Regulatory Commission web site. “Select content” was later restored.
- Reports on water resources by the U.S. Geological Survey, which also instructed the Federal Depository Libraries to “destroy” all copies of a CD-ROM on “characteristics of large public surface water supplies.”

These plans include, among other things, five-year accident histories, measures to prevent an accidental release, response plans to mitigate damage should one occur, and assessments of potential dangers to surrounding communities, including worst-case scenarios.

More than two years before the 9/11 terrorist attacks, Congress decided to restrict access to these worst-case scenario assessments for security reasons, making them available only in 50 “reading rooms” around the country. This happened after the chemical industry – a longtime opponent of such disclosure – convinced the FBI that this data created an increased risk of terrorism.

At the time, the FBI determined there was no increased risk associated with the rest of the information contained in Risk Management Plans. Nonetheless, even after this scrubbing, the RMPs were immediately yanked from EPA’s web site following 9/11. To date, all RMP information remains down, and no explanation for its removal has been given (other than in the most general sense).

While the usefulness of this information to terrorists is murky or perhaps nonexistent, the broader usefulness is crystal clear, enabling citizens to hold facilities accountable to make upgrades and improve safety in their communities.

Although new – EPA did not begin posting RMPs until June of 1999 – health

and safety advocates have already used this information to highlight problems at specific facilities. For example, exposure of this data led to hazard-reduction measures at the Blue Plains Wastewater Treatment Plant, whose vulnerability zone included the White House, Congress, and Bolling Air Force Base (see page 61 for discussion). In short order, the Blue Plains facility substituted chlorine with sodium hypochlorite bleach, which does not have the potential to drift off-site.

The Washington Post also relied on RMP data – including the worst-case scenarios restricted by Congress – to describe a number of frightening possibilities in an extensive front-page story on Dec. 16, 2001.<sup>58</sup> For instance, “a suburban California chemical plant routinely loads chlorine into 90-ton rail cars that, if ruptured, could poison more than 4 million people in Orange and Los Angeles counties”; “a Philadelphia refinery keeps 400,000 pounds of hydrogen fluoride that could asphyxiate nearly 4 million nearby residents”; and “a South Kearny, N.J., chemical company’s 180,000 pounds of chlorine or sulfur dioxide could form a cloud that could threaten 12 million people.”

Some continue to argue that the mere reporting of such information is gravely dangerous. Yet ignoring it, as the Bush administration has done thus far, is far worse. The information may be gone, but the danger remains.



# Politics Over Science

*"Tinkering with scientific information, either striking it from reports or altering it, is becoming a pattern of behavior. It represents the politicizing of a scientific process, which at once manifests a disdain for professional scientists working for our government and a willingness to be less than candid with the American people."*<sup>1</sup>

--Roger G. Kennedy, former director of the National Park Service, responding to the doctoring of findings on Yellowstone National Park

From clean air and water to worker safety to a healthy food supply, science is at odds with the Bush agenda. In response, the administration has suppressed and censored government reports, misrepresented scientific information, and stacked scientific advisory committees with its corporate and ideological allies.

Needless to say, this has not sat well with scientists. In February 2004, more than 60 distinguished scientists, including 20 Nobel laureates, released a statement blasting this political takeover of science.

"Although scientific input to the government is rarely the only factor in public policy decisions, this input should always be weighed from an objective and impartial perspective to avoid perilous consequences," the statement reads. "Indeed, this principle has long been adhered to by presidents and administrations of both parties in forming and implementing policies. The administration of George W. Bush has, however, disregarded this principle."<sup>2</sup>

In doing so, the administration has subverted democratic decision-making and undermined government accountability. When science finds a serious health or environmental problem, for instance, there is frequently public pressure to respond through regulatory action, which the administration is loath to pursue. The White House has sought to protect itself politically by keeping the public in the dark or even manufacturing "evidence" for its case. In other words, the agenda drives the information, not the other way around.

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## Suppressing Scientific Information

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As detailed below, the administration has consistently doctored scientific information to justify misguided policies. For instance, on global warming, it has pretended there is no scientific consensus; on drilling, it has buried evidence of environmental damage; and on teen pregnancy, it refuses to acknowledge studies that demonstrate the effectiveness of comprehensive sex education. This reveals an administration guided by political muscle and right-wing ideology rather than facts.

### Global Warming

In spring 2003, the White House forced EPA to drop findings on global climate change from a draft report on the state of the environment.<sup>3</sup>

The initial EPA draft, obtained by the New York Times, contained a two-page section on climate change, which was completely deleted from the version released for public comment.<sup>4</sup> This section referenced a number of studies that blamed human activity (such as rising concentrations of smokestack and tail pipe emissions) for global warming, including a 2001 National Research Council report commissioned by the White House.

The White House Council on Environmental Quality, along with the Office of Management and Budget, edited the initial draft, cutting out mention of these studies and instead referencing a study partially funded by the American Petroleum Institute that questioned climate change. EPA staff ultimately decided to delete the entire section; an internal memo stated that the agency objected to filtering science and misrepresenting scientific consensus.

This was the second time in a year the White House and Bush appointees downplayed global warming in an official document. In September 2002, for the first time in six years, the administration removed a climate change section from EPA's annual report on air pollution.<sup>5</sup>

Shortly before that, in May 2002, President Bush disavowed an EPA report<sup>6</sup> to the United

Nations that faulted human activity for global warming, juxtaposing the seriousness of the problem with the administration's unwillingness to do anything about it. "I read the report put out by the bureaucracy," the president responded dismissively.<sup>7</sup>

Describing the president's thinking, Christopher C. Horner, a lawyer at the corporate-funded Competitive Enterprise Institute, which enjoys close ties to the administration, said, "It was obvious to him that it's not tenable to say yes, we're aggressively killing the planet and then not do something aggressive about it. Our fear was that he would have to take severe action."<sup>8</sup>

Instead, the president simply denied scientific consensus. Since this episode, the White House has taken a more active interest in shaping EPA findings that might prove politically damaging.

## Fox In the Henhouse

### James Connaughton, chair of the White House Council on Environmental Quality

Previously, Connaughton was a partner in the Sidley & Austin law firm's Environmental Practice Group, where he worked on behalf of numerous corporate and trade association clients, specializing in Superfund cases. Among others, he represented the Aluminum Company of America, ASARCO, Atlantic Richfield, the Chemical Manufacturers Association, and General Electric, which is potentially responsible for more toxic Superfund sites than any other corporation in the nation.<sup>9</sup>

### Air Quality Around Ground Zero

Following the collapse of the World Trade Center towers, the surrounding area was blanketed by debris containing asbestos, lead, glass fibers, and concrete dust, among other dangerous ingredients, potentially putting clean-up workers and area residents at significant health risk.

Nonetheless, White House officials pressured EPA to declare the air around Ground Zero "safe" even though it "did not

have sufficient data and analyses to make such a blanket statement,” according to EPA’s inspector general.<sup>10</sup> At the time, EPA had not tested for a number of pollutants – including particulate matter, dioxin, and polychlorinated biphenyls (PCBs) – and had no adequate benchmarks to evaluate the health effects of airborne asbestos and the “cumulative or synergistic impacts of being exposed to several pollutants at once.”

The White House Council on Environmental Quality, which was appointed to oversee public communications about WTC environmental conditions, forced EPA to add reassuring statements to its press releases and delete cautionary notes. Among other things, this meant withholding guidance for cleaning indoor spaces, as well as information about the potential health effects from WTC debris. EPA’s inspector general compared two EPA releases with their original drafts, concluding, “Every change that was suggested by the CEQ contact was made.”

### **Mercury and Children’s Health**

After nine months of delay by the White House, EPA released a long-awaited report on children’s health and the environment<sup>11</sup> Feb. 24, 2003, just days after the Wall Street Journal obtained a draft and reported the key findings.<sup>12</sup> Most notably, the report concluded that 8 percent of women ages 16 to 49 have mercury levels in the blood that could lead to reduced IQ and motor-skills for their offspring.

This acknowledgement gives ammunition to those who question the administration’s lax treatment of coal-fired power plants, which are largely responsible for mercury emissions. Apparently this is what caused the White House to launch an extensive – and unprecedented – interagency review of the report as EPA neared completion in May 2002.<sup>13</sup>

Ultimately, the White House forced EPA to make contextual changes to downplay the effects of mercury, according to sources. The data presented by EPA was not the result of new original research; rather, it represented a compilation of a number of previous studies, which made the data mostly immune from

White House manipulation. It is unknown whether the report would have been released had it not been leaked to the Wall Street Journal by frustrated EPA staff.

### **Clean Water**

In 2003 and 2004, senior Bush officials repeatedly made misleading claims about improvements in the nation’s drinking water, according to a report by EPA’s inspector general. For instance, several EPA documents falsely reported that 94 percent of community water systems were in compliance with federal health standards – a figure that was cited in a New York Times editorial, among other news sources. In fact, the inspector general found that EPA is fully aware that this number is a gross exaggeration. Internal agency audits show that about 77 percent of known monitoring and reporting violations and 35 percent of known health violations are not included in EPA’s compliance database.

### **Asbestos Contamination**

OMB stepped in and killed EPA plans in April 2002 to warn the public that as many as 35 million homes might use asbestos-contaminated insulation.<sup>14</sup>

Specifically, EPA discovered that asbestos-contaminated ore from a mine in Libby, Mont., is contained in insulation called Zonolite, which has been used in millions of homes, businesses, and schools across the country. When inhaled, asbestos can cause lung cancer and mesothelioma (a rare cancer of the thin membranes lining the abdominal cavity and surrounding internal organs).<sup>15</sup> Fibers in the Libby ore have been found to be 10 times as carcinogenic as other, more prevalent asbestos fibers.

EPA was also set to declare a public health emergency in Libby, where the mine’s asbestos contamination has killed hundreds and sickened thousands, before John Graham, administrator of OMB’s Office of Information and Regulatory Affairs, blocked it.<sup>16</sup> Documents obtained through the Freedom of Information Act indicate the administration’s concern over “potential

national backlash” from the proposed Libby declaration.<sup>17</sup> This would have been the first public health emergency ever issued by an agency, authorizing the removal of asbestos-contaminated insulation from Libby homes and providing long-term medical care for the sick.<sup>18</sup>

### **Oil and Gas Development**

The Bush administration altered scientific information to advance an oil and gas development practice known as “hydraulic fracturing,” which involves the injection of fracturing fluids into geologic formations. Notably, Halliburton, the energy company previously led by Vice President Cheney, is the leading provider of hydraulic fracturing.<sup>19</sup>

EPA officials briefed congressional staff on the practice in August 2002 and presented a study showing that hydraulic fracturing could lead to levels of benzene in underground sources of drinking water in excess of federal drinking water standards. After congressional staff raised concerns about these environmental impacts, EPA produced a revised analysis showing that the practice would *not* result in levels of benzene above federal standards.<sup>20</sup> The agency provided no scientific explanation for the change, citing only feedback from an industry source.

The White House also removed discussion of potential negative environmental effects of hydraulic fracturing, including water contamination, from the energy plan produced by the Cheney task force.<sup>21</sup> A draft had included such concerns.

### **Drilling in the Arctic National Wildlife Refuge**

As noted earlier (see page 25), the Bush administration has pressed Congress to allow drilling in the Arctic National Wildlife Refuge (ANWR). In response to questions from a Senate committee, Interior Secretary Gale Norton withheld agency scientific information suggesting that ANWR’s caribou could be adversely affected by drilling. Instead, she erroneously reported that caribou calving has been concentrated outside the proposed drilling area in 11 of the last 18 years. In fact, the opposite is true.<sup>22</sup>

Subsequently, in spring of 2002, the U.S. Geological Survey released a 12-year study that confirmed the damaging effects of drilling on ANWR’s wildlife. However, a week later, the agency turned around and issued a two-page follow-up report at the request of high-level Interior Department officials that advanced the case for drilling.<sup>23</sup>

“They didn’t like the results of a 12-year study, so they ordered a seven-day rush job to get the results they really wanted,” said Chuck Clusen, director of the Natural Resources Defense Council’s Alaska project. “The administration’s refusal to accept that drilling in the refuge is a bad idea says something about its commitment to basing environmental decisions on sound science. That is, if it ‘sounds’ good to industry, forget about the environment.”<sup>24</sup>

Norton also renounced reports issued by the Fish and Wildlife Service in 1995 and 1997, which found that drilling in ANWR might violate U.S. treaty obligations to protect polar bears;<sup>25</sup> in December 2001, an Interior Department memo noted that the reports “[do] not reflect the Interior Department’s position,” and directed staff “to correct these inconsistencies and submit promptly a revised report for review and clearance by the department.”<sup>26</sup>

### **Wetlands Protections**

Norton also suppressed an unfavorable analysis of a U.S. Army Corps of Engineers proposal to weaken wetlands protections. The analysis, prepared by scientists at the U.S. Fish and Wildlife Service, found that the proposal would “encourage the destruction of stream channels and lead to increased aquatic functions.” Norton failed to submit the analysis, and the Corps subsequently went forward with its rollback (see pg 33).

### **Threatened Salmon**

The Bush administration dismissed scientific recommendations to increase water in Oregon’s Klamath River Basin and instead approved lower river flows favored by agribusiness interests, killing more

than 33,000 salmon, including hundreds of threatened coho salmon. Scientists at the National Marine Fisheries Service warned of this catastrophic fish kill, but Bush higher-ups overruled them, and the plan was implemented in September 2002.

This happened shortly after President Bush and his top political adviser, Karl Rove, visited Oregon and met with prominent Klamath irrigators; Rove then raised the Klamath project at a meeting with senior Interior Department officials. The Department of Interior's inspector general investigated the matter at the request of Sen. John Kerry (D-MA), and ultimately concluded that Rove did

not exert improper influence. Nonetheless, politics almost certainly played a role.

In lowering water levels, the administration ignored requirements of the Endangered Species Act, which requires biological consultations when a federal agency – in this case Interior's Bureau of Reclamation (BOR) – proposes an action that may adversely affect threatened or endangered species. However, NMFS was denied the opportunity to examine the full implications of BOR's proposal, and ordered to issue a final biological opinion that supported the action, according to Michael Kelly, a former NMFS biologist.<sup>27</sup>

## Foxes In the Henhouse

### **Bennet William Raley, assistant secretary of Interior for water and science**

Raley is responsible for development, management and conservation of the nation's water supply, including the Klamath River Basin. Over the years, he has been a determined opponent of environmental protection. He once testified in favor of legislation that would have weakened enforcement provisions of the Endangered Species Act, and lobbied against a 1994 Clean Water Act reauthorization bill that would have required EPA to set new state guidelines for controlling pollution runoff.<sup>28</sup>

Raley also served on the board of the Mountain States Legal Foundation, which has worked to open public lands for private use, and has been a member of the Defenders of Property Rights Attorney Network, a Washington-based legal foundation whose primary goal has been to promote "takings" legislation, which would require the government to compensate polluters and others who cause environmental damage for the cost of complying with environmental laws and regulations.

### **Jason Peltier, Interior's deputy assistant secretary for water and science**

Peltier participated in the decision to lower water levels in the Klamath River Basin to the benefit of agribusiness. He also has

been a key negotiator over long-term water contracts with California farmers that will commit the federal government to billions in subsidies.<sup>29</sup> Previously, he spent more than a decade working on behalf of these same farmers at the Central Valley Project Water Users Association. After President George H.W. Bush signed a law to limit subsidies for California farmers and free water to mitigate massive damage to the environment and fisheries, Peltier said, "We'll do anything and everything to keep from being harmed. If that means obstructing implementation, so be it."

### **H. Craig Manson, assistant secretary of Interior for fish, wildlife & parks**

Manson oversees both the National Park Service and the Fish and Wildlife Service. Previously, he served six years as chief counsel to the California Department of Fish and Game (DFG). In this position, Manson was accused of aiding politically connected developers and frustrating strict enforcement of resource protection laws, while working behind the scenes to weaken interpretations of key statutes and policies.<sup>30</sup> In one case, DFG and top agency officials, including Manson, were sued by a whistleblower who lost his job for disclosing an order from DFG higher ups to sign an illegal development permit.<sup>31</sup> The state of California settled the suit for an undisclosed sum.



This came after NMFS prepared two draft biological opinions suggesting potential problems. "Comparing the two draft biological opinions to the final biological opinion demonstrates that the agencies intentionally or negligently reached a result that was contrary to the law," Kelly stated, adding that the final opinion "contains very little that is supportable from a biological perspective."

In addition, the administration has refused to release a report – which has been in final draft form since November 2001 – that scientifically demonstrates the need for higher flow levels for salmon and other fish in the Klamath.<sup>32</sup> The administration has also withheld a report that concludes increased river flows would generate 30 times more economic benefit through recreational activities than the current practice of diverting it to farmers in the Klamath Basin.<sup>33</sup>

### **Yellowstone National Park**

The Bush administration disseminated misleading information on ecological problems in Yellowstone National Park in an effort to have the park removed from a list of endangered world heritage sites.<sup>34</sup>

"Yellowstone is no longer in danger," wrote Paul Hoffman, an Interior Department official, in a letter to the World Heritage Committee of the United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>35</sup> Hoffman supplied a supporting report, but it had been significantly altered.<sup>36</sup>

A draft of this report, which was prepared by professional staff, cited continuing threats to the park's streams, bison herd and trout. These sections, however, were removed or toned down in the final report, as described by Roger G. Kennedy, former director of the National Park Service (1993-1997), in a letter to UNESCO: "Through its letter to you, that Department is seeking to mislead you and other concerned citizens into thinking that Yellowstone is no longer in danger...[T]he Bush Administration aggressively edited this professional assessment of ongoing threats, dramatically changing the document's thrust.

The edited report sent to you by Mr. Hoffman, downplays ongoing threats and is yet another defiance of the role of good science in land management by the Administration."<sup>37</sup>

After lengthy debate, the committee ultimately voted to remove Yellowstone from its list of endangered parks, but set a precedent by requiring the United States to report back next year on progress in addressing a number of environmental problems within the park.<sup>38</sup> The committee also requested that the Bush administration involve independent scientists and non-governmental organizations in its review.

### **Power Plant Pollution at Mammoth Cave National Park**

The Department of Interior rejected a study that predicted adverse environmental effects if Peabody Energy went ahead with plans to construct a large coal-fired power plant 50 miles upwind of Mammoth Cave National Park in Kentucky, a designated UNESCO world heritage site and international biosphere reserve.<sup>39</sup>

The National Park Service found that the proposed plant would impair visibility in the park, which is already more polluted than nearly every other park in the country.<sup>40</sup> Nonetheless, Interior cut a deal with Peabody to allow the plant to operate, for at least the next two years, at damaging levels.<sup>41</sup>

Peabody, the world's largest coal company, and its subsidiaries contributed a total of \$450,000 to the Republican National Committee as the project was at critical stages in the approval process.<sup>42</sup>

### **Agricultural Pollution**

In February 2002, USDA officials instructed staff scientists to seek prior approval on all manuscripts pertaining to "sensitive issues,"<sup>43</sup> including:

"Agricultural practices with negative health and environmental consequences, e.g. global climate change; contamination of water by hazardous materials (nutrients, pesticides, and pathogens); animal feeding operations

or crop production practices that negatively impact soil, water, or air quality.”<sup>44</sup>

For instance, in response to industry complaints, USDA higher-ups barred a staff scientist, microbiologist James Zahn, from publishing the results of a study that found antibiotic-resistant bacteria in the air near hog confinements in Iowa and Missouri.<sup>45</sup> Zahn was also prohibited from accepting a number of speaking engagements to share his findings.<sup>46</sup>

USDA officials told Zahn he was being silenced because the study dealt with human health, an issue outside his unit’s mission.<sup>47</sup> Yet the web site for the Swine Odor and Manure Management Research Unit, where Zahn worked, states that its mission “is to solve critical problems in the swine production industry that impact production efficiency, environmental quality, and *human health*.”<sup>48</sup> (emphasis added)

### Food Safety

In late 2003, the USDA boasted about steep declines in the food-borne pathogens *Listeria* and *Salmonella*. “These data validate our scientific approach to protecting public health through safer food,” said Elsa Murano, the agency’s undersecretary for food safety, in a press release just before Thanksgiving, which claimed a 12 percent reduction in *Salmonella* from the previous year and a 66 percent reduction over the previous six years. A separate press release touted a one-year 25 percent decline in *Listeria* and a 70 percent reduction over the previous six years.

Unfortunately, on closer inspection, these numbers turned out to be highly misleading:

- First, the data derives from random sampling as part of USDA’s verification testing program, which is meant to gauge regulatory compliance, not nationwide prevalence of pathogens. Indeed, USDA’s own *Salmonella* progress report states, “Because the [verification testing] program is not statistically designed, different establishments may be sampled from

year to year, confounding rigorous trend analyses.”<sup>49</sup> Likewise, the agency also warns against this for testing ready-to-eat meats, which includes *Listeria*: “The data presented here are from regulatory testing programs that change from year to year and even within years and thus comparisons should be made with caution... These regulatory programs have not been designed to test for statistically significant change from one year to the next.”<sup>50</sup>

- Second, the data do not cover a full year. The press releases were issued in the fall when only eight or nine months of testing had been reported.
- Third, the data is not weighted to account for differences in beef and poultry. *Salmonella* is found at higher rates in poultry than beef. However, in 2002, of the roughly 58,000 samples taken, 31,000 were ground beef, which had a 2.6 percent incidence of *Salmonella*, and just 429 were ground chicken, which had a 29.1 percent incidence.<sup>51</sup> Without accounting for this difference, USDA was virtually guaranteed to find lower rates of *Salmonella*.

These problems were uncovered by Barbara Kowalczyk, a statistician in the Department of Biostatistics at the University of Wisconsin and board member of Safe Tables Our Priority (STOP). “[USDA is] going around using sound science as their selling point, yet they’re really not using it,” said Kowalczyk, whose son died from *E. coli* 0157:H7. “The fact is that they misled the American public and Congress by issuing these press releases, and it’s irresponsible.”<sup>52</sup>

### Prescription Drug Advertising

The FDA released a report in January 2003 that distorts scientific evidence on the value of prescription drug advertising in a way that supports the pharmaceutical industry.<sup>53</sup>

In its report, FDA claimed that a survey of 500 doctors showed that direct-to-consumer (DTC) advertising “when

done correctly, can serve public health functions.”<sup>54</sup> The agency claimed that most physicians “agreed that, because their patient saw a DTC ad, he or she asked more thoughtful questions during the visit.” In fact, 59 percent of respondents said the fact that a patient had seen an advertisement had no beneficial effects and just 4 percent said the advertisement informed or educated the patient.<sup>55</sup>

### **Stem Cell Research**

After banning federal funding for research on new stem cell lines, President Bush misleadingly assured the public that the move would not hamper medical progress, claiming research on “more than 60” existing lines “could lead to breakthrough therapies and cures.”<sup>56</sup>

In September 2001, however, HHS Secretary Tommy Thompson told Congress that only 24 or 25 cell lines were actually suitable for experimentation.<sup>57</sup> The director of the National Institutes of Health, Elias Zerhouni, painted an even bleaker picture in May 2003. Just 11 stem cell lines are “widely available to researchers,” he testified,<sup>58</sup> and even these lines might not be fit for human use because they are derived from mouse feeder cells and might be infectious.

Scientists have found a way to develop uninfected stem cell lines using human bone marrow cells but cannot use this method due to President Bush’s ban.<sup>59</sup>

### **Research on HIV and Sexual Behavior**

In early October 2003, congressional Republicans sent an apparent hit list to the National Institutes of Health identifying more than 150 scientists with agency grants to conduct research on HIV and sexual behavior. NIH responded by contacting these researchers, apparently to put the agency in better position to defend the grants.

Soon after this began, some of these researchers alerted Rep. Henry Waxman (D-CA) – who had created a web site on political influence over science<sup>60</sup> – and expressed fear of losing their funding. One researcher

wrote, “We are seriously concerned that extra-scientific criteria are being introduced into the NIH grant making process that until now has been based solely on the scientific merit and public health importance of proposed research.”

“This atmosphere of intimidation is unacceptable,” Waxman responded in a letter to HHS Secretary Tommy Thompson, who oversees NIH. “These researchers, who are tackling serious and intractable health problems, have done nothing wrong... Contacting and alarming the researchers sets a terrible precedent.”<sup>61</sup>

The Traditional Values Coalition, a conservative advocacy organization, has claimed responsibility for authoring the list. However, HHS officials appear to have at least provided assistance, according to Waxman; some of the information included (such as funding levels) is not publicly accessible but easily retrieved through the internal HHS computer system, and a number of researchers are listed without any corresponding grants but with the notation “nothing found on HHS search,” implying a search conducted at the agency. If HHS did indeed help produce the list, it represents a deeply troubling sign. As Waxman put it, “Imposing ideological shackles on this research would be a serious public health mistake.” Thompson claims his staff was not involved in creation of the list.<sup>62</sup>

The list reportedly emerged after NIH asked congressional staffers to identify 10 grants questioned at a congressional hearing.<sup>63</sup> However, NIH was instead sent the list of 150, prompting the agency to contact the researchers.

### **Sex Education**

The Bush administration has suppressed and distorted scientific evidence about effective sex education programs in an effort to promote an abstinence-only agenda.

The Centers for Disease Control and Prevention recently discontinued a project called “Programs that Work,” which identified sex education programs that scientific

studies found to be effective.<sup>64</sup> All five of the programs identified in 2002 involved comprehensive sex education for teenagers and none were abstinence-only programs. In ending the project, CDC removed information about these programs.

The Bush administration also altered performance measures for abstinence-only programs – trading measures of participants’ actual sexual behavior for measures of their program attendance and attitude.<sup>65</sup> Such measures cannot truly gauge the effectiveness of sex education programs and are likely to paint an overly rosy picture of the programs’ success.

### **Condoms**

The Centers for Disease Control and Prevention removed a fact sheet from its web site that included information on proper condom use, the effectiveness of different types of condoms, and studies showing that condom education does not promote sexual activity.<sup>66</sup> This was replaced with a document that emphasizes condom failure rates and the effectiveness of abstinence.<sup>67</sup>

Likewise, the U.S. Agency for International Development (USAID) also yanked information from its web site on the effectiveness of condoms. Specifically, the agency removed a document entitled, “The Effectiveness of Condoms in Preventing Sexually Transmitted Infections,” which stated that condoms are “highly effective” in preventing HIV/AIDS, adding, “Public and government support for latex condoms is essential for disease prevention.”<sup>68</sup> A document entitled “USAID: HIV/AIDS and Condoms” remains on the site, but it merely states that “condom use can reduce the risk of HIV infection.”<sup>69</sup>

### **Breast Cancer and Abortion**

The Bush administration has wrongly suggested that abortions increase a woman’s risk of getting breast cancer. Previously, the National Cancer Institute (NCI) web site referenced several respected studies concluding that scientific evidence does

not support this claim. However, the administration removed this page, and replaced it with a fact sheet that incorrectly indicated a great deal of uncertainty. The fact sheet stated:

“Some studies have reported statistically significant evidence of an increased risk of breast cancer in women who have had abortions, while others have merely suggested an increased risk. Other studies have found no increase in risk among women who had an interrupted pregnancy. NCI is currently supporting mechanistic and population studies to gain a better understanding of the hormonal changes that occur during pregnancy and interrupted pregnancies and how they relate to breast cancer risk.”<sup>70</sup>

NCI subsequently convened a conference to review scientific data on reproductive events that may impact a woman’s risk of getting breast cancer. The participants, who represented a diversity of breast cancer expertise, including epidemiologists, clinicians, basic scientists and breast cancer activists, concluded “abortion is not associated with an increase in breast cancer risk.”<sup>71</sup> (In March 2004, a comprehensive review of 53 studies involving 83,000 women in 16 countries also found no link.<sup>72</sup>) Shortly thereafter, NCI revised its web site to reflect this conclusion.

## **Stacking Scientific Advisory Committees**

Federal agencies convene scientific advisory committees to provide unbiased, expert advice, ideas, and opinions on a wide range of topics. Their findings, for instance, frequently form the basis of health, safety and environmental regulation. Thus, it is crucial that these committees be, as the law requires, “fairly balanced in terms of the points of view represented and ... not be inappropriately influenced by the appointing authority or by any special interest.”<sup>73</sup>

Unfortunately, the Bush administration has screened nominees for advisory committees based on their political views rather than their scientific qualifications, tilting committees in favor of corporate interests and right-wing ideologues, as detailed below. This effort goes hand in hand with the administration's proposed agency-wide "peer review" guidelines (discussed on page 56), which allow industry-funded scientists to serve while treating those funded by government with skepticism. The administration clearly wants "advice" that will fit its predetermined agenda regardless of the weight of the scientific evidence.

### Childhood Lead Poisoning

In the summer of 2002, a CDC advisory committee was set to reexamine federal standards for lead and the health risks posed to children. Knowledgeable observers believed that the committee would advise more stringent controls based on new scientific evidence of lead's damaging effects even at low levels.<sup>74</sup> However, HHS Secretary Tommy Thompson, who oversees CDC, stepped in and stacked the committee with those friendly to the lead industry and predisposed against new regulation.

At the same time, Thompson rejected the reappointment of Michael Weitzman, pediatrician in chief at Rochester General Hospital and author of numerous publications on lead poisoning (who CDC staff had planned to nominate as the committee's new chair<sup>75</sup>), as well as staff nominations of two other accomplished doctors with expertise in lead poisoning.<sup>76</sup> This was the first time the HHS secretary had ever rejected nominations by the committee or CDC staff, according to Susan Cummins, chair of the committee from 1995 to 2000.<sup>77</sup> In response, CDC substituted four nominees, who are closely allied with the lead industry, including:

- William Banner, professor of pediatrics at the University of Oklahoma, who has served as an expert witness for the lead industry, downplaying the effects of lead on children;<sup>78</sup>
- Sergio Piomelli, a professor at Columbia Presbyterian Medical Center, who has argued against lowering the acceptable limit of lead in the blood, saying "there is no epidemic of lead poisoning in the United States today, but some people are trying to create an epidemic by decree";<sup>79</sup>
- Joyce Tsuji, principle scientist at Exponent, whose corporate clients include Dow Chemical, Dupont, and ASARCO, which is now involved in a lead dispute with EPA (Tsuji withdrew her nomination due to scheduling conflicts);<sup>80</sup> and
- Kimberly Thompson, an assistant professor of risk analysis and decision science at Harvard, who is affiliated with the Harvard Center for Risk Analysis (HCRA), which has 22 corporate funders with a financial interest in the deliberations of the lead advisory committee.<sup>81</sup> This includes Ciba-Geigy Corp., FMC Corp., and Monsanto, which have Superfund sites with lead contamination.<sup>82</sup> John Graham, the administration's regulatory czar, previously served as director of HCRA.

Banner, Piomelli and Thompson have since become members of the committee.<sup>83</sup> It was later learned that the lead industry had a hand in the appointments. At the committee's October 2002 meeting, Piomelli stated, "Before some reporter detects it, I would like you to know that I was called a few months ago from somebody in the lead industry ... and asked if I don't mind if they nominated me for this committee. I said, 'Yes.'"<sup>84</sup>

The committee, in place for more than a decade, examines the science of lead poisoning and advises CDC on appropriate policy measures, including the limit on acceptable lead levels in the blood. According to CDC, more than 400,000 children in the United States between the ages of 1 and 5 have elevated levels of lead in their blood,<sup>85</sup> which can result in damage to the central nervous system, kidneys, reproductive

system, as well as decreased intelligence, among other harmful effects.

### Environmental Health

The administration overhauled a committee that advises the CDC's National Center for Environmental Health on a wide range of public health issues, including the effects of low-level chemical exposures. Fifteen new members were added to the 18-person panel, including a number with close ties to corporate interests. In particular, this includes:

- Dennis Paustenbach, who conducts paid risk assessment for industry and testified on behalf of Pacific Gas & Electric, which was ultimately found guilty of poisoning drinking water, in the trial that made Erin Brockovich famous;
- Roger McClellan, the former director of the Chemical Industry Institute of Toxicology; and
- Becky Norton Dunlop, a vice president at the Heritage Foundation and former head of Virginia's natural resources department, where she aggressively fought against environmental protection.<sup>86</sup>

### Global Warming

Acting at the behest of industry lobbyists, the Bush administration succeeded in ousting renowned scientist Robert Watson as chair of the U.N.'s Intergovernmental Panel on Climate Change.<sup>87</sup>

Within the Bush administration's first weeks, ExxonMobil delivered a confidential memo (obtained by the Natural Resources Defense Council) to the White House urging that Watson be replaced with someone skeptical of the scientific consensus that global warming is a serious problem.<sup>88</sup> Later, ExxonMobil was joined in this campaign by the coal industry and electric utilities.

Not surprisingly, the Bush administration, along with OPEC countries, opposed Watson's reappointment in April 2002 when more than 100 governments met

to elect the head of the panel. India also opposed Watson, arguing that a scientist from a developing country deserved a turn as chair, and in the end, Indian scientist Rajendra Pachauri was elected. It marked the first time the chair had not been selected by consensus.

A year earlier, under Watson's leadership, the 2,500-member panel produced its third comprehensive global warming assessment, concluding, "There is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities." This assessment further predicted that temperatures would rise between three and 10 degrees by the end of the century. Needless to say, this is not what industry and the Bush administration want to hear – even if it is true.

### Chemicals and Allied Products

A legal settlement requires the inclusion of an environmental representative on the Industry Sector Advisory Committee for Chemicals and Allied Products. However, the Bush administration rejected the application of Greenpeace's Rick Hind, and instead selected Brian Mannix, a vocal opponent of regulation and a researcher at the conservative Mercatus Center.

Mannix has strong ties to industry and the conservative policy community in Washington. Previously, he served as director of science and technology studies for the Manufacturers Alliance for Productivity and Innovation, an industry-sponsored consulting and lobbying group.<sup>89</sup>

### Ergonomic Hazards

After repealing Clinton-era ergonomics standards, the Bush administration issued a feeble "replacement" plan to adopt voluntary industry-specific guidelines (see page 37). This plan created the National Advisory Committee on Ergonomics (NACE) to examine relevant research and provide advice on the guidelines.

This appears to be an effort to supplant the CDC's National Institute of Occupational Safety and Health, which is legally charged

with evaluating worker safety and health. In July 1997, after reviewing more than 600 studies, NIOSH concluded that injuries caused by ergonomic hazards are a serious and widespread problem.

NACE, however, is more likely to spout the administration's line regardless of the scientific evidence. With seven management representatives and just two union safety and health experts, it is the first advisory committee in OSHA's 32-year history that does not include an equal number of management and union representatives.

### **Occupational Safety and Health**

HHS Secretary Tommy Thompson overruled the recommendations of NIH science administrators and removed three ergonomics experts from a study section that evaluates research grants on workplace injuries for the National Institute of Occupational Safety and Health.<sup>90</sup> Specifically, Thompson rejected:

- Laura Punnett, a professor at the University of Massachusetts, Lowell, who expressed public support for workplace ergonomics standards;
- Catherine Heaney, an associate professor of public health at Ohio State University, whose recent research has focused on ergonomics; and
- Manuel Gomez, director of scientific affairs at the American Industrial Hygiene Association.

A study section does not make policy recommendations (unlike an advisory committee); rather, it makes determinations on the scientific merits of proposed research projects. For this reason, Thompson's attention surprised insiders,<sup>91</sup> as well as those affected. "I was shocked," Punnett said of being rejected. "I think it conveys very powerfully that part of the goal is to intimidate researchers and limit what research questions are asked."<sup>92</sup>

Another prospective member said someone from Thompson's staff screened

her nomination by asking politically charged questions – in particular whether she would be an advocate on ergonomics issues. "I was intrigued and offended at the same time," recalled Pamela Kidd, associate dean of the College of Nursing at Arizona State University. "I purposely answered in a way that would not put me on either side."<sup>93</sup>

### **Food Safety Hazards**

In March 2003, Agriculture Secretary Ann Veneman named nine food-industry representatives and no consumer representatives to a committee on food safety hazards, such as E. Coli and Salmonella.<sup>94</sup> This included Virginia Scott of the National Food Processors Association, which calls itself "the voice of the \$500 billion food processing industry," and Robert Seward of the American Meat Institute. The committee is supposed to be "impartial," but that seems impossible given its built-in slant in favor of food manufacturers.

### **Dietary Guidelines**

In August 2003, HHS and USDA appointed 13 members to an advisory committee on dietary guidelines, seven of which have significant ties to food, drug, dietary supplement and other related industries.<sup>95</sup>

For example, this includes Fergus M. Clydesdale, who has held stock in and consulted for several food-related companies.<sup>96</sup> Clydesdale runs a pilot food plant at the University of Massachusetts at Amherst that receives corporate support, and has worked closely with the industry-backed American Council on Science and Health, which downplays food safety concerns.<sup>97</sup> He is also chairman of the board of directors at the industry-funded International Life Sciences Institute (ILSI) and previously served as director of the industry-funded International Food Information Council (IFIC).<sup>98</sup>

In announcing the new committee roster, HHS and USDA failed to disclose ties to corporate interests. This is especially significant because the committee (the Dietary Guidelines Advisory Committee)

reviews and revises the Dietary Guidelines for Americans report, a “broad-based nutrition guide.”<sup>99</sup> Changes in the guidelines can affect government policy as well as consumers’ eating habits – helping or harming food manufacturers’ profits.

## Fox In the Henhouse

### **Eric Hentges, director of USDA’s Center for Nutrition Policy and Promotion**

Hentges is in charge of redesigning the nation’s Food Pyramid and Dietary Advisory Guidelines, and deciding what foods go into USDA’s Thrifty Food Plan, which governs Food Stamp recipients. He previously served as vice president of applied technology and education services at the National Pork Board (formerly the National Pork Producers Council), and was director of human nutrition research for the National Livestock and Meat Board.<sup>100</sup> In the past, Hentges has defended higher-sodium pork and fatty sausages, supported the consumption of hot dogs by children, and opposed nutrition labeling on steaks and pork chops.<sup>101</sup>

### **Silicone Breast Implants**

A plastic surgeon was permitted to sit on an FDA advisory committee reviewing the safety of implants manufactured by Inamed Aesthetics even though he had previously received a grant from the company.

Dr. Michael Miller, of the Anderson Cancer Center at the University of Texas, received a \$25,000 grant from Inamed to develop a CD-ROM on breast reconstruction.<sup>102</sup> The CD-ROM includes a video of Miller making statements that breast implants are indeed “safe.”<sup>103</sup>

FDA determined that Miller could participate in the committee’s deliberations because, “He reported his institution’s past and current involvement with firms at issue.”<sup>104</sup> The agency then failed to appropriately disclose the conflict of interest at the beginning of the committee’s meeting and instead cryptically alluded to it; an FDA official merely stated that the agency “took into consideration certain matters regarding

Dr. Miller.” The FDA guidance on conflicts of interest for advisory committee members states that a disclosure should be made into the record that would “adequately enable a reasonable person to understand the nature of the conflict and the degree to which it could be expected to influence the recommendations the SGE [special government employee, in this case committee member] will make.”<sup>105</sup>

Not surprisingly, Miller was a part of the 9-to-6 majority that recommended returning the implants to the market.

### **Genetic Testing**

The Food and Drug Administration declined to renew the charter of a committee that recommended regulation of genetic testing, which reads a person’s DNA to suggest risk of disease.<sup>106</sup> Currently, companies are marketing tests for genes, frequently through the Internet, even where there is no established link to disease, needlessly worrying consumers and conning them out of their money. As a result of the committee’s recommendations, FDA initiated a rulemaking during the Clinton administration to oversee the marketing of such testing. However, this rulemaking has now been abandoned, along with the committee.

Members of the committee learned HHS had not renewed the committee’s charter in September 2002, a month after it lapsed.<sup>107</sup> Shortly thereafter, the Bush administration established a new committee – the Secretary’s Advisory Committee on Genetics, Health, and Society – which, as the name implies, has a broader scope than its predecessor, focusing on the implications of genetic technologies.

### **Human Research Protections**

HHS scrapped a committee that, over the objections of the pharmaceutical industry, recommended new protections for human research subjects. Specifically, the committee urged a tightening of conflict-of-interest rules and new restrictions on research involving the mentally ill.

The committee also angered religious conservatives when it declined to support



the administration's effort to include fetuses under a regulation involving research on newborns. This appears to have been the death knell. The committee (Secretary's Advisory Committee on Human Research Protections) has since been reincarnated and the new charter<sup>108</sup> makes clear that fetuses and embryos are to be treated as human research subjects.

Jonathan Moreno, director of the University of Virginia Center for Biomedical Ethics and member of the Clinton-appointed committee, was asked to join the new 11-member committee, but declined over concerns about the absence of a patient advocate. "You can say all heads of research are patient advocates, but institutional roles do mean something and when it comes time to take a position on research protections the institution or business that you represent makes a difference," Moreno said.<sup>109</sup> After Moreno declined to join the committee, the administration appointed Susan Weiner, president and founder of Children's Cause,<sup>110</sup> which advocates for more effective treatments of childhood cancer.

Other appointees include Cindi Berry, a former speechwriter for Senate Majority Leader Bill Frist, and C. Christopher Hook, who is active in Christian medical groups and has testified before Congress that embryonic stem cell research amounts to a "license to kill."<sup>111</sup>

## Bioethics

On Feb. 27, 2004, President Bush dismissed two handpicked members of his Council on Bioethics who had publicly supported human embryonic stem cell research – which the president opposes – and replaced them with three members who can be counted on to fall in line.

The two dismissed members include Elizabeth Blackburn, a renowned biologist at the University of California at San Francisco, and William May, a highly respected emeritus professor of ethics at Southern Methodist University. In their place, the president appointed:

- Diana Schaub, a political scientist at Loyola College who has opposed embryonic stem cell research, referring to it as "the evil of the willful destruction of human life;"<sup>112</sup>
- Benjamin Carson, director of pediatric neurosurgery at Johns Hopkins University, who has called for more religion in public life; and
- Peter Lawler, a professor of government at Berry College in Georgia, who has written against abortion and the "threats of biotechnology."

The council – formed by Bush shortly after taking office – has produced reports on human cloning, stem cell research and the use of biotechnology to enhance human beings. However, it frequently encountered problems reaching consensus as scientific facts took a backseat.

Describing her experience in a Washington Post op-ed, Blackburn wrote, "I consistently sensed resistance to presenting human embryonic stem cell research in a way that would acknowledge the scientific, experimentally verified realities. The capabilities of embryonic versus adult stem cells, and their relative promise for medicine, were obfuscated."<sup>113</sup>

Of course, consensus will now be easier to achieve, but debate is stifled in the process. "I am convinced that enlightened societies can only make good policy when that policy is based on the broadest possible information and on reasoned, open discussion," Blackburn continued. "Narrowness of views on a federal commission is not conducive to the nation getting the best possible advice. My experience with the debate on embryonic stem cell research, however, suggests to me that a hardening and narrowing of views is exactly what is happening on the President's Council on Bioethics."

## Prevention of Injury and Disease

The administration appointed staunch opponents of sex education and a number of corporate executives to a CDC committee

that gives advice on “policy issues and broad strategies for promoting health and quality of life by preventing and controlling disease, injury and disability.”<sup>114</sup>

Specifically, this includes Joe S. McIlhaney, Jr., the founder and president of the Medical Institute for Sexual Health in Austin, Texas, which is against sex-ed programs, needle exchange, condoms, and legal abortion;<sup>115</sup> Shepherd Smith, the president and founder of Institute for Youth Development, a group that sponsors abstinence education forums, in Sterling, Va.;<sup>116</sup> and executives from General Motors and General Electric Medical System.

### HIV/AIDS

Christian conservative Jerry Thacker, who has called AIDS the “gay plague” and referred to homosexuality as a “deathstyle,” was tapped to serve on the Presidential Advisory Council on HIV/AIDS.<sup>117</sup> This choice caused much controversy and Thacker eventually withdrew.

### Reproductive Health Drugs

David Hager, an obstetrician/gynecologist who strongly opposes abortion, was appointed to serve on the FDA panel that reviews reproductive health drugs. Hager recommends specific scripture readings and prayers for such ailments as headaches and premenstrual syndrome.<sup>118</sup>

Meanwhile, at least two nominees proposed by FDA staff were rejected by political higher ups: Donald R. Mattison, former dean of the University of Pittsburgh School of Public Health, and Michael F. Greene, director of maternal-fetal medicine at Massachusetts General Hospital.<sup>119</sup>

### Drug Abuse

The administration rejected the nomination of William R. Miller, a professor of psychology and psychiatry at the University of New Mexico in Albuquerque, to serve on the National Advisory Council on Drug Abuse, which guides funding and policy decisions at a unit of the National Institutes of Health.

Shortly after his nomination, someone from HHS Secretary Tommy Thompson’s office called and asked Miller about his views on the president’s faith-based initiative, needle exchange programs, the death penalty for drug kingpins, and abortion, keeping a tally of whether he agreed with the views of the White House.<sup>120</sup> The caller also asked whether Miller had voted for Bush. When Miller said he had not, the caller asked him to explain. Miller believed he did not give enough right answers, and he was not appointed to the panel.

Likewise, a Thompson representative vetted a staff nominee for NIH’s Muscular Dystrophy Research Coordinating Committee, asking for views on various Bush administration policies, none of them related to the work of the committee. This included the president’s embryonic stem cell policy.<sup>121</sup>

### Army Science

The secretary of defense’s White House Liaison Office disapproved about a dozen nominees to the Army Science Board (ASB) after uncovering their campaign contributions through the web site Opensecrets.org (which lists individual donors), according to one of the rejected nominees.<sup>122</sup>

In a letter to Science Magazine, William E. Howard III reported that a member of the ASB staff told him that his nomination was rejected because he had contributed to the presidential campaign of Sen. John McCain (R-AZ).<sup>123</sup> In fact, Howard never made such a contribution, but someone with the same name, different middle initial (William S. Howard) had contributed \$1,000. Howard tried to clear things up, but ASB would not reconsider because “they did not want to upset the OSD White House Liaison Office.”

Prior to his nomination, Howard had served as a consultant to the board, as did other rejected nominees. “The country is not being well served by any administration’s policy of seeking advice only from a group of scientists and engineers who have passed the administration’s political litmus test,” Howard wrote.



## Irresponsible Contracting

Under the Bush administration, federal contracting and grantmaking has frequently been done in secret, without accountability, and for apparently political purposes.

The most high profile example has been the no-bid contracts for Iraq reconstruction, the largest of which went to Halliburton, where Vice President Cheney previously served as CEO. However, the administration has undermined sound contracting in other ways as well.

From the start, the administration moved to repeal Clinton-era contractor responsibility standards while simultaneously pushing for federal funding of religious congregations, which are exempt from civil rights laws. Meanwhile, federal grantees that disagree with the president's policies – including, for instance, those that favor comprehensive sex education – have been singled out for intimidation and subjected to retaliatory audits.

Later, in May 2003, the administration issued new rules for privatizing the federal workforce that threaten to create a modern-day spoils system and a government run by special interests for special interests.

## Turning Away from Contractor Responsibility

Say you are the government. You are considering two contractors, equal in every way except that one has repeatedly violated labor and environmental laws. Common sense says you contract with the law-abiding company. But then, you wouldn't be the Bush administration.

Two days after Christmas 2001, with no one around to object, the administration quietly revoked<sup>1</sup> a rule issued at the end of the Clinton administration<sup>2</sup> that instructed government contracting officers to consider a bidding company's record of compliance with the law – including tax laws, labor laws, employment laws, environmental laws, antitrust laws and consumer protection laws – before awarding taxpayer dollars.

Too frequently, federal contractors do not take these laws seriously, as a number of recent reports have documented.<sup>3</sup> Between 1990 and 2002, the nation's top 43 contractors paid about \$3.4 billion in penalties, restitution, settlements, and Superfund cleanup costs, according to the Project on Government Oversight. Sixteen of these contractors were convicted of a total of 28 criminal violations, yet only one was suspended from doing business with the government, and that suspension lasted just five days. The Clinton contractor responsibility rule would have provided a powerful new incentive for these contractors to clean up their act.

Not surprisingly, industry groups, such as the U.S. Chamber of Commerce, strongly urged the Bush administration to repeal the rule, dishonestly arguing that it amounted to "blacklisting" – that companies could be barred from receiving federal contracts with no due process. In fact, each determination under the rule was to be made on a case-by-case basis for the contract in question and would not have constituted "debarment" for all federal contracts; in other words, a company denied one contract on the basis of its legal track record would still have been eligible for another contract. The blacklist existed only in the imagination of industry lobbyists.

As for due process, the rule required contracting officers to coordinate adverse determinations with agency legal counsel, notify bidders if they were found non-responsible, and provide justification for such a determination – which could then be challenged through an appeals process.<sup>4</sup> Contracting officers were further instructed to give the greatest weight to convictions or civil judgments against the prospective contractor in the preceding three years.

In justifying repeal, the Bush administration largely ignored industry's cries of blacklisting, and instead argued in vague terms that it would be impossible to implement and too burdensome on industry. Again, these were not serious arguments – particularly when considered next to the benefits of ensuring that the government does not contract with chronic lawbreakers.

To facilitate implementation, the rule required bidding companies to disclose whether they had been found liable of violating the law within the preceding three years. This minimal disclosure requirement – which was the only "burden" placed on industry – would have made it easy for contracting officers to make the necessary determinations.

In the end, there is just one core question (which the objections of industry and the administration sought to mask): Should we consider a company's compliance with the law in awarding taxpayer dollars? Common sense says yes. Industry lobbyists and their allies in the Bush administration clearly believe the answer is no.

### Fair Labor Standards

On Feb. 17, 2001, President Bush signed an executive order<sup>5</sup> abolishing a requirement that construction contractors engage in project labor agreements (PLAs) with their workers. PLAs help to ensure fair treatment of workers and have been shown to save the government money by resolving potentially contentious labor issues in advance. Elimination of the requirement was a top priority for builders seeking to avoid fair labor practices and hold down wages and benefits.

### **The Equal Opportunity Survey**

The Bush administration has failed to implement a tool known as the Equal Opportunity Survey, which is designed to help the Office of Federal Contract Compliance Programs (OFCCP) better target reviews of federal contractors and identify potential violations.

The survey gathers employment information from federal contractors and subcontractors – including information on affirmative action plans as well as compensation practices broken down by sex and race – to help uncover illegal pay disparities.<sup>6</sup>

The OFCCP completed surveys of 50,000 contractors in 2001, but has so far failed to use them to target reviews. The office also waited more than a year before sending out a scaled-down second round of surveys to just 10,000 contractors<sup>7</sup> in late 2002.

Authorization for the Equal Opportunity Survey expired in March 2003, and the OFCCP is seeking a limited extension for just 10,000 surveys a year for two years.<sup>8</sup>

opposed) that sought to prohibit religious groups from discriminating on the basis of religion when hiring for federally funded positions. The Senate debated similar legislation throughout 2001 and 2002, but never reached agreement, with many, like the House Democrats, concerned over the issue of employment discrimination.

On Dec. 12, 2002, the president took matters into his own hands and issued Executive Order 13279, which instructed federal agencies to alter preexisting policies to allow religious congregations to receive federal funds for non-religious social services. On Sept. 22, 2003, HHS responded by issuing three implementing regulations<sup>10</sup> – covering the Community Service Block Grant (CSBG) program, Temporary Assistance for Needy Families (TANF), and a number of substance abuse programs – and HUD issued another regulation covering eight different programs.<sup>11</sup> Later, in March 2004, the Department of Agriculture also proposed implementing regulations,<sup>12</sup> and HUD proposed to extend coverage to state Community Development Block Grant (CDBG) programs.<sup>13</sup>

The administration has publicly argued that these actions simply “level the playing field” for religious organizations. However, administration officials told the Associated Press that the executive order was “aimed at giving those groups a leg up in the competition for federal money”<sup>14</sup> – and indeed, this is consistent with other administration actions, as detailed below. At one point, for instance, the administration actually moved overtly to set aside grant funds for faith-based organizations, backing down only under threat of litigation.

Disturbingly, the administration’s preference seems rooted in the religious character of these organizations rather than their performance, which has never been proven superior to that of secular groups. On the contrary, in October 2003, academic researchers found (in the first ever such comparative study) that secular groups in two Indiana counties were more effective at job training, placing 53 percent of their

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### **Federal Funding for Religious Organizations**

President Bush has moved to provide federal funding to religious institutions for social services – in what’s widely known as the “faith-based initiative” – even though he has failed to win Senate backing.

Groups such as Catholic Charities, United Jewish Communities, and Lutheran Social Services have long been involved in federal service delivery. However, these groups are distinct from any house of worship, and subject to the same standards as all other federal grantees. The Bush administration has pushed to remove this wall between church and state and allow federal dollars to go directly to religious congregations, which operate by their own distinct rules.

In July 2001, the House voted largely along party lines to approve the president’s plan<sup>9</sup> after Democrats failed to add an amendment (which the administration

clients in full-time employment compared to 31 percent for faith-based groups.<sup>15</sup> Soon after, researchers at Pepperdine University also released a study showing that secular welfare-to-work programs in Los Angeles had outperformed faith-based ones in terms of moving clients off welfare.<sup>16</sup>

### Regulatory Implementation

Just days after taking office, President Bush issued executive orders creating the White House Office of Faith-Based and Community Initiatives as well as faith-based offices in the departments of Education, HHS, HUD, Justice, and Labor. Offices within the Department of Agriculture and the U.S. Agency for International Development have also since been established.

With faith-based legislation stalled in the Senate, these offices have looked for ways to implement the president's plan administratively. "We really want the legislation badly," said Jim Towey, director of the White House's faith-based office, "but this office isn't just about federal legislation. This office is going to move forward with the president's agenda."<sup>17</sup> This effort culminated with the December 2002 executive order and subsequent implementing regulations described above, circumventing Congress and raising a host of significant concerns:

- **Federal funding of religious activity.** Under the executive order, a faith-based organization can accept federal funding without altering its structure or giving up its religious mission, provided that such funds are not used for "inherently religious activities, such as worship, religious instruction or proselytization." Nonetheless, partially religious activities could still conceivably be funded or supported. For example, a soup kitchen that says grace before each meal or a shelter that says goodnight prayers could claim the overall service is not inherently religious. The order also explicitly allows such organizations to provide services in areas that display religious icons and art.
- **Subsidizing religious construction projects.** The HUD rule permits federal dollars to be used for constructing and renovating buildings that are used for both worship and federally funded programs so long as funds are not spent on the principal room used for prayer.
- **No assurance of non-religious alternatives.** Two of the HHS rules – those applicable to TANF and substance abuse programs – require that faith-based organizations notify beneficiaries of their right to receive alternative services if they object to the religious provider. In such an event, beneficiaries must receive a prompt referral to a provider of equivalent services – of course, assuming one actually exists. The other rules, however, do not contain such a guarantee. Rather, they merely require that "inherently religious activities" conducted by the service provider be held at either a different place or time than federally funded programs. Because of confusion over the definition of "inherently religious activities," beneficiaries could be offered services with significant religious content, but would not have the right to demand an alternative program.
- **Sanctioning employment discrimination.** Under Title VII of the Civil Rights Act, religious congregations can discriminate based on religious affiliation when hiring for positions that involve worship-related skills; for example, a synagogue can hire only Jewish rabbis. While this makes sense, it only applies to privately funded religious positions. The administration's new rules now permit religious organizations to discriminate on the basis of religion when hiring for federally funded positions that are not supposed to involve religious activities. "In any employment decision, there's discrimination," Towey explained. "Universities hire smart people."<sup>18</sup>
- **No requirement to disclose financial information.** Unlike other charitable

organizations, religious groups do not have to publicly disclose their financial information.<sup>19</sup> This will make it almost impossible for the public to determine whether federal funds are being used in an appropriate manner, and not to promote religious activity.

### **A Preference for Religious Grantees**

The administration claims its efforts are about leveling the playing field. However, in January 2002, HHS moved to give explicit preference to faith-based organizations. For instance, HHS's Administration for Children and Families issued a program announcement setting aside \$210,000 to promote partnerships between community agencies and faith-based organizations.

HHS eventually backed off after Americans United for Separation of Church and State threatened to sue, objecting that the government is barred from favoring religious groups over secular ones. However, the administration appears to be playing favorites informally.

Many recent grant announcements have contained the disclaimer, "Faith-based organizations are encouraged to apply." In March 2004, Towey boasted, "The results will show that there's been a dramatic increase in funds going to faith-based organizations," touting a \$144 million increase from FY 2002 in faith-based grants by HHS and HUD, the "two agencies where there is comparison data available." Likewise, a White House fact sheet claims that funding of faith-based organizations increased 41 percent at HHS and 16 percent at HUD from FY 2002 to FY 2003.<sup>20</sup> "You'll see at HUD now that over half of the money that goes to Section 202, elderly housing, which is a program of about \$750 million, with about half of that money going to faith-based organizations," Towey said.

An organization can register as a faith-based entity with the White House, entitling it to technical assistance and information about grant opportunities (secular groups do not have this service). Towey's comments raise concern that such registration can give

an organization a leg up in funding, and that the playing field is tilted against secular groups.

In one suspicious case, John F. Downing received a significant influx of funds after he registered his organization (a homeless shelter and substance abuse program for veterans) as a faith-based entity. Downing made this move in 2003 after the Department of Veterans Affairs (VA) declined to renew a \$415,000 grant. He also contacted his congressional representatives, whose staff helped with the preparation of grant applications, and testified before Congress about his organization's loss of funds. The next year, he was showered with almost \$2 million from the VA and HUD. Both agencies deny that the organization's faith-based status played no role. However, the administration's general preference for religious grantees seems clear.

### **Misusing the Compassion Capital Fund**

The administration also appears to have inappropriately steered money to religious groups through the Compassion Capital Fund,<sup>21</sup> which was created in 2001 at the urging of President Bush to help provide advice and develop "best practices" on the most successful methods of operation for social service charities.

Of the \$30 million appropriated to the Compassion Capital Fund in 2002<sup>22</sup> (its first year of existence), the administration awarded \$24.8 million to 21 intermediary organizations, which were instructed to redistribute the money to faith-based and community organizations for a multitude of capacity-building purposes<sup>23</sup> – an approach that has been extended in subsequent years.

These intermediary grantees have been given almost no guidance to ensure separation of church and state. On the contrary, in June 2003, the administration issued a grant announcement that instructs intermediary organizations to disregard the religious nature of programs in selecting sub-grantees.<sup>24</sup>

This instruction clearly undermines the president's executive order prohibiting federal funds from supporting inherently religious activities.<sup>25</sup> If intermediary organizations disregard the religious nature of programs, this prohibition cannot be enforced.

It also ignores the wishes of Congress, which specifically sought to avoid direct federal funding of religious groups. During a Senate colloquy over the matter, Sen. Tom Harkin (D-IA), then chairman of the Labor-HHS Appropriations Subcommittee, assured that "this fund is only for the development of model best practices" for "social programs and community initiatives." Likewise, Sen. Arlen Specter (R-PA) said, "It is important to note that this appropriations bill is not changing any of the rules or standards for government funding of religious organizations..."<sup>26</sup>

Moreover, there are inherent problems with the practice of funneling funds through intermediaries. Federal grant rules – such as cost principles that identify unallowable expenses – are supposed to follow the federal dollar wherever it goes.<sup>27</sup> However, sub-grantees are seldom monitored for compliance with these rules and it is "nearly impossible" to track sub-grants to ensure that money is properly spent, according to a report by the Roundtable on Religion and Social Welfare Policy.<sup>28</sup>

This leaves the door wide open for abuse, and the administration has given plenty of reason to worry. For example, during the summer of 2002, the Republican Party in South Carolina sponsored a "seminar on faith-based and community initiatives" attended by about 100 ministers and charity leaders. Jeremy White of the White House's faith-based office was the keynote speaker, and according to The State newspaper in Columbia, S.C., focused on how pastors can "get their part of \$30 million in federal money," referring to the Compassion Capital Fund.<sup>29</sup>

A follow-up mailing from Ron Thomas, political director of the South Carolina GOP, provided more details on how to apply for federal funds. Church and State (published by Americans United) noted that the event was

geared toward African-American pastors as part of the GOP's "outreach" program.<sup>30</sup>

Similarly, during a Minnesota seminar hosted by HHS, also in the summer of 2002, "The Rev. Floyd Blair, an African American minister and a Bush HHS official, was seen ... literally directing African American religious leaders to special sessions for exclusive information. Blair also spoke extensively about the Compassion Capital Fund to attendees, calling the available tax dollars 'faith money,'" according to Church and State.<sup>31</sup>

## Muzzling and Intimidating Grantees

While the Bush administration has relaxed oversight of faith-based grantees, it has sought to muzzle and intimidate other grantees with which it has policy disagreements. The following are some of the known examples.

### Sex Education

In the summer of 2003, HHS launched an audit of a federal grantee, Advocates for Youth, apparently for the group's opposition to the administration's abstinence-only strategy. The audit was the third such review in a year – even though the previous two audits found no problems<sup>32</sup> – and followed a letter from Rep. Joseph Pitts (R-PA) and 23 other members of Congress complaining about a web site sponsored by Advocates of Youth, NoNewMoney.org, which urges opposition to funding for abstinence-only programs. Federal grantees are permitted to engage in such advocacy provided it is done with private funds.

"Advocates is concerned that it appears that the selective and political use of these audits is to intimidate organizations such as ours that support comprehensive sex education," said Bill Barker of Advocates for Youth. "They want to impose a kind of censorship."<sup>33</sup>

Indeed, this appears to be part of a larger effort to silence criticism of the administration. In 2001, an internal HHS memo identified "critics of the Bush administration,"<sup>34</sup>



which included Advocates of Youth. Audits apparently were then targeted at these critics. In response to a letter from Rep. Henry Waxman (D-CA), HHS indicated on Nov. 27, 2002, that its Office of Inspector General had only performed audits of programs that use comprehensive approaches to sex education, and no audits of abstinence-only programs were being conducted.

Likewise, the Department of Education chose not to audit a grantee that promotes charter schools and vouchers, the Black Alliance for Educational Options, after a board member, state Rep. Dwight Evans (D-Phila.), told the Philadelphia Inquirer that some federal funds would be used to lobby for a bill he was sponsoring on the subject – which would be a violation of federal law.<sup>35</sup>

### **Head Start**

On May 8, 2003, HHS threatened Head Start grantees with sanctions for lobbying, even with private funds, after the president's proposed restructuring of Head Start met stiff resistance.<sup>36</sup> The National Head Start Association responded by suing the agency, and less than two months later, a federal district court forced HHS to back off, at least temporarily.<sup>37</sup>

On Nov. 13, 2003, HHS indicated its intention to survey all 2,700 Head Start grantees in the country on salaries and benefits to identify the top 25 earners among Head Start executives.<sup>38</sup> HHS estimated that it would take each grantee nine hours to complete the survey for a total of 24,300 burden hours nationwide.<sup>39</sup>

HHS asked OMB to approve this survey within 30 days using emergency powers. However, no explanation was given as to why this qualified as an emergency. The real "emergency" appears to be the continued resistance of the Head Start community to the president's proposed restructuring of the program.

### **AIDS Awareness**

On June 13, 2003, the director of the Centers for Disease Control and Prevention,

Julie Louise Gerberding, warned Stop AIDS and the city of San Francisco's public health department that continued use of certain promotional materials – which Gerberding claimed encouraged sexual activity – could result in "disallowance or discontinuation of federal funding." This threat was made even though these materials were used for a workshop funded by the city of San Francisco, without any federal dollars. CDC informally told Stop AIDS that the same rules for federally funded activity apply to programs funded with non-federal dollars, but provided no legal justification for this claim.

Gerberding's threat was especially outrageous because Stop AIDS had followed federal rules even though it was not required to do so; the group sought and received approval for the materials in question from a local review board, as called for by CDC guidelines<sup>40</sup> for federally funded activity.

### **International Family Planning**

Soon after taking office, President Bush reinstated what's known as the "global gag rule,"<sup>41</sup> which forbids any international family planning organization that receives federal funds from talking about abortion, counseling women on abortion, providing abortions, or advocating for changes in abortion law, even with private funds. (President Reagan first imposed this gag rule in 1984, and President Clinton repealed it in 1993.)

Bush also backed two amendments during FY 2004 appropriations that carve out special privileges from the \$15 billion awarded for international family planning and reproductive health. One requires one-third of the money to be used to promote abstinence. The other permits religious grantees to reject successful AIDS prevention strategies that conflict with their beliefs, such as instruction in condom use.

## **Privatizing the Federal Workforce**

Early in his term, President Bush made privatization of government jobs and services a top priority, identifying

“competitive sourcing” as one of five areas of management weakness.<sup>42</sup>

Competitive sourcing (whereby private bidders compete with public employees for government work) has been employed on a limited basis for years, but the Bush administration has taken a radically aggressive approach, demanding that agencies study at least 425,000 federal jobs for potential privatization. This covers half of all government jobs considered “commercial,” from prison guards to border patrol officers to park and forest service employees (see box on next page).

In May 2003, the administration issued the first major revisions in two decades to OMB Circular A-76,<sup>43</sup> which governs public-private competition for federal jobs, raising significant concerns over accountability and possible abuse. Specifically, this change:

- **Opens the door for corruption and politically motivated contracting.** The revisions allow political appointees and managers to decide the winners of public-private competitions based on a subjective “best value” standard rather than cost. This change invites corruption, such as bribes and kickbacks, and threatens to create a modern-day spoils system, whereby the presiding administration can steer contracts to cronies and political supporters<sup>44</sup> – even when federal employees can perform the work for less money.
- **Does not insist that taxpayers receive a superior deal.** Besides removing cost as the determining factor, the revisions also eliminate a previous requirement that a contractor must bid at least 10 percent or \$10 million less than the in-house team to win work involving more than 10 jobs. Privatization presents significant accountability issues, and without a superior deal, there is little reason to do it.

Moreover, taxpayers could actually end up paying more. Private contractors might produce short-term savings, but they frequently lowball long-term cost

projections. Over time, the government loses the ability to perform the work and becomes dependent on the contractor, which then has the power to run up costs and pad its bottom line.

- **Strongly tilts in favor of privatization.**

First, the new A-76 significantly narrows the definition of “inherently governmental” positions, which are exempt from privatization, and allows OMB officials to easily overrule agency decisions that certain work is too important to be handed over to private contractors. Second, it allows jobs to be automatically privatized if government managers miss deadlines for reviewing jobs for potential privatization. And third, it requires federal workers that win competitions to re-compete every five years, with no such requirement for private contractors.

Indeed, after work has been turned over to private companies, it will almost certainly stay there. Under the administration’s plan, public-private competition is not a two-way street. Rather, the administration has insisted that agencies set arbitrary competitive-sourcing targets for government work, while ignoring the concept for new work or work already privatized.

The assumption is that the private sector can perform these jobs better than the public sector at less cost; OMB claims that public-private competitions consistently generate cost savings of 10 to 40 percent. However, the supporting evidence that OMB cites consists of just three studies, all conducted by contractors. These studies rely largely on those with a vested interest in the results and report savings without regard to performance.<sup>45</sup>

This last point is especially important. Many federal workers whose jobs are now up for privatization have held their positions for years. Replacing this expertise and experience with contractors could lead to deterioration in the quality of work performed.

- **Ignores the hidden costs of privatization.** The administration is forcing agencies to

conduct studies to determine whether jobs should be privatized. These studies cost about \$3,000 per full time job, according to the director of the National Park Service, and agencies have been forced to cut back other services to pay for them.<sup>46</sup>

Of course, there may be instances when potential savings justify such costs. However, the Bush administration has moved forward as if privatization were an end in itself, rather than carefully considering agency needs and missions. At first, the administration arbitrarily directed federal agencies to open 15 percent of all jobs identified as “commercial” to competitive sourcing by 2003. However, the administration backed off this plan under pressure from Congress, and instead is developing “customized” targets for each

agency while maintaining the same ultimate goal: entertaining private bids for all of the 850,000 government jobs identified as “commercial” (labeled as such because they do not necessarily need to be performed by government employees). “All commercial activities performed by government personnel should be subject to the forces of competition,” the revised circular states.

This relentless drive to privatization could force agencies to hold competitions when they’re not called for or needed, wasting hundreds of thousands of dollars while diverting government personnel – which among other things must determine the parameters of the work to be performed and comb through prospective bids. Potentially making matters worse, the revised circular puts in place new

#### **Privatizing the National Park Service**

The National Park Service (NPS) might be forced to cut back visitor services, dismiss dedicated staff scientists and technical experts, and reduce the diversity of its workforce as a result of the Bush administration’s aggressive push for privatization of government services.

In December 2002, the Office of Management and Budget directed NPS to examine 1,708 full-time positions by the end of FY 2004. Some months later, NPS Director Fran Mainella announced that 900 jobs were already lined up for immediate privatization with another 1,323 jobs slated for study.<sup>47</sup>

Most of these 2,000-plus jobs, which represent 13 percent of the Park Service’s total workforce, are maintenance and administrative positions, but the list also includes hundreds of archeologists, scientists, historians and environmental experts.<sup>48</sup> This is especially alarming because for-profit companies will inevitably be more interested in making a profit than protecting the parks.

“What is at risk is reducing a once proud, highly productive workforce in an agency with immense public respect and admiration, into a run-of-the-mill government bureaucracy,”

testified Bill Wade, former superintendent of Shenandoah National Park, before the Senate National Parks Subcommittee.<sup>49</sup>

The Reagan, Bush I, and Clinton administrations all conducted studies concluding that the National Park Service was already turning over the appropriate jobs to private contractors, including operation of hotels, gift shops, restaurants, and gas stations.<sup>50</sup> Nonetheless, NPS is being forced to pay for this new round of privatization studies – which run about \$3,000 per position studied – out of its already cash-strapped budget; in a memo to officials at the Department of the Interior, Mainella suggested that cutbacks affecting “visitor services and seasonal operations” would be necessary as a result.<sup>51</sup> (NPS already operates with only two-thirds of the funding required to properly maintain parks, according to the National Parks Conservation Association, which believes that an additional \$600 million is needed annually.<sup>52</sup>)

Mainella also expressed concern that privatization could negatively impact diversity among the NPS workforce, since women and minorities hold a large number of the jobs being studied.

deadlines for competitions, requiring those involving 65 or fewer jobs to be completed in 90 days, while larger competitions must be completed in a year (previously competitions were required to be completed in a “reasonable” time). As the numbers of competitions skyrocket, this could present an overwhelming burden in the absence of significant new resources. Moreover, once contracts are awarded, they must be monitored for performance and compliance.

- **Reduces accountability for government work.** Congress carefully monitors federal employees and their work through the budget and appropriations process. Private companies, however, are subject to far less scrutiny.

When the government contracts out services, it loses the capacity to directly obtain information about the work being performed. If a private company is performing services for the government, problems with service delivery are more difficult to address than when work is performed in-house.

In late 2003, Congress moved on a bipartisan basis to block part of the administration’s plan and bring some balance to the process through language added to the FY 2004 spending bill covering the Transportation and Treasury departments. Specifically, this language sought to restore the requirement that private bids show savings of at least 10 percent or \$10 million, and provide government workers the right to appeal to the General Accounting Office if they lose their jobs to private contractors. However, President Bush responded with a veto threat, blocking the bill from moving forward, and eventually House and Senate negotiators removed the offending language.

Likewise, the president used a veto threat to block a provision on the Senate version of the Commerce-Justice-State appropriations bill that would have prohibited competitive sourcing at DOJ’s Office of Justice Programs, a 700-person office that distributes and monitors

billions of dollars in grants to state and local governments.<sup>53</sup>

## Secret Contracts for Iraq

Before bombs even began falling on Baghdad, the Bush administration awarded a secret, no-bid contract to repair and operate Iraq’s oil infrastructure – worth up to \$7 billion – to Kellogg Brown & Root (KBR), a subsidiary of Halliburton, the world’s largest oil services and construction company.

Typically, when the government awards such a contract, particularly one of this size, it releases a project description on which anyone can bid. Prospective contractors are then evaluated based on their quality, reliability, and price.

The fact that this process was not adhered to – that KBR was handpicked by a special administration task force – has led to concerns that favoritism played a role. Vice President Cheney, after all, led Halliburton prior to the 2000 election and collected more than \$33 million in stock following his departure.<sup>54</sup> In fact, Cheney continues to receive deferred compensation from the company worth more than \$160,000 a year,<sup>55</sup> and retains stock options of more than \$18 million.<sup>56</sup> The White House quickly denied charges that the vice president was involved, yet suspicion grew as the administration refused to release even basic information about the deal with KBR, and later defended the company – and awarded more taxpayer dollars – after massive overcharging was uncovered.

### Details Withheld

The contract, issued by the U.S. Army Corps of Engineers, was shrouded in secrecy from the beginning – it was signed March 8, 2003, but wasn’t publicly announced until weeks later, on March 24.<sup>57</sup> Even then, the Corps released only a vague description of the work to be performed. The Corps did not reveal the potential value of the contract until April 8, a disclosure that came only in response to questions from Rep. Henry

Waxman (D-CA). (As of November 2003, the Corps had awarded KBR task orders worth \$1.59 billion under the contract.<sup>58</sup>)

As interest in the contract grew, the administration continued to stonewall and in certain instances provided misleading information. This was possible because the KBR contract and the documents justifying and approving the Corps' decision to forego competitive bidding are classified and unavailable for public review.

Initial reports from the Bush administration, as well as Halliburton, indicated that the deal involved only short-term emergency work – putting out oil well fires and repairing damage. In May, however, the Corps acknowledged that the deal carried a two-year term, and included “operation of facilities” and “distribution of products,” allowing KBR to profit from producing and distributing Iraqi oil.<sup>59</sup>

Shortly thereafter, the administration declared that the KBR deal would be cut short and replaced with a contract awarded through competitive bidding, likely at the end of August, according to an administration official.<sup>60</sup> In June, however, Gary Loew, planning director of the Corps' project, cast doubt on this assurance, stating, “There may not be time to actually award a second contract.”<sup>61</sup> Sure enough, in late October, the administration announced that KBR would retain its no-bid contract longer than expected,<sup>62</sup> citing sabotage of oil facilities and a need to rethink the scope of the work.

Without competitive bidding, U.S. taxpayers cannot be assured that they are getting the best plan at the best price. In this case, the administration claimed that it had little choice – that quick action was required and that KBR was in the best position to deliver.

During the Gulf War, acts of sabotage by Iraqi troops damaged more than 700 oil wells. In November 2002, as war with Iraq loomed, the Pentagon began planning for a similar scenario.<sup>63</sup> Under a preexisting contract, the U.S. Army Material Command directed Brown & Root Services, a division of KBR, to develop contingency plans for

repairing and continuing operations of the Iraqi oil infrastructure. This contract, the Logistics Civil Augmentation Program (LOGCAP), which was awarded competitively in December 2001, allows the company to provide a wide range of logistical services to the Army.

The Corps claims it did not learn until February 2003 – less than two months before the start of the war – that it was responsible for executing the plan to repair and operate Iraq's oil infrastructure. “When the Corps considered ways to accomplish this mission,” Lieutenant Army General Robert Flowers explained, “there was only one practical alternative: use KBR who was already mobilized in the region and was fully knowledgeable of the mission.”<sup>64</sup>

As war rapidly approached, a task such as putting out oil-well fires may have been urgent enough to justify the circumvention of standard procedures. It is not clear, however, why long-range tasks, such as the distribution of Iraqi oil, were included in the KBR contract and not opened for competition.

### **An Open-Ended Contract**

On top of the March contract, KBR has also earned billions under the earlier LOGCAP contract for Iraq “task orders” that are not subject to competitive bidding. For instance, this LOGCAP work has included the repair of a presidential palace being used by Americans,<sup>65</sup> as well as assistance to the Pentagon's Office of Reconstruction and Humanitarian Assistance (ORHA).<sup>66</sup> When asked specifically what is covered by KBR's assignment to assist ORHA, an official with the reconstruction agency replied, “I guess the real question is, what doesn't it cover?”<sup>67</sup>

At least three of the task orders given to KBR were each worth \$60 million or more, yet they were treated merely as small duties to be carried out under the LOGCAP. “One of the unique features of the LOGCAP contract is that it apparently allowed Halliburton to profit from virtually every phase of the war with Iraq,” noted Waxman in a letter to the acting secretary of the Army.<sup>68</sup> All told, KBR has

received about \$4 billion in task orders under the LOGCAP for Iraq work.

### Accountability Issues

The LOGCAP contract was awarded to KBR on a “cost-plus” basis, meaning that the contractor receives payment for its expenditures as well as an additional percentage of those costs. Such awards are susceptible to abuse because they give companies an incentive to pad their profits by increasing costs. The fact that the administration decided to award work to KBR in this way was particularly alarming given the company’s track record (see box).

Not surprisingly, there is mounting evidence that KBR is exploiting its cost-plus arrangement. In October 2003, Waxman and Rep. John Dingell (D-MI) discovered that KBR was “inflating gas prices at a great cost to American taxpayers,” charging the government \$2.65 a gallon for over 60 million gallons of gasoline imported from Kuwait into Iraq.

Experts report that the cost of buying and transporting gas into Iraq should cost less than \$1.00 per gallon.<sup>69</sup> The Iraqi oil company, the State Oil Marketing Organization (SOMO), for example, pays only 97 cents per gallon to import gas from Kuwait,<sup>70</sup> and gasoline imported from Kuwait is sold inside Iraq for as little as four to 15 cents a gallon.<sup>71</sup>

Amazingly, the Corps has continued to publicly defend KBR from charges of overbilling; one spokesman said the company is getting “the best price possible” for the fuel.<sup>72</sup> Nonetheless, the Corps subsequently announced that it would transfer the job to the Pentagon’s Defense Energy Support Center, which has said it can import gasoline into Iraq for less than half the price.<sup>73</sup>

In the months since, two new Halliburton scandals have emerged. In January 2004, the company acknowledged that two employees had taken kickbacks involving a Kuwaiti subcontractor, leading to overcharges of \$6.3 million. (The employees were dismissed and the money returned, according to Halliburton.) Nonetheless, a day later, the company

### The Halliburton/KBR Record

- In a 1997 report, the General Accounting Office revealed that Brown & Root Services – performing work under an earlier LOGCAP contract in the Balkans – charged the Army \$85.98 per sheet of plywood. The actual price tag was \$14 per sheet.<sup>74</sup>
- In performing work in Kosovo, Brown & Root Services overcharged taxpayers by overstaffing projects and providing more goods and services than necessary, according to a 2000 GAO report. For example, it provided nearly twice the electricity necessary for the Army’s facilities and cleaned offices four times a day.<sup>75</sup>
- A former employee charges that Brown & Root defrauded the government out of millions by inflating prices for repairs and maintenance at the former Fort Ord, Calif., military installation.<sup>76</sup> The Justice Department and the Department of Defense reportedly initiated an investigation of the matter.

received a brand new \$1.2 billion contract to rebuild southern Iraq’s oil industry.<sup>77</sup> Then, the following month, the Wall Street Journal revealed that the company had overcharged the government for feeding troops at a Kuwaiti military base by \$16 million in one month alone.

This problem is not an isolated incident for Halliburton, but rather “it is systemic,” according to the Defense Contract Audit Agency. Halliburton whistleblowers told Waxman that the company’s motto was, “Don’t worry. It’s cost-plus.”<sup>78</sup>

### More Secret Deals

The Bush administration followed a familiar pattern in awarding contracts to repair Iraq’s crumbling infrastructure (including water systems, power plants, roads and bridges, and schools and hospitals). In particular, this included a \$680 million contract won by the engineering-construction firm Bechtel Corp. – a company that shelled out

more than \$770,000 to Republicans between 1999 and 2002.<sup>79</sup>

This contract, the largest of the post-Iraq awards, was the product of a closed process in which the administration secretly invited a number of politically well-connected companies to submit bids. These lucky invitees – Bechtel, Fluor Corp., KBR, Louis Berger Group Inc., Parsons Corp., and Washington Group International Inc. – contributed a combined \$3.6 million in individual, PAC, and soft money donations between 1999 and 2002, 66 percent of which went to Republicans.<sup>80</sup> Of these companies, Bechtel – the ultimate winner – contributed the largest amount of money to Republicans. Bechtel also claims George Schultz, former secretary of State under the first Bush administration, as a board member.

Scandal-ridden telecommunications firm MCI, formerly known as WorldCom, has also profited from the administration's backroom deals – receiving a \$45 million no-bid contract to construct a small wireless network in Iraq,

even though it has limited experience doing this sort of work.

Telecom competitors cried foul when they learned of the contract, objecting not only to the secretive nature of the deal, but also to the government's indifference to WorldCom's disgraceful record. In 2003, WorldCom agreed to pay a \$500 million fine to the Securities and Exchange Commission for overstating its cash flow by nearly \$4 billion between 2000 and 2002. This accounting scandal sent the company's stock plummeting and led WorldCom to file for bankruptcy in 2002.<sup>81</sup>

In July 2003, the General Services Administration temporarily banned MCI/WorldCom from receiving new and renewed contracts after determining that the company "lacks the necessary controls and business ethics."<sup>82</sup> Nonetheless, the administration has continued to show preference to MCI/WorldCom, which contributed nearly \$2.5 million to Republicans from 1997 to 2002.<sup>83</sup> During the first three months of this contracting ban, federal agencies awarded the company

### Questions Over Port Security Grant

In June 2003, the Department of Homeland Security awarded a giant \$13.5 million port-security grant to Citgo Petroleum Corp. for its refinery at Lake Charles, La.,<sup>84</sup> outweighing nine grants for Los Angeles, the busiest container port in the country, as well as the 17 grants won by other businesses and port authorities in Louisiana.<sup>85</sup>

"I could contract a private security company to provide round-the-clock surveillance for the entire waterway for two years on that size of a grant," said Jim Robinson, director of navigation and security for the state-run Port of Lake Charles. "But I doubt that's what they're going to spend it on."

Out of 1,112 applicants for \$245 million in port security funds, only one in five landed grants, and most of these awards were worth less than \$1 million.<sup>86</sup> Homeland Security would not disclose its reasons for awarding Citgo such a disproportionate amount,<sup>87</sup> nor would Citgo say what it intended to do with the money.

"That was a part of the application, that the information we provided in that application would remain confidential, so we're abiding by that," said Kent Young, a spokesman at Citgo's Tulsa, Okla., headquarters. "It's a part of the application process and it's stated in the application"<sup>88</sup> Young also noted that the information has been declared off-limits under the Freedom of Information Act.<sup>89</sup>

Citgo, a subsidiary of the national oil company of Venezuela, was also given smaller grants for work at plants in Georgia and Texas, receiving a total of \$15.7 million, far more than any other company.<sup>90</sup> Sunoco Inc. was second, with \$5.1 million in grants for facilities in Philadelphia and the Houston area.<sup>91</sup>

Without additional information, there can be little assurance that port-security funds are being well spent. The administration and its awardees are operating in the absence of public accountability.

more than \$100 million using a little-known waiver process to extend existing contracts.<sup>92</sup>

"I'm angry about this," responded Rep. John Sweeney (R-NY). "There is a codependence there. WorldCom is very adept at playing the old inside-the-Beltway game. They've got friends in high places."<sup>93</sup>

Of course, other Iraq contractors also play this inside game. The Hatch Act forbids most government employees from giving to political campaigns. However, government contractors are under no such constraints. The roughly 70 contractors working in Iraq gave more money to President Bush than any other candidate in the last 12 years, with Halliburton donating \$17,677 to the 2000 campaign.<sup>94</sup> In the three months after Saddam Hussein's ouster, Halliburton, Bechtel, and DynCorp International (which received a \$50 million contract for civilian law enforcement) together gave \$82,600 in contributions to congressional candidates, nearly four times the amount of the previous three months.

### Unanswered Questions

The public cannot be assured that KBR, Bechtel, and MCI/WorldCom represent the best options in the absence of open competitive bidding. As a result, questions linger over whether favoritism played a role.

In the case of KBR, why did the administration decide to forgo competitive bidding even for long-term work? Why has so much work been routed through KBR's open-ended LOGCAP contract, which includes incentives to run up costs? Why was the contract for infrastructure repairs closed to just five handpicked companies (all generous contributors to the Republican Party)? Why was MCI/WorldCom awarded a no-bid contract given its suspect qualifications and even more suspect ethical transgressions?

These questions can only be answered if the administration lifts the veil of secrecy and fully explains the contracts. Unfortunately, this seems unlikely considering the track record.

### Sweetheart Deal for Boeing

In 2003, Boeing Co. landed a deal worth about \$17 billion to lease planes to the U.S. Air Force despite studies that showed the planes weren't needed and that the contract was highly overpriced.<sup>95</sup> OMB had initially opposed the deal, but relented after White House Chief of Staff Andrew Card intervened on the president's behalf. Later it was revealed that Boeing might have improperly influenced the contract through a job offer to an Air Force acquisitions official, and the administration, following a congressional outcry, decided to delay execution pending an investigation.

The deal emerged in February 2001 when Boeing submitted an unsolicited bid that proposed converting 36 Boeing 767s to aerial refueling tankers at \$124.5 million per plane.<sup>96</sup> However, the Air Force could not afford to buy the tankers, so in September 2001, Boeing executives met with a senior Air Force acquisitions official, Darleen Druyun, and instead worked out a 10-year

lease deal for 100 planes. Druyun agreed to promote the leasing idea on Capitol Hill, and free up money by curtailing a program used to modernize existing tankers – an arrangement Boeing and the Air Force acknowledged would "retire flightworthy tankers early to procure new ones."<sup>97</sup> Boeing subsequently hired Druyun as its deputy general manager for missile defense systems, which ultimately raised questions of impropriety.

The Air Force pursued the leasing plan even though there appeared to be no need for it. In fact, in 2001, the Air Force itself determined that existing tankers would be usable through 2040 and that no new purchases would be needed until after 2010. (The Air Force also did not include tankers on its FY 2002 "unfunded priorities" list, which details weapons that the Air Force needs but cannot afford,<sup>98</sup> and made no mention of a need for tankers in hearings held by Senate authorization and appropriations committees.<sup>99</sup>) Likewise, the General



### **Sweetheart Deal for Boeing** *continued*

Accounting Office concluded in May 2002 that with relatively inexpensive upgrades, the Air Force would not need to begin replacing the current fleet of 545 KC-135 tankers until 2040.<sup>100</sup> Under the lease arrangement, however, tankers would be made available beginning in FY 2005.<sup>101</sup>

The Air Force never conducted a formal study of alternatives to this deal, as is normally done, nor did it hold a formal competition before handing the contract to Boeing,<sup>102</sup> which was overcharging by at least \$21 million per plane, according to the Institute for Defense Analyses, an independent think tank.<sup>103</sup> The Congressional Budget Office also found that the leasing plan would cost \$5.7 billion more than an outright purchase of the tankers.<sup>104</sup>

At first, Mitch Daniels, then director of the Office of Management and the Budget, called the deal “irresponsible,” and in a series of letters to members of Congress, pointed out that it violated federal leasing standards.<sup>105</sup> OMB rejected the plan in October 2002, telling the Air Force that it “was not urgent and would squander billions of dollars.”<sup>106</sup>

Shortly thereafter, however, Card intervened at the direction of President Bush and asked OMB and the Air Force to “resolve their differences.”<sup>107</sup> OMB subsequently muted its objections, possibly because the White House saw the deal as a way to bail out an ailing Boeing, which donated \$100,000 to the president’s inaugural fund.<sup>108</sup> Boeing had seen orders for 767s plummet following the 9/11 terrorist attacks.

In the fall of 2003, the plan stalled in the Senate Armed Services Committee, where members raised concerns about the costly arrangement. Eventually, the committee put forth a compromise under which the Air Force would lease 20 tankers and purchase 80,

reducing the original \$21 billion price tag by \$4 billion.<sup>109</sup> This deal was included in the FY 2004 Defense spending bill, which was signed by President Bush on Nov. 24, 2003.

The very same day, Boeing announced that it had fired Executive Vice President Mike Sears and former Air Force employee Druyun for violating company ethics policies. Apparently, the two had discussed potential employment opportunities for Druyun while she was still employed by the Pentagon and was in a position to influence the Boeing contract.<sup>110</sup> The company also found that the two attempted to conceal their communications.<sup>111</sup> Shortly thereafter, Boeing’s chairman and chief executive officer, Philip Condit, resigned.

In response to the scandal, Sens. John McCain (R-AZ) and Peter Fitzgerald (R-IL) sent a letter urging the Pentagon to reassess the multi-billion dollar deal. Subsequently, Deputy Secretary of Defense Paul Wolfowitz announced that the Pentagon would indefinitely delay execution while Pentagon Inspector General Joseph Schmitz assesses “any negative impact that improper conduct by Mr. Sears and Ms. Druyun may have had on the negotiation of the contracts that the Air Force proposes to execute.”<sup>112</sup>

Sen. McCain, however, remained uneasy and followed up with a letter to Wolfowitz expressing his worry that the administration was still moving forward.<sup>113</sup>

“I was concerned about the fact that, as recently as Wednesday, November 26, 2003, Air Force Acquisitions Chief Dr. Marv Sambur was prepared to have the contract signed immediately – without any further review,” McCain wrote.<sup>114</sup>

McCain also repeated a longstanding request for DOD documents related to the leasing deal.<sup>115</sup> Not surprisingly, the administration was stonewalling.



## Whose Government Is This?

Special interests have taken over our government. They are throwing out public safeguards and writing their own rules. They are locking down information and scientific conclusions that might suggest government oversight. And they are securing backroom contracts devoid of normal accountability protections.

This takeover began during the 2000 presidential campaign with a substantial investment in the election of George W. Bush. Energy interests gave \$20.7 million; the health care industry kicked in \$15.1 million; agribusiness forked over \$14.6 million; and auto manufacturers and other transportation interests gave \$13.9 million.<sup>1</sup> All told, special interests contributed more than \$200 million to then Gov. Bush and the Republican National Committee.

Following the election, these large-scale donors were rewarded for their generosity with spots on the president's transition team, and charged with setting the agenda across government agencies. Many of the people representing these industries in the transition were themselves large-scale donors who had bundled more than \$100,000 in individual contributions, earning "Pioneer" status. The Department of Energy's transition team, for instance, included Pioneers Thomas Kuhn, president of the Edison Electric Institute, Anthony Alexander, president of FirstEnergy, and Ken Lay, former CEO of Enron.

From this privileged perch, special interests were able to push their friends for key agency positions. Jeffrey Holmstead, a lawyer for electric utilities, became EPA's air administrator; Steven Griles, a lobbyist for the oil industry, became the deputy secretary of Interior; Mark Rey, a timber industry lobbyist, became head of the Forest Service; and David Lauriski, a mine industry executive, became head of the Mine Safety and Health Administration.

Once in place, these special-interest allies literally opened the doors of government for business. In rolling back clean air standards, EPA adopted legal language provided by industry lawyers at Latham & Watkins, Holmstead's previous employer. Griles pushed to open public land to drilling that chiefly benefited his former clients. Rey did the same in lifting forest protections to allow new clear cutting. And Lauriski moved to roll back black lung and respiratory protections for miners.

Of course, these are just a few examples. Special interests have taken over our government from top to bottom, turning back years of progress on health, safety and the environment. That this puts the public and our natural resources at significant risk seems to be of little concern to the Bush administration. Rather, the administration appears to view government as an instrument to enrich its political allies.

This can be seen most directly in federal contracting and grantmaking. For Iraq reconstruction, the administration set aside secret no-bid contracts for politically well-connected companies, most notoriously Vice President Cheney's former employer, Halliburton. At the same time, it has thrown out contractor responsibility standards and adopted new rules to steer social-service grants to religious institutions and privatize the federal workforce, threatening to create a modern-day spoils system.

Naturally, the administration understands this service to special interests has potential political drawbacks, and has sought to mask its intentions and avoid public scrutiny. This has frequently manifested itself through rhetorical diversions. For instance, the rollback of power-plant emissions standards is called the "Clear Skies Initiative," while the plan to open public land to clear cutting is called the "Healthy Forests Initiative." However, far more serious has been the administration's willingness to withhold information from the public and doctor scientific conclusions.

A functioning democracy depends on the free flow of information, allowing the public to participate in government decisions and hold elected officials accountable. A government for special interests, on the other hand, requires the utmost secrecy, lest the public assert its interests. Following this model, the administration has broadly restricted public access to information that might expose irresponsible behavior by special interests, and suppressed scientific findings – on drinking-water contamination, the dangers of global warming, and the environmental consequences of drilling, just to name a few examples – that suggest a need for government intervention.

Not surprisingly, special interests intend to keep the government working for them, and are again doling out tens of millions in campaign cash. Oil, mining and timber interests want even greater access to our public lands. Auto manufacturers want to avoid new fuel efficiency measures and auto safety standards. Meat producers want to hold off stronger testing requirements. And corporate interests across the board want to remove the threat of government oversight and enforcement.

We are unlikely to know the full consequences of this special interest takeover for years to come. The SEC was neglected and underfunded through the 1990s before the recent eruption of corporate financial scandals (which have cheated investors out of billions). Corporations came to understand that they could get away with almost anything, and motivated by profits, progressively pushed fraudulent practices to the breaking point.

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The same could happen with the environment, worker health and safety, and protection of our food supply, among other areas of concern. By removing corporate oversight, the Bush administration is inviting irresponsible behavior that could lead to catastrophic consequences.

What will happen to the nation's rivers and streams from no-holds-barred dumping of mining waste? What lies ahead if we continue to turn a blind eye to global warming? How many workers will suffer debilitating injuries from preventable ergonomic hazards? How many people will die from outbreaks of foodborne disease as a result of inadequate meat inspection?

If we continue on our present course, we will eventually see these questions answered. A government that acts on behalf of the public, on the other hand, would set standards to head off these dangers and exercise oversight to ensure compliance.

This report is part of an effort to reclaim our government from the special interests. The first step is to understand the sweeping, all-encompassing nature of what is happening. The next step is to come together to make our voices heard. Citizens for Sensible Safeguards is a broad coalition of public interest organizations representing a diversity of concerns, including the environment, food safety, consumer protection and American workers.

This coalition formed in 1995 in response to Newt Gingrich's Contract with America, and against all odds, repeatedly stopped regulatory "reform" legislation that sought to block new public and environmental safeguards. We beat back the special interests then, and together we can do it again.

**For information on how you can get involved, see the Citizens for Sensible Safeguards web site at [www.sensiblesafeguards.org](http://www.sensiblesafeguards.org).**

# Endnotes

## A Record of Rollbacks

<sup>1</sup> See testimony of Thomas O. McGarity, Professor of Law, University of Texas School of Law, before the House Subcommittee on Energy, Policy, Natural Resources and Regulatory Affairs of the Committee on Government Reform (March 27, 2001).

<sup>2</sup> At the time, media attention focused heavily on the administration's review of new restrictions on arsenic in drinking water. Yet ironically, or perhaps consequently, this was one of the few major Clinton-era standards the administration chose to retain. Despite its original inclination to weaken the arsenic restrictions, the administration could not ignore the resulting political firestorm. This included a rebuke by Congress and was further fueled by a National Academy of Sciences study – done at the administration's request – that found even greater health benefits than previously expected.

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<sup>5</sup> Donald Evans, Rx For Global Climate Change (Dec. 3, 2002) (online at <http://www.useu.be/Categories/ClimateChange/Dec0302EvansClimateChange.html>).

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<sup>17</sup> General Accounting Office, Air Pollution: Emissions from Older Electricity Generating Units (June 2002) (online at <http://www.gao.gov/new.items/d02709.pdf>).

<sup>18</sup> Natural Resources Defense Council, Southern's Fingerprints Seen on Energy Policy (March 28, 2002) (online at <http://www.nrdc.org/news/newsDetails.asp?nID=584>).

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<sup>20</sup> Eric Pianin and Dan Morgan, EPA Will Ease Coal Plant Rules, Washington Post (March 18, 2002).

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<sup>46</sup> Id.

<sup>47</sup> Estimates from the Natural Resources Defense Council based on data from the Chlorine Institute, Sixth Annual Report to EPA (May 12, 2003), and EPA's Toxics Release Inventory (online at <http://www.epa.gov/tri/>).

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<sup>64</sup> Tom Hamburger, Political Energy: A Coal-Fired Crusade Helped Bring Bush A Crucial Victory, Wall Street Journal (June 13, 2001).

<sup>65</sup> Center for Responsive Politics, Mining: Long-term Contribution Trends (online at <http://www.opensecrets.org/industries/indus.asp?ind=E04>).

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<sup>190</sup> 68 Fed. Reg. 22455 (April 28, 2003)

<sup>191</sup> Parents Against Tired Truckers, New Rule Will Not Adequately Address Truck Driver Fatigue (April 25, 2003) (online at <http://www.patt.org/news.asp?contentID=351>).

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<sup>194</sup> Eric Pianin, Congress Drops Fight for Overtime, *Washington Post* (Nov. 22, 2003).

<sup>195</sup> Leadership Conference on Civil Rights, The Bush Administration Takes Aim: Civil Rights Under Attack, 9 (Apr. 2003) (online at [http://www.civilrights.org/publications/reports/taking\\_aim/bush\\_takes\\_aim.pdf](http://www.civilrights.org/publications/reports/taking_aim/bush_takes_aim.pdf)).

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<sup>197</sup> Center for Responsive Politics and [www.whitehouseforaale.org](http://www.whitehouseforaale.org), *supra* note 29.

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<sup>202</sup> 68 Fed. Reg. 55528 (Sept. 26, 2003)

<sup>203</sup> National Citizens' Coalition for Nursing Home Reform, NCCNHR Warns HHS Feeding Assistant Regulations Endanger

Nursing Home Residents (Sept. 26, 2003).

<sup>204</sup> Letter from Rep. Henry Waxman and Sen. Charles Grassley to HHS Secretary Tommy Thompson (Sept. 26, 2003) (online at [http://www.house.gov/reform/min/pdfs\\_108/pdf\\_inves/pdf\\_nursing\\_hhs\\_feeding\\_sept\\_26\\_let.pdf](http://www.house.gov/reform/min/pdfs_108/pdf_inves/pdf_nursing_hhs_feeding_sept_26_let.pdf)).

<sup>205</sup> 68 Fed. Reg. 53221 (Sept. 9, 2003)

<sup>206</sup> Ceci Connolly, Hospital Rule Change Faulted, *Washington Post* (Sept. 4, 2003).

<sup>207</sup> 68 Fed. Reg. 41387 (July 11, 2003)

<sup>208</sup> Food and Drug Administration, FDA Implements Enhanced Regulatory Process to Encourage Science-Based Labeling and Competition for Healthier Dietary Choices (July 10, 2003) (online at <http://www.cfsan.fda.gov/~dms/nuttfbg.html>).

<sup>209</sup> Public Citizen, Groups Sue FDA Over Weakening of Health Claims Rule (Sept. 23, 2003) (online at <http://www.citizen.org/pressroom/release.cfm?ID=1545>).

<sup>210</sup> 68 Fed. Reg. 46363 (Aug. 5, 2003)

<sup>211</sup> Center for Science in the Public Interest, Olestra Linked to Gastrointestinal Disease (July 15, 2003) (online at <http://www.cspinet.org/new/200307151.html>).

<sup>212</sup> One staunch opponent to the COOL requirements is Cargill, whose chairman and CEO, Warren R. Staley, is a 2004 Bush Pioneer. Cargill met with OMB's Office of Information and Regulatory Affairs about COOL on Oct. 17, 2003 (see <http://www.whitehouse.gov/omb/oira/2040/meetings/172.html>).

<sup>213</sup> Democratic Policy Committee, *supra* note 41.

<sup>214</sup> *Earth Island Inst. v. Evans*, 256 F. Supp. 2d 1064 (N.D. Cal. 2003).

<sup>215</sup> Earth Island Institute: International Marine Mammal Project, Pacific Dolphins Make Waves for US Policy on Mexican Tuna (Feb. 3, 2004) (online at [http://www.earthisland.org/news/new\\_news.cfm?newsID=545](http://www.earthisland.org/news/new_news.cfm?newsID=545)).

<sup>216</sup> Frank Ahrens, 'Soldier's Ethic' Guides Powell at the FCC, *Washington Post* (Oct. 15, 2003).

<sup>217</sup> Public Citizen, *supra* note 27.

<sup>218</sup> *Id.*

## White House Roadblock

<sup>1</sup> See OIRA web site at <http://www.whitehouse.gov/omb/inforeg>.

<sup>2</sup> This is not a comprehensive list of OIRA actions, but just a few of the known examples. Unfortunately, many OIRA actions are hidden from public scrutiny. For extensive discussion of these examples, see OMB Watch at <http://www.ombwatch.org/article/archive/132/>.

<sup>3</sup> OIRA's review authority flows from presidential executive order that dates to the first year of the Reagan administration. In 1993, President Clinton revised and replaced the previous Reagan executive order. Among other things, this limited OIRA reviews to "major" rules. This executive order (E.O. 12866) remains in place today.

<sup>4</sup> *Public Citizen, Inc. v. Mineta*, 340 F.3d 39 (U.S. App. , 2003) (Ruling online at <http://www.autosafety.org/TPMSRuling.pdf>).

<sup>5</sup> Public Citizen, Safeguards at Risk: John Graham and Corporate America's Back Door to the Bush White House (March 12, 2001) (online at <http://www.citizen.org/documents/grahamrpt.pdf>).

<sup>6</sup> *Id.*

<sup>7</sup> See letter to Transportation General Counsel Kirk K. Van Tine (Feb. 12, 2002) (online at [http://www.whitehouse.gov/omb/inforeg/dot\\_revised\\_tire\\_rtnltr.pdf](http://www.whitehouse.gov/omb/inforeg/dot_revised_tire_rtnltr.pdf)).

<sup>8</sup> Charles M. Farmer, New evidence concerning Fatal crashes of passenger vehicles before and after adding antilock braking systems, *Accident Analysis and Prevention*, 33 (2001), 361-369.

<sup>9</sup> OMB Watch, In Rejecting NHTSA Rule, Graham Shows True Colors (May 15, 2002) (online at <http://www.ombwatch.org/article/articleview/739/>).

<sup>10</sup> See OIRA meeting records online at <http://>



[www.whitehouse.gov/omb/oira/0910/meetings.html](http://www.whitehouse.gov/omb/oira/0910/meetings.html).

<sup>11</sup> 68 Fed. Reg. 58974 (Oct. 10, 2003)

<sup>12</sup> Statement online at <http://www.cspinet.org/new/200310091.html>.

<sup>13</sup> OMB Watch, OMB Guts EPA Standards to Limit Construction Runoff (Sept. 4, 2002) (online at <http://www.ombwatch.org/article/articleview/1071/1/132/>).

<sup>14</sup> 67 Fed. Reg. 42644 (June 24, 2002)

<sup>15</sup> This decision, which was announced April 1, 2004, is online at <http://www.epa.gov/guide/construction/final-action-fs.htm>.

<sup>16</sup> OMB Watch, OMB Weakens EPA Proposal to Limit Fish Kills from Power Plants (Sept. 4, 2002) (online at <http://www.ombwatch.org/article/articleview/1074/1/132/>).

<sup>17</sup> 67 Fed. Reg. 17122 (April 9, 2002)

<sup>18</sup> OMB Watch, OMB Waters Down Standards on Factory Farm Runoff (May 28, 2003) (online at <http://www.ombwatch.org/article/articleview/1540/1/132/>).

<sup>19</sup> See OMB web site at <http://www.whitehouse.gov/omb/oira/2040/meetings/81.html>. This meeting included a representative from Pilgrim's Pride, whose board chairman and majority owner, Lonnie "Bo" Pilgrim, is a 2004 Bush Pioneer.

<sup>20</sup> See Executive Order 12866, issued by President Clinton on Sept. 30, 1993.

<sup>21</sup> Environmental Defense, Snowmobiles: Weak EPA Rules Will Derail Attempts to Curb Pollution (Sept. 13, 2002).

<sup>22</sup> 66 Fed. Reg. 51098 (Oct. 5, 2001)

<sup>23</sup> See letter to Jeffrey R. Holmstead, EPA assistant administrator for air, at [http://www.whitehouse.gov/omb/inforeg/spark\\_engines\\_epa\\_sep2001.html](http://www.whitehouse.gov/omb/inforeg/spark_engines_epa_sep2001.html).

<sup>24</sup> Environmental Defense, *supra* note 21.

<sup>25</sup> See meeting log at <http://www.ombwatch.org/regs/2002/eomtgs2001090601s.gif>.

<sup>26</sup> 69 Fed. Reg. 9215 (Feb. 27, 2004)

<sup>27</sup> See original submission at <http://www.ombwatch.org/execreport/marinediesel/preamble3.14.pdf>.

<sup>28</sup> OMB Watch, OMB Guts Marine Diesel Rule (Nov. 6, 2002) (online at <http://www.ombwatch.org/article/articleview/1172/1/132/>).

<sup>29</sup> 65 Fed. Reg. 55684 (May 29, 2002)

<sup>30</sup> INTERTANKO press release, INTERTANKO Applauds U.S. Progress Toward Ratification of International Pollution Accords (May 8, 2002).

<sup>31</sup> Bluewater Network, A Stacked Deck: Air Pollution from Large Ships (July 17, 2000) (online at [http://www.bluewaternet.org/reports/rep\\_ss\\_ships\\_stackeddeck.pdf](http://www.bluewaternet.org/reports/rep_ss_ships_stackeddeck.pdf)).

<sup>32</sup> The two industrial categories covered by the rules are plywood manufacturing and industrial boilers.

<sup>33</sup> See OIRA meeting logs on air and radiation at <http://www.whitehouse.gov/omb/oira/2060/meetings.html>.

<sup>34</sup> OMB Watch, Industry, OMB Press EPA to Offer Exemptions to Clean Air Standards (March 19, 2003) (online at <http://www.ombwatch.org/article/articleview/1382/>).

<sup>35</sup> For AF&PA white papers, see concentration-based approach at <http://www.ombwatch.org/regs/2002/afpa.deminimus.pdf>; delisting approach at <http://www.ombwatch.org/regs/2002/afpa.enforceable.pdf>; and risk-based applicability exemptions at <http://www.ombwatch.org/regs/2002/afpa.riskbased.pdf>.

<sup>36</sup> Covering auto surface coating and stationary reciprocating internal combustion engines.

<sup>37</sup> 65 Fed. Reg. 55684 (Sept. 14, 2000)

<sup>38</sup> 66 Fed. Reg. 58258 (Nov. 20, 2001)

<sup>39</sup> See OMB web site at [http://www.whitehouse.gov/omb/inforeg/oira\\_review-process.html](http://www.whitehouse.gov/omb/inforeg/oira_review-process.html).

<sup>40</sup> Office of Management and Budget, Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations (online at [http://www.whitehouse.gov/omb/fedreg/2003draft\\_cost-benefit\\_rpt.pdf](http://www.whitehouse.gov/omb/fedreg/2003draft_cost-benefit_rpt.pdf)).

<sup>41</sup> Letter from OIRA Administrator John D. Graham to EPA Assistant Administrator Jeffrey R. Holmstead (Sept. 24, 2001) (online at [http://www.whitehouse.gov/omb/inforeg/spark\\_engines](http://www.whitehouse.gov/omb/inforeg/spark_engines)

[http://www.whitehouse.gov/omb/inforeg/spark\\_engines](http://www.whitehouse.gov/omb/inforeg/spark_engines)

<sup>42</sup> Seth Borenstein, Elderly Less Valuable in Cost-Benefit Analysis, *Miami Herald* (Dec. 18, 2002).

<sup>43</sup> See, for example, Katharine Q. Seelye and John Tierney, E.P.A. Drops Age-Based Cost Studies, *New York Times* (May 8, 2003).

<sup>44</sup> Rodricks comments at National Academy of Sciences workshop (March 22, 2002) (online at [http://www7.nationalacademies.org/stl/4-22-02\\_Transcript.doc](http://www7.nationalacademies.org/stl/4-22-02_Transcript.doc)).

<sup>45</sup> *Id.*

<sup>46</sup> Triazine was joined in its challenge by the Kansas Corn Growers Assn.

<sup>47</sup> Graham comments at National Academy of Sciences workshop (March 21, 2002) (online at [http://www7.nationalacademies.org/stl/4-21-02\\_Transcript.doc](http://www7.nationalacademies.org/stl/4-21-02_Transcript.doc)).

<sup>48</sup> *Id.*

<sup>49</sup> 68 Fed. Reg. 54023 (Sept. 15, 2003)

<sup>50</sup> David Kohn, Foes Say Bush Plan Would Create Debating Society Over Science, *Baltimore Sun* (Dec. 18, 2003).

<sup>51</sup> Andrew Schneider, White House Seeks Control on Health, Safety, *St. Louis Post-Dispatch* (Jan. 11, 2004).

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<sup>54</sup> He also cites the Paperwork Reduction Act and Executive Order 12866 which likewise contain no mention of OIRA-guided peer review.

<sup>55</sup> Andrew Schneider, White House Seeks Control on Health, Safety, *St. Louis Post-Dispatch* (Jan. 11, 2004).

<sup>56</sup> Office of Management and Budget, Informing Regulatory Decisions: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities (February 2004) (online at [http://www.whitehouse.gov/omb/inforeg/draft\\_2004\\_cbreport.pdf](http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf)).

## The Toll of Neglect

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<sup>7</sup> U.S. Chemical Safety and Hazard Investigation Board, The 600K Report: Commercial Chemical Accidents in the United States 1987-1996 (February 1999) (online at [http://mapcruzin.com/download/600k\\_sum.pdf](http://mapcruzin.com/download/600k_sum.pdf)).

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Security Guidelines for the U.S. Chemical Industry (October 2001) (online at [http://www.c3.org/acc\\_security\\_guide.pdf](http://www.c3.org/acc_security_guide.pdf)).

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<sup>21</sup> Natural Resources Defense Council, Clean Water At Risk (October 2002).

<sup>22</sup> Earthjustice, White House Watch Administration Profiles: Adam J. Sharp (2002).

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<sup>32</sup> Public Citizen Health Research Group v. Chao, 314 F.3d 143 (3d. Cir. 2002).

<sup>33</sup> Final Report of the OSHA Metalworking Fluids Standards Advisory Committee (July 15, 1999).

<sup>34</sup> See CDC fact sheet on listeria at [http://www.cdc.gov/ncidod/dbmd/diseaseinfo/listeriosis\\_t.htm](http://www.cdc.gov/ncidod/dbmd/diseaseinfo/listeriosis_t.htm).

<sup>35</sup> Center for Science in the Public Interest, Statement Of CSPI Food Safety Director Caroline Smith DeWaal (June 4, 2003) (online at <http://cspinet.org/new/200306042.html>).

<sup>36</sup> The American Meat Institute, for one, met with OMB's Office of Information and Regulatory Affairs about the listeria rule in May 2003 (see <http://www.whitehouse.gov/omb/oira/0584/meetings/221.html>).

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<sup>49</sup> National Center for Statistics and Analysis (August 2003).

<sup>50</sup> HHS, Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II, Final Report (Winter 2001).

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## Cop Off the Beat

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<sup>2</sup> Stephen Labaton, S.E.C. Offers Plan for Tightening Grip on Mutual Funds, New York Times (Nov. 19, 2003).

<sup>3</sup> Eliot Spitzer, Regulation Begins at Home, New York Times (Nov. 17, 2003).

<sup>4</sup> The settlement discusses but puts off fines and restitution, and most important, according to Spitzer, "does not address the manner in which the fees charged to investors are calculated. Nor does it require the fund to inform investors exactly how much they are being charged – or even provide a structure that will create market pressure to reduce those fees. Finally, there is no discussion of civil or criminal sanctions for the managers who acted improperly by engaging in or permitting market timing and late trading" (which was responsible for cheating investors).

<sup>5</sup> Paul Krugman, Funds and Games, New York Times (Nov. 18, 2003).

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- <sup>21</sup> *Id.*
- <sup>22</sup> Environmental Integrity Project, *supra* note 9.
- <sup>23</sup> Public Employees for Environmental Responsibility, 2003 Survey of EPA Office of Criminal Enforcement, Forensics and Training Employees (April 28, 2003) (online at [http://www.peer.org/EPA/EPA-OCEFT\\_Survey\\_Results.pdf](http://www.peer.org/EPA/EPA-OCEFT_Survey_Results.pdf)).
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## Sworn to Secrecy

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## Politics Over Science

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## Irresponsible Contracting

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## Whose Government Is This ?

<sup>1</sup> These figures, from the Center for Responsive Politics, include donations to the Republican National Committee.

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