

110TH CONGRESS
2D SESSION

H. R. 5881

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2008

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Environment and Pub-
5 lic Health Restoration Act of 2008”.

6 **SEC. 2. FINDINGS.**

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

9 (1) As human beings, we share our environment
10 with a wide variety of habitats and ecosystems that
11 nurture and sustain a diversity of species.

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

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

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

1 diversity of plants and animals, combat global cli-
2 mate change, and protect the environment.

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

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

22 (7) Attempts to repeal or weaken key environ-
23 mental safeguards pose dangers to the public health,
24 air quality, water quality, wildlife, and the environ-
25 ment.

1 (b) FINDINGS ON CHANGES AND PROPOSED
2 CHANGES IN LAW.—The Congress finds that, since 2001,
3 the following changes and proposed changes to existing
4 law or regulations have negatively impacted or will nega-
5 tively impact the environment and public health:

6 (1) CLEAN WATER.—

7 (A) On May 9, 2002, the Environmental
8 Protection Agency (EPA) and the United
9 States Army Corps of Engineers put forth a
10 final rule that reconciled section 404 regula-
11 tions of the Clean Water Act by redefining the
12 term “fill material” and amending the defini-
13 tion of the term “discharge of fill material”, re-
14 versing a 25-year-old Clean Water Act regula-
15 tion. The new rule fails to restrict the dumping
16 of hardrock mining waste, construction debris,
17 and other industrial wastes into rivers, streams,
18 lakes, and wetlands. The rule further allows de-
19 structive mountaintop removal coal mining com-
20 panies to dump waste into streams and lakes,
21 polluting the surrounding natural habitat and
22 poisoning plants and animals that depend on
23 those water sources.

24 (B) On February 12, 2003, the Environ-
25 mental Protection Agency published the rule

1 “National Pollutant Discharge Elimination Sys-
2 tem Permit Regulation and Effluent Limitation
3 Guidelines and Standards for Concentrated
4 Animal Feeding Operations”—new livestock
5 waste regulations that aimed to control factory
6 farm pollution but which would severely under-
7 mine existing Clean Water Act protections. This
8 regulation allows large-scale animal factories to
9 foul the Nation’s waters with animal waste, al-
10 lows livestock owners to draft their own pollu-
11 tion-management plans and avoid groundwater
12 monitoring, legalizes the discharge of contami-
13 nated runoff water rich in nitrogen, phos-
14 phorus, bacteria, and metals, and ensures that
15 large factory farms are not held liable for the
16 environmental damage they cause. In a 2005
17 Federal Court Decision (Waterkeeper Alliance
18 et al. v. EPA, 399 F.3d 486 (2nd Cir. 2005)),
19 major parts of the rule were upheld, others va-
20 cated, and still others remanded back to the
21 EPA. The EPA proposed rule revisions in June
22 2006, along with supplementary revisions in
23 March 2008, which are still pending final pro-
24 mulgation.

1 (C) On March 19, 2003, the Environ-
2 mental Protection Agency published a new rule
3 regarding the Total Maximum Daily Load pro-
4 gram of the Clean Water Act, which regulates
5 the maximum amount of a particular pollutant
6 that can be present in a body of water and still
7 meet water quality standards. The new rule
8 withdrew the existing regulation put forth on
9 July 13, 2000, and halted momentum in clean-
10 ing up polluted waterways throughout the coun-
11 try. By abandoning the existing rule, the Envi-
12 ronmental Protection Agency is undermining
13 the effectiveness of clean-up plans and is allow-
14 ing States to avoid cleaning polluted waters en-
15 tirely by dropping them from their clean-up
16 lists. Waterways play a crucial role in the lives
17 of Americans and are critical to the livelihood
18 of fish and wildlife. By dropping the July 2000
19 rule, cleanup of existing polluted rivers, shore-
20 lines, and lakes will be delayed, harming more
21 fish and wildlife and worsening the quality of
22 drinking water.

23 (D) On June 5, 2007, the Environmental
24 Protection Agency and Army Corps of Engi-
25 neers jointly issued a Guidance Document in

1 the form of a Legal Memorandum, titled “Clean
2 Water Act Jurisdiction Following the U.S. Su-
3 preme Court’s Decision in Rapanos v. United
4 States & Carabell v. United States”. This new
5 guidance dictates enforcement actions under the
6 Clean Water Act, and calls for a complicated
7 “case-by-case” analysis to determine Clean
8 Water Act jurisdiction for waterways that do
9 not flow all year long. Such actions endanger
10 small streams and wetlands that serve as im-
11 portant habitats for aquatic life, which play a
12 fundamental role in safeguarding sources of
13 clean drinking water and mitigate the risks and
14 effects of floods and droughts. Further, the def-
15 inition provided therein for “waters of the
16 United States” is applicable to the Clean Water
17 Act as a whole, potentially affecting programs
18 that control industrial pollution and sewage lev-
19 els, prevent oil spills, and set water quality
20 standards for all waters in the United States
21 protected under the Clean Water Act.

22 (2) FORESTS AND LAND MANAGEMENT.—

23 (A) On December 3, 2003, the President
24 signed into law the Healthy Forests Restoration
25 Act of 2003 (Public Law 108–148). Although

1 the law attempts to reduce the risk of cata-
2 strophic forest fires, it provides a boon to tim-
3 ber companies by accelerating the aggressive
4 thinning of backcountry forests that are far
5 from at-risk communities. The law allows for
6 increased logging of large, fire-resistant trees
7 that are not in close proximity of homes and
8 communities; it undermines critical protections
9 for endangered species by exempting Federal
10 land management agencies from consulting with
11 the United States Fish and Wildlife Service be-
12 fore approving any action that could harm en-
13 dangered plants or wildlife; and it limits public
14 participation by reducing the number of envi-
15 ronmental project reviews.

16 (B) On April 21, 2008, the Department of
17 Agriculture issued a Final Planning Rule and
18 Record of Decision for National Forest System
19 Land Management Planning. Similar to rules
20 enacted by the Administration on January 5,
21 2005, later remanded back to the agency in
22 Federal district court for violating the National
23 Environmental Policy Act of 1969, the Endan-
24 gered Species Act of 1973, and the Administra-
25 tive Procedure Act (Citizens for Better Forestry

1 v. U.S. Dept. of Agriculture, 481 F. Supp. 2d
2 1059 (N.D. Cal. 2007)), this revised rule elimi-
3 nates strict forest planning standards estab-
4 lished in 1982, and opens millions of acres of
5 public lands to damaging and invasive logging,
6 mining, and drilling operations. These regula-
7 tions would reverse more than 20 years of pro-
8 tection for wildlife and national forests by re-
9 moving the overall goal of ensuring ecological
10 sustainability in managing the national forest
11 system, weakening the National Forest Man-
12 agement Act of 1976, and effectively ending the
13 review of forest management plans under the
14 National Environmental Policy Act of 1969.

15 (C) On September 20, 2006, the District
16 Court for the Northern District of California,
17 vacated the Protection of Inventoried Roadless
18 Areas rule, enacted on May 13, 2005, which
19 gave State Governors 18 months to petition the
20 Federal Government to either restore the pre-
21 vious rule for their States, or submit a new
22 management and development plan for national
23 forest areas inventoried under the rule. Despite
24 the enjoinderment of the Administration's 2005
25 rule, and the subsequent restoration of the

1 original Roadless Area Conservation Rule, the
2 Department of Agriculture has stated that
3 States can still petition for a special rule under
4 the authority of the Administrative Procedure
5 Act. As a result, 58.5 million acres of wild na-
6 tional forests are still vulnerable to logging,
7 road building, and other developments that may
8 fragment natural habitats and negatively im-
9 pact fish and wildlife.

10 (3) CLEAN AIR.—

11 (A) On October 20, 2005, the Environ-
12 mental Protection Agency proposed the rule
13 “Prevention of Significant Deterioration, Non-
14 attainment New Source Review, and New
15 Source Performance Standards: Emissions Test
16 for Electric Generating Units”, along with a
17 supplemental proposal on April 25, 2007. This
18 new rule would significantly undermine the New
19 Source Review Permitting Program, a key tool
20 of the Clean Air Act which requires owners of
21 industrial facilities to install modern pollution
22 control mechanisms whenever existing equip-
23 ment is expanded, improved, replaced, or sig-
24 nificantly repaired. Under the rulemaking pro-
25 posal, power plants could make modifications

1 without installing controls as long as such
2 changes do not increase “maximum hourly
3 emissions achievable”, effectively allowing
4 plants to increase annual emissions of pollut-
5 ants such as sulfur dioxide by more than
6 10,000 tons per year, any time modifications
7 increase the hourly operations of the facility.
8 Described as “effectively unenforceable” by the
9 Director of the Environmental Protection Agen-
10 cy’s Air Enforcement Division, the proposed
11 rule weakens the effectiveness of the Clean Air
12 Act and fails to hold the oldest and dirtiest in-
13 dustrial facilities accountable for reducing the
14 amount of pollution they produce, allowing
15 them to continue to emit harmful toxic pollut-
16 ants that will have a detrimental impact on
17 public health and the environment.

18 (B) On March 27, 2008, the Environ-
19 mental Protection Agency issued a new rule re-
20 vising National Ambient Air Quality Standards
21 for Ozone (NAAQS), which sets new EPA air
22 pollution limits for ground level ozone, or smog,
23 allowed in the air. Despite a requirement that
24 directs the EPA to set air pollution limits low
25 enough, and with a “margin of safety” suffi-

1 cient to protect even the most sensitive groups,
2 this new rule sets primary and secondary stand-
3 ards at .075 parts per million, well above the
4 lower level of .060 found to affect some healthy
5 individuals. The Clean Air Scientific Advisory
6 Committee unanimously recommended a range
7 of .060 to .070 for the primary ozone NAAQS.
8 Because existing law allows nonattainment
9 areas up to twenty years to meet air quality
10 standards, the long-term implications of this
11 new standard and its extensive impact on public
12 health across the country necessitate standards
13 supported by available scientific data in order
14 to ensure adequate public protection from seri-
15 ous diseases linked to ozone pollution including
16 asthma, emphysema, and bronchitis.

17 (C) On January 3, 2007, the Environ-
18 mental Protection Agency published a proposed
19 rule to amend the General Provisions of the
20 National Emission Standards for Hazardous
21 Air Pollutants (NESHAP). This rule would
22 eliminate the decade-old “once-in-always-in”
23 policy which requires major source compliance
24 with maximum achievable control technology
25 standards (MACT), subverting the intent of the

1 Clean Air Act for major sources of hazardous
2 air pollutants to achieve maximum emissions re-
3 ductions. By allowing a major source to acquire
4 “area source” status by obtaining potential-to-
5 emit permits, and thereby avoid compliance
6 with MACT standards, the proposed rule would
7 allow for significantly higher emission levels of
8 toxic air pollutants from existing plants across
9 the country. Such a provision significantly de-
10 grades toxic air pollution standards, and in-
11 creases health risks for millions of people ex-
12 posed to higher levels of air toxicity.

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

14 It is the policy of the United States Government to
15 work in conjunction with States, territories, tribal govern-
16 ments, international organizations, and foreign govern-
17 ments in order to act as a steward of the environment
18 for the benefit of public health, maintain air quality and
19 water quality, sustain the diversity of plant and animal
20 species, combat global climate change, and protect the en-
21 vironment for future generations to enjoy.

1 **SEC. 4. STUDY AND REPORT ON PUBLIC HEALTH OR ENVI-**
2 **RONMENTAL IMPACT OF REVISED RULES,**
3 **REGULATIONS, LAWS, OR PROPOSED LAWS.**

4 (a) STUDY.—Not later than 30 days after the date
5 of enactment of this Act, the President shall enter into
6 an arrangement under which the National Academy of
7 Sciences will conduct a study to determine the impact on
8 public health, air quality, water quality, wildlife, and the
9 environment of the following regulations, laws, and pro-
10 posed laws:

11 (1) CLEAN WATER.—

12 (A) Final Revisions to the Clean Water
13 Act Regulatory Definitions of “Fill Material”
14 and “Discharge of Fill Material”, finalized and
15 published in the Federal Register on May 9,
16 2002 (67 FR 31129), amending title 40, Code
17 of Federal Regulations, part 232.

18 (B) National Pollutant Discharge Elimini-
19 nation System Permit Regulation and Effluent
20 Limitation Guidelines and Standards for Con-
21 centrated Animal Feeding Operations, finalized
22 and published in the Federal Register on Feb-
23 ruary 12, 2003 (68 FR 7176), amending title
24 40, Code of Federal Regulations, parts 9, 122,
25 123, and 412.

1 (C) A March 19, 2003, rule published in
2 the Federal Register (68 FR 13608) with-
3 drawing a July 13, 2000, rule revising the
4 Total Maximum Daily Load program of the
5 Clean Water Act (65 FR 43586), amending
6 title 40, Code of Federal Regulations, parts 9,
7 122, 123, 124, and 130.

8 (2) FORESTS AND LAND MANAGEMENT.—

9 (A) Healthy Forests Restoration Act of
10 2003, signed into law on December 3, 2003
11 (Public Law 108–148).

12 (B) National Forest System Land Manage-
13 ment Planning Rule, finalized and published in
14 the Federal Register on April 21, 2008 (73 FR
15 21468), replacing the 2005 final rule (70 FR
16 1022, Jan. 5, 2005), as amended March 3,
17 2006 (71 FR 10837) and the 2000 final rule
18 adopted on November 9, 2000 (65 FR 67514)
19 as amended on September 29, 2004 (69 FR
20 58055), amending title 36, Code of Federal
21 Regulations, part 219.

22 (C) The application of the Administrative
23 Procedure Act (5 U.S.C. 551 to 559, 701 to
24 706, et seq.), such that States may petition for

1 a special rule for the roadless areas in all or
2 part of said State.

3 (D) Official Guidance Document, “Clean
4 Water Act Jurisdiction Following the U.S. Su-
5 preme Court’s Decision in *Rapanos v. United*
6 *States & Carabell v. United States*”, issued as
7 a Legal Memorandum on June 5, 2007, and
8 announced in the Federal Register on June 8,
9 2007 (72 FR 31824), relating to jurisdiction
10 under the Clean Water Act, section 404.

11 (3) CLEAN AIR.—

12 (A) Proposed Rule, Prevention of Signifi-
13 cant Deterioration, Nonattainment New Source
14 Review, and New Source Performance Stand-
15 ards: Emissions Test for Electric Generating
16 Units, published in the Federal Register on Oc-
17 tober 20, 2005 (70 FR 61081), including a
18 supplemental proposal on April 25, 2007 (72
19 FR 26202), amending title 40, Code of Federal
20 Regulations, parts 51 and 52.

21 (B) Final Rule, National Ambient Air
22 Quality Standards for Ozone, published in the
23 Federal Register on March 27, 2008 (73 FR
24 16436), amending title 40, Code of Federal
25 Regulations, parts 50 and 58.

1 (C) Proposed Rule, National Emission
2 Standards for Hazardous Air Pollutants
3 (NESHAP), published in the Federal Register
4 on January 3, 2007 (72 FR 69), amending title
5 40, Code of Federal Regulations, part 63.

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

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

19 (1) a description of the impact of all such regu-
20 lations, laws, and proposed laws on public health, air
21 quality, water quality, wildlife, and the environment,
22 compared to the impact of preexisting regulations,
23 or laws in effect, including—

24 (A) any negative impacts to air quality or
25 water quality;

1 (B) any negative impacts to wildlife;

2 (C) any delays in hazardous waste cleanup
3 that are projected to be hazardous to public
4 health; and

5 (D) any other negative impact on public
6 health or the environment; and

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

16 **SEC. 5. DEPARTMENT AND AGENCY REVISION OF EXISTING**
17 **RULES, REGULATIONS, OR LAWS.**

18 Not later than 180 days after the date on which the
19 report is submitted pursuant to section 4(c), the head of
20 each department and agency that has issued or imple-
21 mented a regulation or law listed in section 4(a) shall sub-
22 mit to the Congress a plan describing the steps such de-
23 partment or such agency will take, or has taken, to restore
24 or improve protections for public health and the environ-

- 1 ment in whole or in part that were in existence prior to
- 2 the issuance of such regulation or law.

