

111TH CONGRESS
1ST SESSION

H. R. 585

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

JANUARY 15, 2009

Ms. LEE of California (for herself, Mr. STARK, Mr. KUCINICH, Mr. GRIJALVA, Mr. CONYERS, and Mr. RUSH) 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 2009”.

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. On November 20, 2008, the Environ-
22 mental Protection Agency published a revised
23 final rule which undermines environmental pro-
24 tection provisions by removing mandatory per-
25 mitting requirements and allowing large animal

1 farms to self-certify the absence of pollutant
2 discharge activity.

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

(D) On December 2, 2008, the Environmental Protection Agency and Army Corps of Engineers jointly issued a Guidance Document in the form of a Legal Memorandum, titled “Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States* & *Carabell v. United States*”. This new guidance dictates enforcement actions under the Clean Water Act, and calls for a complicated “case-by-case” analysis to determine Clean Water Act jurisdiction for waterways that do not flow all year long. Such actions endanger small streams and wetlands that serve as important habitats for aquatic life, which play a fundamental role in safeguarding sources of clean drinking water and mitigate the risks and effects of floods and droughts. Further, the definition provided therein for “waters of the United States” is applicable to the Clean Water Act as a whole, potentially affecting programs that control industrial pollution and sewage levels, prevent oil spills, and set water quality standards for all waters in the United States protected under the Clean Water Act.

(2) FORESTS AND LAND MANAGEMENT.—

(A) On December 3, 2003, the President signed into law the Healthy Forests Restoration Act of 2003 (Public Law 108–148). Although the law attempts to reduce the risk of catastrophic forest fires, it provides a boon to timber companies by accelerating the aggressive thinning of backcountry forests that are far from at-risk communities. The law allows for increased logging of large, fire-resistant trees that are not in close proximity of homes and communities; it undermines critical protections for endangered species by exempting Federal land management agencies from consulting with the United States Fish and Wildlife Service before approving any action that could harm endangered plants or wildlife; and it limits public participation by reducing the number of environmental project reviews.

(B) On April 21, 2008, the Department of Agriculture issued a Final Planning Rule and Record of Decision for National Forest System Land Management Planning. Similar to rules enacted by the Administration on January 5, 2005, later remanded back to the agency in

1 Federal district court for violating the National
2 Environmental Policy Act of 1969, the Endan-
3 gered Species Act of 1973, and the Administra-
4 tive Procedure Act (Citizens for Better Forestry
5 v. U.S. Dept. of Agriculture, 481 F. Supp. 2d
6 1059 (N.D. Cal. 2007)), this revised rule elimi-
7 nates strict forest planning standards estab-
8 lished in 1982, and opens millions of acres of
9 public lands to damaging and invasive logging,
10 mining, and drilling operations. These regula-
11 tions would reverse more than 20 years of pro-
12 tection for wildlife and national forests by re-
13 moving the overall goal of ensuring ecological
14 sustainability in managing the national forest
15 system, weakening the National Forest Man-
16 agement Act of 1976, and effectively ending the
17 review of forest management plans under the
18 National Environmental Policy Act of 1969.

19 (C) On September 20, 2006, the District
20 Court for the Northern District of California
21 vacated the Protection of Inventoried Roadless
22 Areas rule, enacted on May 13, 2005, which
23 gave State Governors 18 months to petition the
24 Federal Government to either restore the pre-
25 vious rule for their States, or submit a new

1 management and development plan for national
2 forest areas inventoried under the rule. Despite
3 the enjoinder of the Administration's 2005
4 rule, and the subsequent restoration of the
5 original Roadless Area Conservation Rule, the
6 U.S. Forest Service has continued to allow
7 States to petition for a special rule under the
8 authority of the Administrative Procedure Act,
9 publishing a final special rule for Idaho on Oc-
10 tober 16, 2008. As a result, 58.5 million acres
11 of wild national forests are still vulnerable to
12 logging, road building, and other developments
13 that may fragment natural habitats and nega-
14 tively impact fish and wildlife.

15 (D) On November 17, 2008, the Depart-
16 ment of the Interior's Bureau of Land Manage-
17 ment (BLM) signed the Record of Decision
18 (ROD) amending 12 resource management
19 plans in Colorado, Utah, and Wyoming opening
20 up 2,000,000 acres of public lands to commer-
21 cial tar sands and oil shale exploration and de-
22 velopment. On November 18, 2008, the BLM
23 published a final rule for Oil Shale Manage-
24 ment setting the policies and procedures for a
25 commercial leasing program for the manage-

1 ment of federally owned oil shale in these 3
2 States. Previously barred by a Congressional
3 Moratorium on the commercial leasing regula-
4 tions for oil shale until September 30, 2008, the
5 development of oil shale on public lands poses
6 a serious threat to land conservation, endan-
7 gered and threatened species, and critical habi-
8 tat. Domestic shale oil production permitted by
9 these regulations is highly water and energy in-
10 tensive, the impacts of which will intensify ex-
11 isting water scarcity in the arid Western Region
12 and potentially degrade air and water quality
13 for surrounding populations.

14 (3) CLEAN AIR.—On March 27, 2008, the En-
15 vironmental Protection Agency issued a new rule re-
16 vising National Ambient Air Quality Standards for
17 Ozone (NAAQS), which sets new EPA air pollution
18 limits for ground level ozone, or smog, allowed in the
19 air. Despite a requirement that directs the EPA to
20 set air pollution limits low enough, and with a “mar-
21 gin of safety” sufficient to protect even the most
22 sensitive groups, this new rule sets primary and sec-
23 ondary standards at .075 parts per million, well
24 above the lower level of .060 found to affect some
25 healthy individuals. The Clean Air Scientific Advi-

1 sory Committee unanimously recommended a range
2 of .060 to .070 for the primary ozone NAAQS. Be-
3 cause existing law allows nonattainment areas up to
4 twenty years to meet air quality standards, the long-
5 term implications of this new standard and its ex-
6 tensive impact on public health across the country
7 necessitate standards supported by available sci-
8 entific data in order to ensure adequate public pro-
9 tection from serious diseases linked to ozone pollu-
10 tion including asthma, emphysema, and bronchitis.
11 Thirteen states have filed suit against this rule alleg-
12 ing that the newly promulgated Federal ozone stand-
13 ards fail to protect the elderly, children and people
14 with respiratory ailments, such as asthma.

15 (4) SCIENTIFIC REVIEW.—On December 16,
16 2008, the U.S. Fish and Wildlife Service of the De-
17 partment of the Interior and the National Oceanic
18 and Atmospheric Administration of the Department
19 of Commerce jointly issued a new rule amending
20 regulations governing interagency cooperation under
21 section 7 of the Endangered Species Act of 1973
22 (ESA). This rule undermines the intention of the
23 ESA to protect species and the ecosystems upon
24 which they depend by allowing Federal agencies to
25 carry out, permit, or fund an action without proper

1 environmental review and expert third-party con-
2 sultation from Federal wildlife experts. Under this
3 new rule, Federal agencies can unilaterally cir-
4 cumvent the formal review process, eliminating long-
5 standing and scientifically grounded safeguards that
6 serve to protect the biodiversity of our Nation's eco-
7 systems and avert harm to thousands of endangered
8 and threatened species.

9 **SEC. 3. STATEMENT OF POLICY.**

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

18 **SEC. 4. STUDY AND REPORT ON PUBLIC HEALTH OR ENVI-**
19 **RONMENTAL IMPACT OF REVISED RULES,**
20 **REGULATIONS, LAWS, OR PROPOSED LAWS.**

21 (a) STUDY.—Not later than 30 days after the date
22 of enactment of this Act, the President shall enter into
23 an arrangement under which the National Academy of
24 Sciences will conduct a study to determine the impact on
25 public health, air quality, water quality, wildlife, and the

1 environment of the following regulations, laws, and pro-
2 posed laws:

3 (1) CLEAN WATER.—

4 (A) Final Revisions to the Clean Water
5 Act Regulatory Definitions of “Fill Material”
6 and “Discharge of Fill Material”, finalized and
7 published in the Federal Register on May 9,
8 2002 (67 FR 31129), amending title 40, Code
9 of Federal Regulations, part 232.

10 (B) Revised National Pollutant Discharge
11 Elimination System Permit Regulation and Ef-
12 fluent Limitation Guidelines and Standards for
13 Concentrated Animal Feeding Operations in
14 Response to the Waterkeeper Decision, finalized
15 and published in the Federal Register on No-
16 vember 20, 2008 (73 FR 225), amending title
17 40 Code of Federal Regulations, parts 9, 122,
18 and 412.

19 (C) A March 19, 2003, rule published in
20 the Federal Register (68 FR 13608) with-
21 drawing a July 13, 2000, rule revising the
22 Total Maximum Daily Load program of the
23 Clean Water Act (65 FR 43586), amending
24 title 40, Code of Federal Regulations, parts 9,
25 122, 123, 124, and 130.

1 (D) Official Guidance Document, “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*”, issued on
5 December 2, 2008, relating to jurisdiction
6 under the Clean Water Act, section 404.

7 (2) FORESTS AND LAND MANAGEMENT.—

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

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

21 (C) The application of the Administrative
22 Procedure Act (5 U.S.C. 551 to 559, 701 to
23 706, et seq.), such that States may petition for
24 a special rule for the roadless areas in all or
25 part of said State.

(D) Record of Decision, “Oil Shale and Tar Sands Resources Resource Management Plan Amendments”, issued on November 17, 2008, along with the Final Rule, Oil Shale Management-General, published in the Federal Register on November 18, 2008 (73 FR 223), amending title 43, Code of Federal Regulations, parts 3900, 3910, 3920, and 3930.

(3) CLEAN AIR.—Final Rule, National Ambient Air Quality Standards for Ozone, published in the Federal Register on March 27, 2008 (73 FR 16436), amending title 40, Code of Federal Regulations, parts 50 and 58.

(4) SCIENTIFIC REVIEW.—Final Rule, Inter-agency Cooperation Under the Endangered Species Act, published in the Federal Register on December 16, 2008, amending title 50, Code of Federal Regulations, part 402.

(b) METHOD.—In conducting the study under subsection (a), the National Academy of Sciences may utilize and compare existing scientific studies regarding the regulations, laws, and proposed laws listed in subsection (a).

(c) REPORT.—Under the arrangement entered into under subsection (a), not later than 270 days after the date on which such arrangement is entered into, the Na-

1 tional Academy of Sciences shall make publicly available
2 and shall submit to the Congress and to the head of each
3 department and agency of the Federal Government that
4 issued, implements, or would implement a regulation, law,
5 or proposed law listed in subsection (a), a report con-
6 taining—

7 (1) a description of the impact of all such regu-
8 lations, laws, and proposed laws on public health, air
9 quality, water quality, wildlife, and the environment,
10 compared to the impact of preexisting regulations,
11 or laws in effect, including—

12 (A) any negative impacts to air quality or
13 water quality;

14 (B) any negative impacts to wildlife;

15 (C) any delays in hazardous waste cleanup
16 that are projected to be hazardous to public
17 health; and

18 (D) any other negative impact on public
19 health or the environment; and

20 (2) any recommendations that the National
21 Academy of Sciences considers appropriate to main-
22 tain, restore, or improve in whole or in part protec-
23 tions for public health, air quality, water quality,
24 wildlife, and the environment for each of the regula-
25 tions, laws, and proposed laws listed in subsection

1 (a), which may include recommendations for the
2 adoption of any regulation or law in place or pro-
3 posed prior to January 1, 2001.

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

6 Not later than 180 days after the date on which the
7 report is submitted pursuant to section 4(c), the head of
8 each department and agency that has issued or imple-
9 mented a regulation or law listed in section 4(a) shall sub-
10 mit to the Congress a plan describing the steps such de-
11 partment or such agency will take, or has taken, to restore
12 or improve protections for public health and the environ-
13 ment in whole or in part that were in existence prior to
14 the issuance of such regulation or law.

○