

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5235

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Ms. LEE introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, Resources, and Agriculture, 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

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## 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 lie Health Restoration Act of 2006”.

6 **SEC. 2. FINDINGS.**

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

9            (1) Our natural environment encompasses a  
10 wide variety of habitats and ecosystems that nurture  
11 and sustain a diversity of species, including the  
12 human race.

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

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

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

1 maintain air quality and water quality, sustain the  
2 diversity of plants and animals, combat global cli-  
3 mate change, and protect the environment.

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

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

23 (7) Attempts to repeal or weaken key environ-  
24 mental safeguards pose dangers to the public health,

1 air quality, water quality, wildlife, and the environ-  
2 ment.

3 (b) FINDINGS ON CHANGES AND PROPOSED CHANGE  
4 IN LAW.—The Congress finds that, since 2001, the fol-  
5 lowing changes and proposed changes to existing law or  
6 regulations have or will negatively impact the environment  
7 and public health:

8 (1) CLEAN WATER.—

9 (A) On May 9, 2002, the Environmental  
10 Protection Agency and the United States Army  
11 Corps of Engineers put forth a final rule that  
12 reconciled section 404 regulations of the Clean  
13 Water Act by redefining the term “fill mate-  
14 rial” and amending the definition of the term  
15 “discharge of fill material”, reversing a 25-  
16 year-old Clean Water Act regulation. The new  
17 rule fails to restrict the dumping of hardrock  
18 mining waste, construction debris, and other in-  
19 dustrial wastes into rivers, streams, lakes, and  
20 wetlands. The rule further allows destructive  
21 mountaintop removal coal mining companies to  
22 dump waste into streams and lakes, polluting  
23 the surrounding natural habitat and poisoning  
24 plants and animals that depend on those water  
25 sources.

1           (B) On February 12, 2003, the Environ-  
2           mental Protection Agency published the rule  
3           “National Pollutant Discharge Elimination Sys-  
4           tem Permit Regulation and Effluent Limitation  
5           Guidelines and Standards for Concentrated  
6           Animal Feeding Operations”—new livestock  
7           waste regulations that aimed to control factory  
8           farm pollution but which would severely under-  
9           mine existing Clean Water Act protections. This  
10          regulation allows large-scale animal factories to  
11          foul the Nation’s waters with animal waste, al-  
12          lows livestock owners to draft their own pollu-  
13          tion-management plans and avoid groundwater  
14          monitoring, legalizes the discharge of contami-  
15          nated runoff water rich in nitrogen, phos-  
16          phorus, bacteria, and metals, and ensures that  
17          large factory farms are not held liable for the  
18          environmental damage they cause.

19          (C) On March 19, 2003, the Environ-  
20          mental Protection Agency published a new rule  
21          regarding the Total Maximum Daily Load pro-  
22          gram of the Clean Water Act, which regulates  
23          the maximum amount of a particular pollutant  
24          that can be present in a body of water and still  
25          meet water quality standards. The new rule

1           withdrew the existing regulation put forth on  
2           July 13, 2000, and halted momentum in clean-  
3           ing up polluted waterways throughout the coun-  
4           try. By abandoning the existing rule, the Envi-  
5           ronmental Protection Agency is undermining  
6           the effectiveness of clean-up plans and is allow-  
7           ing States to avoid cleaning polluted waters en-  
8           tirely by dropping them from their clean-up  
9           lists. Waterways play a crucial role in the lives  
10          of Americans and are critical to the livelihood  
11          of fish and wildlife. By dropping the July 2000  
12          rule, cleanup of existing polluted rivers, shore-  
13          lines, and lakes will be delayed, harming more  
14          fish and wildlife and worsening the quality of  
15          drinking water.

16          (2) FORESTS AND LAND MANAGEMENT.—

17                 (A) On December 3, 2003, the President  
18                 signed the Healthy Forests Restoration Act of  
19                 2003 (Public law 108–148). Although the law  
20                 attempts to reduce the risk of catastrophic for-  
21                 est fires, it provides a boon to timber companies  
22                 by accelerating the aggressive thinning of  
23                 backcountry forests that are far from at-risk  
24                 communities. The law allows for increased log-  
25                 ging of large, fire-resistant trees that are not in

1 close proximity of homes and communities; it  
2 undermines critical protections for endangered  
3 species by exempting Federal land management  
4 agencies from consulting with the United States  
5 Fish and Wildlife Service before approving any  
6 action that could harm endangered plants or  
7 wildlife; and it limits public participation by re-  
8 ducing the number of environmental project re-  
9 views and exempting projects designed to re-  
10 duce hazardous fuels from analysis.

11 (B) On January 5, 2005, the Department  
12 of Agriculture published a new national forest  
13 system land and resource management planning  
14 rule in the Federal Register that replaced the  
15 existing rule published on November 9, 2000.  
16 The revised rule opens 155 national forests and  
17 20 grasslands (over 192 million acres of public  
18 lands) to logging, grazing, drilling, and other  
19 commercial activities. The new rule reverses  
20 more than 20 years of protection for wildlife  
21 and national forests by removing the overall  
22 goal of ensuring ecological sustainability in  
23 managing the national forest system, weakening  
24 the National Forest Management Act of 1976,  
25 and effectively ending the review of forest man-

1           agement plans under the National Environ-  
2           mental Policy Act of 1969.

3           (C) On May 13, 2005, the Department of  
4           Agriculture published the Protection of Inven-  
5           toried Roadless Areas rule, replacing the origi-  
6           nal Roadless Area Conservation Rule issued in  
7           January 2001. The new rule gives State Gov-  
8           ernors 18 months to petition the Federal Gov-  
9           ernment to either restore the previous rule for  
10          their States, or submit a new management and  
11          development plan for national forest areas  
12          inventoried under the rule. As a result of the  
13          new rule, 58.5 million acres of wild national  
14          forests are now vulnerable to logging, road  
15          building, and other development that may frag-  
16          ment natural habitats and negatively impact  
17          fish and wildlife.

18          (3) CLEAN AIR.—

19          (A) On February 14, 2002, the President  
20          announced the Clear Skies Initiative, a limited  
21          market based cap and trade system designed to  
22          cut down on harmful air pollutants. The legisla-  
23          tive proposal was later submitted to the Con-  
24          gress on July 29, 2002, and has since been in-  
25          troduced in various forms through the last



1 three Congresses. The Clear Skies Initiative  
2 would weaken existing emission reduction tar-  
3 gets for sulfur dioxide, mercury, and nitrogen  
4 oxides under the Clean Air Act by allowing  
5 three times more toxic mercury emissions, 50  
6 percent more sulfur emissions, and hundreds of  
7 thousands more tons of nitrogen oxides.

8 (B) On October 27, 2003, the Environ-  
9 mental Protection Agency published the rule  
10 “Prevention of Significant Deterioration (PSD)  
11 and Non-Attainment New Source Review  
12 (NSR): Equipment Replacement Provision of  
13 the Routine Maintenance, Repair and Replace-  
14 ment Exclusion”, which was slightly clarified on  
15 June 6, 2005. The new rule significantly under-  
16 mines the New Source Review Permitting Pro-  
17 gram, a key tool of the Clean Air Act which re-  
18 quires owners of industrial facilities to install  
19 modern pollution control mechanisms whenever  
20 existing equipment is expanded, improved, re-  
21 placed, or significantly repaired. In clarifying  
22 the definition of “routine maintenance,” the  
23 new rule exempts more than 17,000 older power  
24 plants, oil refineries, and factories across the  
25 country from having to install pollution controls

1 when replacing equipment or carrying out up-  
2 grades, even if such activities increase air pollu-  
3 tion. Ultimately the new rule undermines the  
4 effectiveness of the Clean Air Act and fails to  
5 hold the oldest and dirtiest industrial facilities  
6 accountable for reducing the amount of pollu-  
7 tion they produce, allowing them to continue to  
8 emit harmful toxic pollutants that will have a  
9 detrimental impact on public health and the en-  
10 vironment.

11 (C) On March 29, 2005, the Environ-  
12 mental Protection Agency formally revised and  
13 reversed the regulatory finding that it issued in  
14 December 2000 pursuant to section  
15 112(n)(1)(A) of the Clean Air Act, removing  
16 coal- and oil-fired electric utility steam gener-  
17 ating units from the Clean Air Act section  
18 112(c) source category list. The new rule re-  
19 vokes a decision in 2000 which determined that  
20 as the largest domestic source of mercury emis-  
21 sions it is “necessary and appropriate” to re-  
22 quire power plants which use coal- and oil-fired  
23 utility units to apply technology that would re-  
24 duce their mercury emissions as those emissions  
25 pose a significant public health and environ-

1           mental hazard. By reversing its previous intent  
2           to regulate these power plants and reduce the  
3           emissions of a serious hazardous air pollutant,  
4           the Environmental Protection Agency is poten-  
5           tially exposing millions of people to continued  
6           mercury pollution.

7           (D) On May 18, 2005, the Environmental  
8           Protection Agency issued a new rule entitled  
9           “Standards of Performance for New and Exist-  
10          ing Stationary Sources: Electric Utility Steam  
11          Generating Units”, also known as the Clean Air  
12          Mercury Rule, which implements a cap-and-  
13          trade approach that is intended to reduce mer-  
14          cury emissions from coal-fired power plants.  
15          The new rule subverts a previous Environ-  
16          mental Protection Agency finding that required  
17          power plants to implement maximum achievable  
18          controls on mercury emissions by 2008, a deci-  
19          sion that would have resulted in a 90 percent  
20          cut within 3 years, and further replaces an ex-  
21          isting target of achieving an overall 70 percent  
22          reduction in emissions by 2018 in favor of a 50  
23          percent reduction by 2020. By delaying the reg-  
24          ulation of mercury emissions and reducing the  
25          overall targets for reduction the Environmental



1 published in the Federal Register on May 9,  
2 2002 (67 FR 31129), amending title 40, Code  
3 of Federal Regulations, part 232.

4 (B) National Pollutant Discharge Elimini-  
5 nation System Permit Regulation and Effluent  
6 Limitation Guidelines and Standards for Con-  
7 centrated Animal Feeding Operations, finalized  
8 and published in the Federal Register on Feb-  
9 ruary 12, 2003 (68 FR 7176), amending title  
10 40, Code of Federal Regulations, parts 9, 122,  
11 123, and 412.

12 (C) A March 19, 2003, rule published in  
13 the Federal Register (68 FR 13608) with-  
14 drawing a July 13, 2000, rule revising the  
15 Total Maximum Daily Load program of the  
16 Clean Water Act (65 FR 43586), amending  
17 title 40, Code of Federal Regulations, parts 9,  
18 122, 123, 124, and 130.

19 (2) FORESTS AND LAND MANAGEMENT.—

20 (A) Healthy Forests Restoration Act of  
21 2003, signed into law on December 3, 2003  
22 (Public Law 108–148).

23 (B) National Forest System Land and Re-  
24 source Management Planning Rule, finalized  
25 and published in the Federal Register on Janu-

1           ary 5, 2005 (70 FR 1022–23), replacing the  
2           rule announced on November 9, 2000, amend-  
3           ing title 36, Code of Federal Regulations, parts  
4           217 and 219.

5           (C) Protection of Inventoried Roadless  
6           Areas, finalized and published in the Federal  
7           Register on May 13, 2005 (70 FR 25654),  
8           amending subpart B of title 36, Code of Fed-  
9           eral Regulations, part 294.

10          (3) CLEAN AIR.—

11           (A) Clear Skies Initiative, announced by  
12           the President on February 14, 2002, and intro-  
13           duced as legislation in each subsequent Con-  
14           gress.

15           (B) Prevention of Significant Deterioration  
16           (PSD) and Non-Attainment New Source Re-  
17           view (NSR): Equipment Replacement Provision  
18           of the Routine Maintenance, Repair and Re-  
19           placement Exclusion, finalized and published in  
20           the Federal Register on October 27, 2003 (68  
21           FR 61248), and altered slightly on June 6,  
22           2005.

23           (C) A rule revoking a 2000 decision that  
24           it is “necessary and appropriate” to require  
25           that each power plant apply technology to re-

1           duce mercury emissions finalized and published  
2           in the Federal Register on March 29, 2005 (70  
3           FR 15994), which amended title 40, Code of  
4           Federal Regulations, part 63.

5                   (D) Standards of Performance for New  
6           and Existing Stationary Sources: Electric Util-  
7           ity Steam Generating Units, finalized and pub-  
8           lished in the Federal Register on May 18, 2005  
9           (70 FR 28606), which amended title 40, Code  
10          of Federal Regulations, parts 60, 72, and 75.

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

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

24                   (1) a description of the impact of all such regu-  
25       lations, laws, and proposed laws on public health, air

1 quality, water quality, wildlife, and the environment,  
2 compared to the impact of preexisting regulations,  
3 or laws in effect, including—

4 (A) any negative impacts to air quality or  
5 water quality;

6 (B) any negative impacts to wildlife;

7 (C) any delays in hazardous waste cleanup  
8 that are projected to be hazardous to public  
9 health; and

10 (D) any other negative impact on public  
11 health or the environment; and

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

21 **SEC. 5. DEPARTMENT AND AGENCY REVISION OF EXISTING**  
22 **RULES, REGULATIONS, OR LAWS.**

23 Not later than 180 days after the date on which the  
24 report is submitted pursuant to section 4(c), the head of  
25 each department and agency that has issued or imple-



1 mented a regulation or law listed in section 4(a) shall sub-  
2 mit to the Congress a plan describing the steps such de-  
3 partment or such agency will take, or has taken, to restore  
4 or improve protections for public health and the environ-  
5 ment in whole or in part that were in existence prior to  
6 the issuance of such regulation or law.

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