

**PUBLIC HEALTH AND NATURAL RESOURCES: A  
REVIEW OF THE IMPLEMENTATION OF OUR  
ENVIRONMENTAL LAWS—PARTS I AND II**

---

---

**HEARINGS**

BEFORE THE

COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

—————  
MARCH 7 AND 13, 2002  
—————

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

79-884 PDF

WASHINGTON : 2002

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan	FRED THOMPSON, Tennessee
DANIEL K. AKAKA, Hawaii	TED STEVENS, Alaska
RICHARD J. DURBIN, Illinois	SUSAN M. COLLINS, Maine
ROBERT G. TORRICELLI, New Jersey	GEORGE V. VOINOVICH, Ohio
MAX CLELAND, Georgia	PETE V. DOMENICI, New Mexico
THOMAS R. CARPER, Delaware	THAD COCHRAN, Mississippi
JEAN CARNAHAN, Missouri	ROBERT F. BENNETT, Utah
MARK DAYTON, Minnesota	JIM BUNNING, Kentucky

JOYCE A. RECHTSCHAFFEN, *Staff Director and Counsel*

KATHRYN J. SEDDON, *Counsel*

KIERSTEN TODT COON, *Professional Staff Member*

TIMOTHY H. PROFETA, *Counsel for the Environment for Senator Lieberman*

RICHARD A. HERTLING, *Minority Staff Director*

ELIZABETH A. VANDERSARL, *Minority Counsel*

TRENT M. KITTLEMAN, *Minority Counsel*

ROBERT G. KLEPP, *Minority Legislative Fellow*

ALLISON P. MARTIN, *Minority Legislative Assistant to Senator Thompson*

DARLA D. CASSELL, *Chief Clerk*

## CONTENTS

---

Opening statements:	Page
Senator Lieberman .....	1, 65
Senator Voinovich .....	4
Senator Thompson .....	6, 68
Prepared statements from Senator Bunning:	
March 7 and 13, 2002 .....	105

### WITNESSES

#### THURSDAY, MARCH 7, 2002

Hon. James M. Jeffords, a U.S. Senator from the State of Vermont .....	10
Hon. Larry E. Craig, a U.S. Senator from the State of Idaho .....	12
Hon. Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency .....	17
Eric V. Schaeffer, former Director, Office of Regulatory Enforcement, U.S. Environmental Protection Agency .....	34
Hon. E. Donald Elliott, Co-Chair, Environmental Practice Group, Paul, Hastings, Janofsky & Walker and Professor (Adj.) of Law, Yale and Georgetown Law Schools .....	39
Thomas O. McGarity, W. James Kronzer Chair, University of Texas School of Law .....	42
Gregory S. Wetstone, Director of Advocacy Programs, Natural Resources Defense Council .....	46

#### WEDNESDAY, MARCH 13, 2002

Hon. Richard Blumenthal, Attorney General, State of Connecticut .....	71
Richard J. Dove, Southeastern Representative, Waterkeeper Alliance .....	82
Kenneth Green, Ph.D., Chief Environmental Scientist, Reason Public Policy Institute .....	85
Donald Newhouse, Guardians of the Rural Environment .....	88
Hope Sieck, Associate Program Director, Greater Yellowstone Coalition .....	89
Stephen C. Torbit, Ph.D., Senior Scientist, Rocky Mountain Natural Resource Center, on behalf of the National Wildlife Federation .....	93

#### ALPHABETICAL LIST OF WITNESSES

Blumenthal, Hon. Richard:	
Testimony .....	71
Prepared statement .....	170
Craig, Hon. Larry E.:	
Testimony .....	12
Prepared statement .....	106
Dove, Richard J.:	
Testimony .....	82
Prepared statement .....	176
Elliott, Hon. E. Donald:	
Testimony .....	39
Prepared statement .....	127
Green, Kenneth, Ph.D.:	
Testimony .....	85
Prepared statement .....	276
Jeffords, Hon. James M.:	
Testimony .....	10

IV

	Page
McGarity, Thomas O.:	
Testimony .....	42
Prepared statement .....	134
Newhouse, Donald:	
Testimony .....	88
Prepared statement .....	282
Schaeffer, Eric V.:	
Testimony .....	34
Prepared statement .....	125
Sieck, Hope:	
Testimony .....	89
Prepared statement .....	284
Torbit, Stephen C., Ph.D.:	
Testimony .....	93
Prepared statement .....	305
Wetstone, Gregory S.:	
Testimony .....	46
Prepared statement with an attachment .....	163
Whitman, Hon. Christine Todd:	
Testimony .....	17
Prepared statement .....	120

APPENDIX

MATERIAL SUBMITTED FOR THE RECORD, MARCH 7, 2002

Chart entitled “New Source Review” submitted by Senator Voinovich .....	314
Judge’s Order dated April 5, 2001 regarding <i>State of Idaho, et al. v. United States Forest Service, et al.</i> , CV01–11–N–EJL (In the United States District Court for the District of Idaho) submitted by Senator Craig .....	315
Judge’s Order dated May 10, 2001 regarding <i>State of Idaho, et al. v. United States Forest Service, et al.</i> , CV01–11–N–EJL (In the United States District Court for the District of Idaho) submitted by Senator Craig .....	336
Letter from Daniel J. Popeo, Chairman and General Counsel, and Paul D. Kamenar, Senior Executive Counsel, Washington Legal Foundation, to Senator Craig, dated April 25, 2001, submitted by Senator Craig .....	341
Chart entitled “Improvements in Annual Visibility in 2020 Under a Multipollutant Scenario Relative to the Base Case” submitted by Senator Thompson .....	347
Chart entitled “Visibility (2020)” submitted by Senator Thompson .....	348
“Clean Air Act/New Source Review Enforcement Activity” submitted by Administrator Whitman .....	349
Chart entitled “NSR § 114 Information Requests and Notices of Violation Issued On or After January 20, 2001—All Facilities” submitted by Administrator Whitman .....	350
Chart entitled “Table 1—2001–02 NSR Settlements” submitted by Administrator Whitman .....	365
Chart entitled “NSR § 114 Information Requests and Notices of Violation: Issued Before January 20, 2001—Coal-Fired Utility Power Plants and Refineries” submitted by Administrator Whitman .....	368
Chart entitled “Clean Air Act § 114 Information Requests: Vendors” submitted by Administrator Whitman .....	381
Resignation letter from Mr. Schaeffer to Administrator Whitman submitted by Mr. Schaeffer .....	382
“Rewriting the Rules: The Bush Administration’s Unseen Assault on the Environment” by the Natural Resources Defense Council (NRDC), January 2002, submitted by Mr. Wetstone .....	385
“The Bush Administration’s Environmental Record: A Year of Accomplishments,” March 7, 2002 .....	439
Responses to Questions for the Record from Administrator Whitman:	
Submitted by Senator Lieberman with attachments .....	466
Submitted by Senator Thompson .....	477



## MATERIAL SUBMITTED FOR THE RECORD, MARCH 13, 2002

Chart entitled "The Importance of Enforcement: Pollution Reductions Achievable Through Enforcement of Current Clean Air Act Compared with Clear Skies (Bush) and S. 556 (Jeffords)" (Source: New York Attorney General) submitted by General Blumenthal .....	480
Medical complaints received by the National Park Service from Yellowstone National Park employees submitted by Hope Sieck .....	481
Photos submitted by Hope Sieck .....	495
Violation Notices for snowmobile violations for the month of February 2002 submitted by Hope Sieck .....	501
Letter to Clifford Hawkes, National Park Service, from Cynthia G. Cody, Chief, NEPA Unit, U.S. Environmental Protection Agency, regarding "Draft EIS for Winter Use Plans" submitted by Hope Sieck .....	594
Letter dated October 17, 2001 from Wildlife Scientists to Secretary Gale Norton, Department of the Interior, submitted by Hope Sieck .....	597
Chart entitled "Sensitive Wyoming Landscapes Threatened by Energy Development" submitted by Dr. Torbit .....	601
Photos of the "Wyoming' Greater Red Desert Region" submitted by Dr. Torbit .....	602
Photo of "Drill pads in the Upper Green River Basin, WY." submitted by Dr. Torbit .....	603
"The Wyoming Bureau of Land Management's Management of Areas with Wilderness Values" submitted by Dr. Torbit .....	604
Chart of "Adobe Town Citizens' Proposal—Portions with Wilderness Character" submitted by Dr. Torbit .....	607
The Honorable Craig Thomas, a U.S. Senator from the State of Wyoming, prepared statement .....	608

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Internal Review Draft—"Draft Supplemental EIS for Winter Use" submitted by Hope Sieck .....	609
Table 15 from the National Park Service, "Listing of materials presented as new information, and a summary of how each was considered," submitted by Hope Sieck .....	610



**PUBLIC HEALTH AND NATURAL RESOURCES:  
A REVIEW OF THE IMPLEMENTATION OF  
OUR ENVIRONMENTAL LAWS—PART I**

---

**THURSDAY, MARCH 7, 2002**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:34 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Durbin, Thompson, and Voinovich.

**OPENING STATEMENT OF CHAIRMAN LIEBERMAN**

Chairman LIEBERMAN. Good morning and welcome to the hearing. This is the first in a series of hearings on the Bush Administration's environmental record.

One of the primary responsibilities of this Governmental Affairs Committee is to make sure that our government is working efficiently and effectively and that its agencies are properly enforcing the laws Congress has passed and the President has signed.

The Committee is involved at this time in an ongoing investigation of the Enron collapse, and it struck me as I was thinking about this hearing this morning that we have regularly in those proceedings raised the question of why the watchdogs did not bark, both private and public watchdogs, as the Enron story was unfolding.

This Committee is itself a watchdog, and it is our job to bark when we see trouble. And I see a lot of trouble in the first year of the Bush Administration's environmental record.

I did not convene this hearing lightly or reflexively, but out of genuine concern that goes back, if I may be personal for a moment, more than three decades in the career that I have been privileged to have in public service, beginning in the early seventies as a State Senator in a Democrat-controlled Senate. Working with a Republican Governor in Connecticut by the name of Tom Meskill, who went on to a distinguished career in the Second Circuit Court of Appeals, and, as was occurring in so many other Statehouses across America, we created, on a bipartisan basis the Connecticut Department of Environmental Protection. We adopted clean air and clean water laws and began to enforce them. In the 1980's, I was privileged to be Attorney General of Connecticut and spent a lot of time enforcing those environmental protection laws. After I arrived here in the Senate in the late eighties and early nineties, during

the administration of former President Bush, one of the most significant environmental accomplishments of the generation and one I was privileged to be involved in as a member of the Environment Committee was the bipartisan amendments to the Clean Air Act. When I look back at my time of service here, that is one of the things that I am proudest of.

We also worked on climate change then. The former Bush Administration and Members of Congress, acknowledging that the planet was warming, and working together on the Rio Treaty which was both signed and ratified by the Senate.

So it is from that context and what followed during the Clinton Administration that I reached the conclusion, sadly, that this Bush Administration has undermined many critical environmental and public health protections and as a result has broken the bipartisan consensus for environmental protection that has existed for quite a number of years here in Washington and certainly throughout the country.

Today we will assess the effects of those actions, not only to learn what has happened but to understand what could happen over the next 3 years if similar behavior goes unchecked and unchanged.

There have been a couple of recent environmental initiatives by the administration which I must say I find disappointing and in some sense deceptive. After avoiding mounting evidence on climate change for too long, a few weeks ago, the President acknowledged that global warming is a serious challenge that requires a response. Unfortunately, his proposals fell short of his rhetoric. His global warming proposal, which EPA Administrator Whitman will discuss with us today, is packaged as a major innovation, but the bottom line is that if it were to become law, the main source of global warming, carbon dioxide emissions, would rise by 14 percent over the next decade, based on current projections. Global warming would literally get worse, not better.

On the related challenge of clean air, I see the same false promise of innovation. When he was running for President, then Governor Bush said without conditions or equivocations that he supported a comprehensive strategy to reduce all four major emissions from power plants, carbon dioxide included. And here in Congress, we were working hard on a bipartisan proposal to do just that, with every expectation that the administration would support our attempts to reach a compromise.

Then, last March, it appears in response to resistance from the power industry, the President suddenly dropped the ball on carbon dioxide and thereby stifled the bipartisan congressional work that was being done. Senator Jeffords, as Chairman of the Environment Committee, is trying to reconstruct that work.

What was issued at that point by the administration was a three-pollutant proposal which again is being marketed as an innovation. In fact, it looks to me as if it would do less of a job of reducing the emissions of those three pollutants than existing rules because, although I favor the cap-and-trade system, the time frame proposed by the administration is too lax, and the targets are too weak.

So I fear that the administration is determined to make existing policies less effective and then to suggest replacing them with new policies that would achieve even less.

That brings me to the enforcement of our environmental laws, where I see a record that is truly troubling. Because I am a former State attorney general, I know something about enforcement of environmental laws, so I have grown increasingly troubled by the poor enforcement record of this administration, which reached a stunning low point last week when Eric Schaeffer, one of EPA's leading environmental enforcers, resigned in protest. We will hear from Mr. Schaeffer later this morning.

The warning signs occurred early in the Bush Administration when it began rolling back important protections that safeguarded our environment and our health. It derailed a new rule to require significant efficiency savings in air conditioners that could have offset the need for over 30 new power plants. And most memorably, on arsenic in the water, it put the brakes on the Clinton Administrations' standards, asking for another redundant study and was finally forced to back down and retain the rule it initially sought to withdraw.

Alongside these higher-profile rollbacks, there has been a subtler undermining of environmental protection through inaction, settlement agreements, changes in guidance documents, and funding reductions. I only wish the administration were as tireless and resourceful in trying to solve some of our common environmental challenges as it has seemed to be in devising ways to take the teeth out of important environmental rules and regulations.

One particular area of concern is the so-called New Source Review which governs how power plants comply with the Clean Air Act and is intended to ensure that when all power plants upgrade their operations, they also upgrade their emissions reduction technology. Is this important? Well, yesterday, we received fresh and truly jarring evidence of the kind of long-term health consequences that weak New Source Review enforcement and other similarly toothless air quality policies can bring. In an article published in the *Journal of the American Medical Association* researchers for the first time linked long-term exposure to air pollution from coal-fired power plants, factories, and diesel trucks to an increased risk of dying from lung cancer.

I quote from the article about this story in yesterday's *Washington Post*: "Previous research by Harvard University and the American Cancer Society strongly linked these fine particles to high mortality rates from cardiopulmonary diseases such as heart attacks, strokes, and asthma. Until now, however, scientists lacked sufficient statistical evidence to directly link those emissions to elevated lung cancer death rates. . . . Nationwide, as many as 30,100 deaths a year are related to power plant emissions according to a study by Abt Associates, a private research organization that does work for EPA. By comparison, 16,000 Americans are killed each year in drunken driving accidents, and more than 17,000 are victims of homicides"—as compared to 30,100 related to power plant emissions.

This is obviously very serious business which I fear that the administration is not in its New Source Review changes treating seri-

ously enough. That is undoubtedly one reason why Mr. Schaeffer resigned last week in protest over what he called, "a White House that seems determined to weaken the rules." That was a disheartening development, because it confirmed from within what many outside have worried was the reality.

Mr. Schaeffer's resignation statement is also to me powerful evidence that this administration is not following a balanced environmental policy, that it is listening and responding disproportionately to the views of those who are the source of pollution and emissions, without giving the views, voices, and values of others the weight that they, too, deserve.

This hearing is intended explicitly as a direct challenge to the administration to defend its environmental record and hopefully to improve it before it gets worse.

I am grateful that Administrator Whitman will testify today. If I may say so, as a personal matter, she is the best friend of the environment in the Bush Administration; I personally only wish that her advice were heeded more often.

We also welcome the second panel of witnesses who are here to help us get to the bottom of these important questions, as well as our two colleagues who will testify first.

Senator Thompson, I believe I have your authorization to go first to Senator Voinovich, who must go on to another hearing.

Senator Voinovich.

#### **OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. Thank you.

First of all, Mr. Chairman, the representatives of the administration can speak for themselves in terms of the Bush Administration's environmental policy. But from my perspective, the President is trying to bring common sense and reason to this whole environmental debate, understanding that it has a dramatic impact on the economy of the United States of America as well as the environment. The challenge that this Committee faces as we move through various pieces of legislation is to understand that we need to harmonize the environmental needs of this country and our energy needs. We need to have a national energy policy. If we keep fighting the way we have been fighting in the past, we will have neither cleaner air nor an improvement in energy delivery, which will have a negative impact on our economy.

I would like to thank you for holding this hearing today, and I would like to say, Mr. Chairman, that since you and I are the chairman and ranking member on the Clean Air Subcommittee of the Environment and Public Works Committee, we have an extra interest in this issue.

I am pleased that Senator Jeffords is here today, and it is my hope that our subcommittee will also hold hearings on this issue, where we have a history and experience with this subject. So we would like to make sure that we follow this up on the Environment and Public Works Committee.

I would like to make a few brief remarks on New Source Review, which I see as one of the most complex and controversial aspects of the Clean Air Act.

As you know, the original goal of the New Source Review program was to transition older power plants into cleaner, state-of-the-art facilities. The program worked well for almost 30 years, thanks to the decreasing levels of pollution, and we have experienced a progressively cleaner environment. I sometimes think that we do not give credit where credit is due. I can tell you as the former Governor of Ohio that we have seen a dramatic reduction in what is going into the air—not enough, but we have seen a significant reduction.

The EPA issued the first New Source Review regulation—a 20-page document—in 1980. Since then, the EPA has produced over 4,000 pages of guidance documents trying to explain and reinterpret the regulation. This has led to confusion and misunderstanding by the Agency, the States, and the regulated community.

We have known for years that New Source Review needed to be reformed. In fact, in 1994 the EPA, under Administrator Carol Browner, issued a proposed rulemaking to reform the program, but unfortunately, she never finalized the rule.

Since then, the Agency redefined New Source Review through enforcement actions and conflicting changes in the guidance document—and that is what this is. This policy changed not as a result of some new regulation; it was changed as a result of guidance documents that were issued by the EPA and turned into enforcement actions. That has led to costly litigation and a climate of uncertainty, forcing companies to forego needed maintenance and repair work.

Unfortunately, this uncertainty has led to companies even declining to invest in stronger anti-pollution technologies out of fear of enforcement actions.

While problems with understanding the New Source Review program affect every single manufacturing industry from computer manufacturers to the auto industry to the chemical and paper industries, it has probably had the biggest impact on energy production.

I want everybody to understand, Mr. Chairman, that New Source Review is not just on utilities; it runs right across a gamut of industries throughout this country.

According to a recent National Coal Council study commissioned by the Clinton Administration, if the EPA were to return to the pre-1988 NSR definitions, we could generate 40,000 new megawatts of electricity from coal-fired facilities and reduce pollution at the same time.

Six months ago, I met a vendor who offers new pollution control equipment to utilities which would reduce emissions and make our air cleaner. He approached Cinergy in Ohio, but they had to decline after investigating the technology and determining that if they installed the technology, they would have violated the New Source Review. So we are in limbo out there.

The obvious goal of the Clean Air Act is to make air cleaner, but at times, the New Source Review program has had the opposite effect. At this point, it is imperative that the EPA move forward with a meaningful reform of the program—and I am glad the administrator is here today—which began under the Clinton Administration by involving groups and other Federal agencies and rewriting

the regulations. They have got to be rewritten so we can understand what is going on.

Right now, we are at a standstill since no one is installing new pollution control equipment out of concerns over lawsuits or because they have been sued or are in settlement negotiations. In order to encourage new investments in more efficient and cleaner equipment, we need to give back to the regulated community the certainty they now lack because of New Source Review. That is why we are in limbo—we are not improving the environment and public health, and we are not producing energy more efficiently.

Mr. Chairman, I have brought this chart along.<sup>1</sup> It is an unbelievable chart. It shows why companies shudder over subjecting themselves to New Source Review. Only a fool would put himself into this regulatory maze to do ordinary repair and maintenance work. That is New Source Review. You can talk about it all you want; that is what companies are subjected to if they go in to get a New Source Review permit. Think about it. Look at the chart.

One last point needs to be made, Mr. Chairman. The costs of New Source Review are passed on to ratepayers. Somehow, people forget that the customers always pays. It is always the industry. Who do you think pays for this? If you load unreasonable costs onto utilities, they just pass them on to the ratepayers; they always pay. Too often, the environment and the ratepayers, as I say, get lost in this constant duel between well-meaning environmental groups and recalcitrant companies. That is why, again, we must harmonize our environmental regulations through our Nation's energy policy.

As for Mr. Schaeffer, I think it is unfortunate that he is testifying today. I can understand when someone leaves an administration because they disagree with the direction taken on a particular issue. However, I think it is disingenuous to suggest that he resigned in protest when he spent weeks lining up a new job before he left. I understand that he is going to be working on these same issues for a new organization, so it seems to me more like he is capitalizing on his departure to further his new career instead of leaving under protest.

Mr. Chairman, I look forward to today's hearing, and I will be especially interested in hearing what our witnesses have to say this morning.

I thank you for this opportunity. I have to run to the floor, but I am going to try to get back. I have an amendment that I have to push this morning.

Thank you.

Chairman LIEBERMAN. Thanks, Senator Voinovich. I have a feeling we are going to be here for a while.

Senator Thompson.

#### **OPENING STATEMENT OF SENATOR THOMPSON**

Senator THOMPSON. I would like to see you come back; so hurry back.

Thank you, Mr. Chairman.

<sup>1</sup> Chart entitled "New Source Review" appears in the Appendix on page 314.



I hope we can do something in these hearings that will improve our stewardship of the environment. We have made a lot of progress over the last few decades, and I think we can do a lot more. The environment is something that each of us depends on and should not be a partisan issue. As you pointed out, I think the progress that we have made in the past has been on a bipartisan basis with those kinds of initiatives crafted by Republican and Democratic Presidents and Members of Congress, and we will need to continue to work together.

I am somewhat disappointed as I listen to things going on around the country, that instead of being able to consider policies in somewhat of a dispassionate fashion, we are primarily going to be subjected to an attack on an administration and analysis of a record of an administration which is barely a year old and still trying to get its team together, mainly because Members of this Senate will not confirm and process them fast enough. That is not the total reason, but it is a big part of the reason why many of the agencies have suffered. I think this Committee has done a good job on that, but the head of the EPA Office of Enforcement and Compliance, for example, is still vacant. If we need to do a 1-year record assessment, then so be it. I think, however, that what we are seeing here is an expression of concern and fear over what might be feared to be happening and not what has happened. There is a lot of speculation and guesswork, a lot of horror expressed, over the very thought that this administration might have a different view on some issues that are very complex, and on which a lot of Americans have different views than the Clinton Administration.

And when I see Mr. Schaeffer doing his victory lap around the country and appearing on all the TV shows, as the lead story on the Democratic National Committee website, and his resignation coincides with these hearings, I would be willing to put off to a later date to do the careful analysis that we need to do on some of these policies, because we are involved in a lot more accusations than we are analysis, unfortunately.

It makes it difficult on people like myself, who have spent a lot of time lately expressing concern over air quality, especially in the national parks, especially with regard to the Great Smoky Mountain National Park. In fact, I wrote the President a letter back when the lawsuits were being analyzed, back when the administration was trying to decide what approach to take on this, before Clear Skies came out, and basically told the President that I represent TVA, and I am concerned about its competitiveness. It should not be competitively disadvantaged. They are spending \$500 million this year on upgrading their equipment, so they are trying to do what they can.

But all that aside, we had to do something about the air quality in that part of the country. We were killing the Smoky Mountains. Automobiles certainly are a part of that, insects, and other things—but we simply had to do something better. And as he was looking at what to do, I wanted the President to know that I for one would support him in any reasonable action he took in order to address that problem.

The President has now come out with what he calls his Clear Skies initiative, and I want to talk to Ms. Whitman about that

today, and I want to be assured that this is going to make improvement with regard to the situation in the Great Smoky Mountains and perhaps other national parks. If in fact it can do what it says it can do, it will be a clear improvement, and to dismiss it out-of-hand simply because it comes from the Bush Administration is foolish and irresponsible.

So let us talk about what that will do and what assurance we can have that it will make some improvement over existing law. These are issues that reasonable people can disagree on, but surely we can have that kind of analysis here.

But for some folks, any change constitutes a rolling back. Any change from what the last administration did is considered to be anti-environmental. Any move away from the old command-and-control approach to doing things, which produces hundreds of millions of dollars in wasted lawsuits all over the country, is a bad move.

But protecting the environment cannot be a zero sum game. Interjecting some common sense into the regulatory process, some balance, some efficiencies, and some cost-benefit considerations into our regulatory scheme is not anti-environment. In fact, the environment will suffer if we do not do so.

Over the long haul, Americans simply will not put up with regulations that deprive them of a reasonable opportunity to produce energy when our Nation needs it so badly or to conduct reasonable business operations, especially in tough economic times.

The reaction to unreasonable and overbearing regulations that work poorly may in itself be unreasonable, and environmental considerations may suffer unnecessarily as a result of such a reaction.

Not all rules and regulations that are produced by government officials are wise or well-balanced or make good sense—even environmental regulations. To support every such regulation simply because it has an environmental tag on it would be just as wrong as to oppose every such rule for the same reason. And to oppose every attempt to take a second look at a complex regulatory set of proposals, some 26,000 pages worth that the last administration left this one, that are left on your doorstep by an outgoing and opposing administration is equally wrong.

Let us look briefly at the review that the Bush Administration initiated of the regulations promulgated in the waning days of the outgoing Clinton Administration.

First, there is nothing unusual about this type of review. During the months following a national election, the exiting administration typically engages in a flurry of rulemaking. Especially coming at the end of an 8-year-old administration, such 11th-hour rules raise a lot of questions. They avoid any political accountability and, not coincidentally, they often involve the most controversial of political hot potatoes. Incoming administrations typically take time to review and reflect upon the multitude of midnight regulations promulgated by the outgoing administration and to consider appropriate responses.

President Reagan reviewed some of the Carter Administration's regulations, as did President Clinton with respect to the end-of-term rules promulgated by President George H.W. Bush.

Many of the midnight regulations subjected by the Bush Administration to review deal with environmental issues. Upon review, the bulk of the proposed rules have been affirmed and implemented as promulgated by the former administration. Among these are the right-to-know reporting on lead, diesel fuel emissions, the Best Available Retrofitting Technology requirements. Other rules have been modified and some are still under review.

This mixed bag should come as no surprise. While some rules are carefully crafted over time, others are hurried through the process. We need look no further than the Roadless Forest Rule issued about a week before President Bush took office. A Federal judge has blocked the implementation of this rule, finding that "Because of the hurried nature of the process, the Forest Service was not well-informed enough to present a coherent proposal or meaningful dialogue" and that "the end result was predetermined. Justice hurried on a proposal of this magnitude is justice denied."

Not only is the administration's review of midnight regulations appropriate and routine, but when you really look at what the administration has been doing with its own agenda in the environmental arena, it seems like a double standard is being applied by those who want to denigrate the administration in an attempt to score political points.

In fact, it seems to me that a lot of people are squealing before they get stuck, getting upset about what they think the administration might do, not about what the administration has done. I wonder if we are witnessing preemptive assaults to block or deter anticipated actions.

We have mentioned the Clear Skies initiative, which we will have a chance to talk about. We can talk about the administration's brownfields reform to speed up brownfield cleanup; the safe water supply, where they work to ensure that our drinking water supplies are safe from terrorist attack. The Office of Management and Budget recently directed the EPA to speed up the reporting of its toxic release inventory to close the gap between the time when information is collected and the time it becomes available to communities concerning toxic pollutants.

On resources, Bush's fiscal year 2003 environment and natural resources budget request is the highest ever, 3 percent higher than enacted in fiscal year 2002. The President's budget proposal provides \$4.1 billion, the highest level ever, for EPA's operating program and provides the highest level ever for EPA's State program grants, \$1.2 billion.

We can talk about all this and if necessary talk about the good and the bad and the indifferent over a period of months. I am sure that every situation would have all those elements in it with regard to any administration. But I hope that we can address these issues in a serious and constructive way. If we want to continue to make gains in improving our environment, we have to direct limited government resources to wherever they can achieve the greatest good. It appears to me that the President is attempting to achieve that goal fairly early in the process, when I am still waiting for information, for example, and I am still waiting for the administration to decide what they want to do in some of these areas

and to come up and defend its positions. Let us look at it and put it in the form of legislation and debate it.

I am sure my colleagues will have different or additional environmental priorities, and we will no doubt work on those as well. I am confident we can work together to achieve results, but if we use the environment as a weapon, we will achieve nothing and we will harm the environment and miss some great opportunities.

Hopefully, we can get past the labeling of each other based on statistics supplied by the various competing interest groups and get down to an analysis of the benefits and drawbacks of whatever proposal is on the table. That will be the only way we can truly develop regulatory frameworks that not only benefit the environment but actually work in the way intended and do not run roughshod over the other legitimate concerns that many Americans may have.

Mr. Chairman, I look forward to hearing from the witnesses on ways that we can work together to enhance the quality of our environment while protecting other legitimate social goals. There has been significant improvement in environmental quality thanks to the work of people like yourself over the last many years, but there remains a lot to be done, and to get it done, we are going to have to work together, and I hope that this hearing and the ones that follow it will be constructive ones. Thank you.

Chairman LIEBERMAN. Thanks, Senator Thompson.

We are privileged to have with us today two colleagues who heard about the hearing and asked to testify, and I want to call on them now.

Senator Jim Jeffords obviously is the Chair of the Environment and Public Works Committee. Senator Jeffords, welcome.

**TESTIMONY OF HON. JAMES M. JEFFORDS, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Senator JEFFORDS. Thank you very much, Senator.

I want to heed the words of Senator Thompson. I think it does no good to shout at each other; we have got to work together, and I think we all agree on that.

Chairman LIEBERMAN. Amen.

Senator JEFFORDS. And I share your concern, Mr. Chairman, that not enough is being done to safeguard our Nation's environment.

Today we stand at the crossroads. One road leads to cleaner air, safer water, and a healthier environment for all of our citizens. The other road leads to more haze, more smog, more polluted waterways, waste, and further environmental degradation. None of us wants that.

I know what road I want to travel, and I know, Mr. Chairman, that you would choose the same path. Let us hope that all of us together can move in a direction that results in an improved environment for all of our citizens.

As Chairman of the Senate Environment and Public Works Committee, I will be working tirelessly to ensure that the progress we have made over the last three decades is not lost. We will be watching carefully to be sure that this administration does not reverse the great strides that we have taken as a Nation to improve air and water quality.

I applaud Governor Whitman for her commitment to advancing these issues. I know her well, and I have faith and confidence in her. She delivered on the administration's promise to complete the brownfields legislation. She reversed efforts to undermine safe drinking water by maintaining the arsenic standard. She moved forward with the sulfur and diesel fuel standards.

But on the issue I care most about—clean air—Governor Whitman has not been able to move forward. My understanding is that her hands are tied and that others in the administration have prevented EPA from working with us.

A few weeks ago, the President released his multi-emissions power plant proposal. I am happy to join the debate, but the President's proposal falls short, very far short, on sulfur dioxide, nitrogen oxide, and mercury. The President's plan is weak, and the President's plan completely ignores carbon dioxide. This is unacceptable.

But we have begun the negotiation, and hopefully, a product that leads to real multi-emissions reduction will be turned into law this year. We will see.

I am deeply concerned that the administration is looking to roll back the New Source Review rules. Months ago, we asked the EPA for information on the process for examining these rules, but we have not received one piece of paper. Let us not make more work for GAO, and let us not dump more soot and smog on our citizens. Our Nation cannot afford to reverse clean air health standards, and we will not let it happen.

Mr. Chairman, I want to ensure the American public that the Congress, the U.S. Senate, and the Senate Environment Committee are watching the administration's environmental activities very carefully. The Environment Committee, particularly under your leadership of the Clean Air, Wetlands, and Climate Change Subcommittee, will be keeping careful oversight over all these important issues. I have confidence that you will do the job you always do.

We cannot abandon our commitment to no net loss of wetlands. We should curb the impact that our mining activities are having on the watersheds. We must replenish our Nation's aging water infrastructure. We should improve Federal environmental enforcement. We need to fulfill our responsibilities under the Kyoto Treaty and reduce our contribution of carbon to the atmosphere. We need progress, not promises.

We have so much to do together to leave a legacy of a clean, safe environment.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Jeffords. I consider myself privileged to serve on the Environment Committee under your leadership. I thank you for the leadership, and I thank you—others of less hardy New England constitutions might not have tried again to find a bipartisan consensus for a four-pollutant bill for your steadfastness and guts in trying to do that. Under your leadership, you and I are working, together with Senator Smith and Senator Voinovich, to see if we can do that.

So I thank you for taking the time to be here and for your leadership generally in these matters.

Chairman LIEBERMAN. Now we will turn to our colleague, Senator Larry Craig, a member of the Energy Committee.

**TESTIMONY OF HON. LARRY E. CRAIG,<sup>1</sup> A U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAIG. Mr. Chairman, thank you very much for this courtesy. I appreciate it.

I should be here to talk about clean air and climate change today, but I am not. I was very pleased that prior to leaving for China, the President laid down what I thought was a very thoughtful approach toward climate change, maybe because a lot of the work that had been done was crafted in the Energy Committee by Senator Chuck Hagel and myself and others over 3 years of extensive review, and we were pleased that the President recognized that the application of science and new computer modeling and clearly a development of the understanding in a foundational way prior to the crafting of rules and regulations that would begin to direct this economy was a more practical way to go.

But because you have on your agenda this morning two folks who are going to talk about something else in the context of the whole review that you have requested of this Committee, let me spend some time if I could, Mr. Chairman, talking about those issues.

As chairman of the Subcommittee on Public Lands and Forests of the Energy and Natural Resources Committee, I held a series of five hearings between November 1999 and March 2001 to examine the development and potential consequences of the Clinton Administration's Roadless Area Conservation rulemaking. Our hearing record details numerous questions about the process and data used to develop the Roadless Area Conservation Rule, and I have brought those committee records with me this morning and would ask that they become a part of this hearing, Mr. Chairman.<sup>2</sup>

Chairman LIEBERMAN. Without objection, so ordered.

Senator CRAIG. Thank you. While I am not going to recite the entire history of this controversy, I do want to highlight some of the key dates and events to help you better understand this issue.

To begin, the issue of roadless has been with us now for well over 30 years. In 1972, the Forest Service began a Roadless Area Review Evaluation—we called it RARE I—to examine how much land should be set aside and recommended for potential wilderness. A more comprehensive RARE II inventory was undertaken in 1982. That review examined a little over 62 million acres. A variety of wilderness bills passed by Congress allocated 24 percent of the RARE II, or that 62 million-acre base of lands, to wilderness. The National Forest Management Act forest plans recommended 10 percent of the 62 million acres to wilderness, 17 percent of the land for future wilderness study, 38 percent of the land for multiple use

<sup>1</sup> The prepared statement of Senator Craig appears in the Appendix on page 106.

<sup>2</sup> Hearings held by the Senate Committee on Energy and Natural Resources entitled "Protection of Roadless Areas" on November 2, 1999 (S. Hrg. 106-416 Pt. 1), February 22 and March 30, 2000 (S. Hrg. 106-416 Pt. 2), and July 26, 2000 (S. Hrg. 106-416 Pt. 3) referenced by Senator Craig can be obtained from the Senate Committee on Energy and Natural Resources.

Hearing held by the Senate Committee on Energy and Natural Resources entitled "Forest Service's Roadless Area Rulemaking," on April 26, 2001 (S. Hrg. 107-66) referenced by Senator Craig can be obtained from the Senate Committee on Energy and Natural Resources.

that excluded timber harvest, and only 14 percent of the 62 million acres could be considered potentially available for timber harvesting.

It is important to know that from the time of RARE I and its completion until 1998, less than 1.1 million acres of the original 62 million RARE II acres was ever utilized for timber harvest. Thus, less than 2 percent of the entire 62 million acres has ever been entered or would likely be entered within the next 5 years for those purposes.

In 1998, after the Interior appropriations bill on the floor—and I think we were all on the floor, Mr. Chairman, engaged in that debate, and it dealt with road moneys and road allocations; I think John Kerry led that debate on the floor for the other side—we were successful by one vote, as I recall. I invited the Chief of the Forest Service, Mike Dombeck, to my office to discuss this issue. I could see that it was growing increasingly contentious—it deserved a remedy and an approach—and I asked him to come and sit down, and I offered my committee, the Energy and Natural Resources Committee, for the purpose of resolving this issue.

I was politely informed by Chief Dombeck that they would rather resolve the issue administratively. In other words, no bipartisan approach was going to appear over this issue. I know this morning you opined the fact of bipartisanship. It did not happen in this issue. The Clinton Administration chose to go it alone.

In May 1998, Vice President Al Gore stated that not only would he eliminate all road-building, but he would prohibit all timber harvest in roadless areas. In effect, he had announced the selection of the final alternative to the Clinton Roadless Area Conservation Rule before the draft rulemaking had even begun.

I must tell you, Mr. Chairman, that I do not view that as bipartisan.

On October 13, 1999, President Clinton, speaking at Reddish Knob in Virginia, directed the Forest Service to develop regulations to end road construction and to protect inventoried and uninventoried roadless areas across the National Forest System.

On October 19, 1999, the Forest Service published a Notice of Intent to Prepare an Environmental Impact State to proposed protection of certain roadless areas.

In June 1999, Chief Dombeck, in a letter to his employees on the roadless issue, stated that “Collaboration does not alleviate our responsibility to make decisions that we believe are in the best long-term interests of the land or the people who depend on and enjoy it,” thus making it clear that Vice President Gore’s statement was going to carry the day.

Chairman LIEBERMAN. Oh, for one brief, fleeting moment, you had me carried away on a fantasy. [Laughter.]

Then again, if that had happened, I would not be here; I would be locked up in bunker somewhere.

Senator CRAIG. Mr. Chairman, I had hoped to make this morning enjoyable for you, so I wanted to offer you at least some flights of fancy.

Chairman LIEBERMAN. You are very gracious. [Laughter.]

Senator CRAIG. Now, in 2000, in the State of the Union, nearly 11 months before the final Roadless Area Conservation Plan was

published, the President said that he, together with the Vice President, was going to save the day and protect over 40 million acres of roadless land in the national forests and that largely by their action, they were doing so.

On November 13, 2000, the final EIS for the Roadless Area Conservation Rule was published. And on January 12, 2001, the final Roadless Area Conservation Rule was published in the *Federal Register*. What was remarkable, Mr. Chairman, is that over the Christmas holidays, the Agency read, absorbed, and responded to over 1.2 million public comments in a little under 2 months.

The Forest and Public Lands Subcommittee hearings made it clear to me that the decision on what to do about roadless issues was sealed on October 13, 1999, and the rest of the effort was little more than window-dressing.

It was also no surprise to me that Federal District Court Judge Ed Lodge stayed the implementation of this rule. While Judge Lodge's stay has been appealed to the Ninth Circuit Court of Appeals, the fact remains that no administration, not the Bush Administration, not the Clinton Administration or any future administration, can ignore a Federal judge's ruling.

I know that both the National Resource Defense Council and Professor McGarity, who are with us today, both proponents of the Roadless Rule, are here today to attempt to convince you that the Bush Administration is somehow skirting the law by refusing to fully implement the Roadless Area Conservation Rule. But the simple fact is that Judge Lodge enjoined all aspects of the Roadless Area Conservation Rule.

I would like to give you copies of that—here are copies of the judge's decisions from both April 5 and May 10, which should become a part of this record.<sup>1</sup>

The reason I do this is also for us to understand that the Ninth Circuit Court of Appeals has not made a decision. I think it would be wrong to draw conclusions at this point. The fact is that every administration faced with defending Agency decisions in court examines each case on its merits, Mr. Chairman, and then decides which course of action is best for the government to take.

In April of 2001, the Washington Legal Foundation provided an analysis of the Clinton Administration's failure to defend or appeal cases that went against natural resource agencies during his 8 years in office. What I am about to suggest to you is that what President Bush has done was in many instances carried out by the Clinton Administration.

They found 13 occasions when the Clinton Administration refused to defend resource management decisions of its predecessors, choosing to accept the injunction or remand from a U.S. District Court rather than defend those decisions in a U.S. Court of Appeals and at least 28 other occasions when the Clinton Administration refused to defend its own resource management decisions in a court of appeals after receiving an injunction or remand from a U.S. District Court.

---

<sup>1</sup>Judge's Orders dated April 5, 2001 and May 10, 2001 appear in the Appendix on pages 315 and 336, respectively.



I would like to enter a copy of that Washington Legal Foundation April 25, 2001 analysis in the record, Mr. Chairman.<sup>1</sup>

Chairman LIEBERMAN. Without objection.

Senator CRAIG. Last, a quick analysis of impact. Last summer, my staff took the time to better understand why people are so upset in the public land States with the Roadless Area Conservation Rule. This is what we found.

We found that nearly 43.5 thousand acres of State lands are within the RARE II areas and that about 421,000 acres of privately owned land were within these areas. Interestingly, we found no evidence in the Forest Service's EIS to suggest that the State, private, and other Federal landowners were notified by either the national or local Forest Service office that this policy would affect the National Forests that surrounded their lands. In many instances, these owners, State and/or private, or even Federal, might have lost access to their lands.

Mr. Chairman, if local government were going to change the zoning around your home and failed to notify you of that change or what it might mean, that it might damage or devalue your property or cause you to lose access to it, my guess is that you would become very skeptical about that zoning rule. I see no difference here.

The Forest Service developed this rule in a very compressed time frame with little or no description of the potential impact of the rule to the local level. Let me give you a few examples, and then I will cut this short.

On the Panhandle Forest of Idaho, one of many that we have in my State, we found 13 Roadless Areas with National Forest System roads within the Roadless Areas proposed and at least three mines and Forest Service campgrounds, and one power line, all of which were encompassed within the designated Clinton Roadless Areas.

On the Superior National Forest in the State of Minnesota, we found three Roadless Areas within the National Forest System roads and four public boat ramps, three Forest Service campgrounds, and one mine.

On the Chequamegon-Nicolet National Forest in Wisconsin, we found 1,300 private acres and 2,800 State acres that would have been denied access by the rule.

On the Monongahela National Forest in West Virginia, we found 10 RARE II Roadless Areas that were being proposed that had pipelines through them, railroad rights-of-way, and other roaded access areas.

In the Dixie National Forest in the State of Utah, we found 14 Roadless Areas with National Forest System roads throughout them, two reservoirs, and one water pipeline.

I could go on through this litany for a long, long while. When the Federal judge in Idaho looked at all of this, after twice warning the administration that they were at or near the violation of Federal law, he ruled; he stopped the action.

Mr. Chairman, I think that what we have to deal with here today is opposing points of view, but we should not deny or con-

---

<sup>1</sup> Letter from Daniel J. Popeo and Paul D. Kamenar, Washington Legal Foundation, to Senator Craig dated April 25, 2001 appears in the Appendix on page 341.

demn those who play by the rules and by the law, and that is what I believe this administration has done. A Federal judge has spoken. The Ninth Circuit Court will speak. Oftentimes, the Ninth Circuit Court has been very loud on these issues.

We can either condemn, or we can suggest that the Bush Administration has followed what past administrations have done. In the case of the Clinton Administration, on 28 occasions, they stepped back from nor would they defend the action of the very Agency that was before the court.

Oh, yes, in the West and across the Nation, the roadless issue is a high-profile political issue. In my State, it is a critical issue because it just so happened that the State of Idaho had the larger majority of lands of all the States in the Nation. And ironically, Mr. Chairman, when we are talking about clean air and carbon sequestration and climate change and vital, youthful, young, growing National Forests that have phenomenal capability in sequestration of carbon, should we not be talking about access for the purpose of forest health, for the purpose of creating a mosaic of young and vital forests for this country's clean air needs? I think we ought to be.

To lock them up and walk away, in a State of near forest crisis today in which the West and the West alone—although many other States are now experiencing it—has lost nearly 3 million acres of forest to wild fires over the last 3 years, it is not an environmental issue, it is an environmental crisis. That is what we talk about when we deny ourselves right and responsible management of these resources.

Mr. Chairman, you have been very generous with time. Thank you.

Chairman LIEBERMAN. Thank you, Senator Craig. We are going to get into the natural resource question somewhat in the panel following Administrator Whitman, and we will probably come back to them at later hearings; perhaps we will have folks from both Agriculture and Interior to come in and speak with us about them.

So I thank you for the time you put into the statement you made and for the time you took to be here.

I thank both of my colleagues for being here. We look forward to continuing to work with you to try to find common ground to move forward the bipartisan environmental legacy of our country.

Thank you both very much.

Senator CRAIG. Thank you.

Senator JEFFORDS. Thank you, Mr. Chairman.

Senator LIEBERMAN. We will now call the Administrator of the U.S. Environmental Protection Agency, the honorable Christine Todd Whitman.

Senator THOMPSON. Mr. Chairman, I might add that while I am somewhat sympathetic with the points that Senator Craig has made, we still have places down where I come from that we do not want any more roads leading to. So I just want to go on record with that. Thank you.

Chairman LIEBERMAN. I think I got that. Thank you.

Ms. Whitman, thank you for being here, and thanks for your patience as we made our opening statements and our colleagues did the same.

We look forward now to your testimony.

**TESTIMONY OF HON. CHRISTINE TODD WHITMAN,<sup>1</sup> ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Ms. WHITMAN. Good morning, Mr. Chairman and Senator Thompson. It is a pleasure to be here with you this morning.

With the Chairman's permission, I have a longer statement that I would like to submit for the record.

Chairman LIEBERMAN. Without objection, it will be printed in full in the record.

Ms. WHITMAN. Mr. Chairman, I want to start by thanking you for calling this hearing on the environmental record of the first year of the Bush Administration. I am proud of what EPA has accomplished over the past 13 months and welcome every opportunity to be able to talk about it.

I realize that the Chairman does not necessarily share my assessment of the past year. I read your recent speech out in California, and I understand your concerns. But in reading that speech, I also think there is a great deal of common ground where we can work productively, and I look forward to so doing.

To enable us to work more effectively, I think it would be helpful to change the tone that surrounds environmental issues and environmental discussions, and that may take leadership from Washington. I understand very well that any discussion about the environment and environmental policy often engenders a great deal of emotion and that very different conclusions can be drawn from the same information.

I would just like to share with you two books here that are recently published that very clearly illustrate the point. Both Bjorn Lumberg and Lester Brown are highly respected environmental experts. They both took similar sets of statistics and came out with quite different conclusions about the impact on the environment. But that does not mean that one is a friend of the environment and the other is an enemy of the environment. They are both people of good faith when it comes to the environment.

I believe that is a point worth remembering as we work together to protect the environment and safeguard public health.

As I have said many times, my goal at the Environmental Protection Agency is to leave America's air cleaner, its water purer, and its land better protected than I found it. We have made real progress in meeting that goal, and I would like to highlight some of the most important of those accomplishments that we have been able to achieve to date.

First, cleaner air. Several weeks ago, President Bush proposed what I have categorized and you have reported that I have categorized as the most significant improvement to the Clean Air Act in more than a decade. I firmly believe that. His Clear Skies proposal will achieve mandatory reductions of 70 percent in three of the most noxious air pollutants emitted by power plants—nitrogen oxides, sulfur dioxide, and mercury. Clear Skies would also reduce fine particulate pollution over the next 10 years faster than would occur under the current Clean Air Act. And the new findings to

<sup>1</sup>The prepared statement of Ms. Whitman appears in the Appendix on page 120.

which the Chairman referred earlier published by the American Medical Association underscore the importance of enacting the Clear Skies policy to help address this and other health issues.

One might categorize the President's approach as "a market-friendly way that encourages innovation, maintains flexibility for business, and achieves real environmental results that we need." In fact, Mr. Chairman, that is exactly how you in your speech in California described the program on which we modeled Clear Skies, the Acid Rain Trading Program. The Acid Rain Trading Program was established in 1990 as part of the Clean Air Act amendments, and this approach has worked for acid rain, and we believe it will work for Clear Skies as well.

I believe we can make some real progress with Clear Skies, and I am looking forward to working with Chairman Jeffords and with you and your colleagues on the Environment and Public Works Committee to enact historic clean air legislation.

Before I leave this issue, I would like to say a word about EPA's review of the New Source Review program. The NSR program is a program that needs to be fixed. The National Governors Association said so quite clearly, as did the Environmental Council of the States. We are still deciding how we can best improve NSR to make it more efficient while accomplishing its goals.

But despite what some have said, we are not going to undermine the Clean Air Act. We are not going to stop enforcing the environmental laws that protect the health of our fellow citizens. We are going to meet our obligations to the American people by improving NSR.

We are also meeting our obligation to the American people and the world community with respect to climate change. Last month, the President announced a sensible, responsible proposal to cut greenhouse gas intensity by 18 percent over the next 10 years. At the same time, his proposal will allow us to take future action as science justifies to stop and then reverse the growth in greenhouse gas emissions.

The President's proposal includes incentives for industry to act now to start to cut their greenhouse gas emissions. By taking steps today to achieve such reductions, they can earn credit against any future mandatory requirements.

This common sense, market-based idea will, I believe, produce real results.

Next, let me turn to purer water. I believe that water quality and supply issues, as I have said to you and the Committee before, will likely pose the major environmental challenge of the 21st Century. Despite significant progress over the last 30 years, we still have much to do.

Because nonpoint source pollution is now the major contributor to water pollution nationwide, we are redirecting our attention away from simply looking at water quality at the end of a particular discharge pipe to looking at practices in entire watersheds and how they affect the quality of all the water in that watershed.

The President's proposed budget includes funding for a watershed initiative that will build partnerships for cleaner water in 20 of America's most threatened watersheds. Our proposal, based on the "Clean Charles 2005 Initiative" in Boston, will help us craft

solutions for each watershed based on its unique needs and challenges. It will also complement the funds that we are already making available to the States to help control nonpoint source pollution.

Our focus on watersheds will also help transform the way that Americans think about how they can make a difference for cleaner water. As people learn more about the ways that even small, individual actions can lead up to big environmental consequences, I believe they will become even more active partners in our effort to make America's waters purer.

We have also moved quickly to help secure America's drinking and wastewater systems from disruptions from terrorist attacks. We have greatly accelerated the work underway to develop vulnerability tools for water utilities, finishing that work literally months ahead of schedule. In addition, we will soon be distributing to the States the nearly \$90 million already approved and appropriated to help water utilities perform vulnerability assessments.

Finally, let me touch on how we have worked to better protect the land. The most significant accomplishment in this area is the passage of historic brownfields legislation. This new law, which will help clean up thousands of the most difficult brownfield sites that remain in America, is a fine example of how much we can accomplish when we work together in a bipartisan fashion. I believe this new law will truly be seen as one of the landmark pieces of legislation of the 107th Congress. And I am pleased that in our budget request for fiscal year 2003, the President has asked for \$200 million more to help State and local governments tackle brownfields projects. That is more than double from last year.

We have also continued to ask for steady funding for the Superfund program at \$1.3 billion. I should point out that our request for brownfields funding is in addition to the Superfund funding, not part of it, as it has been in past years.

Mr. Chairman, Senator Thompson, as I look over the record of the past year, I am proud of what we have accomplished at the Environmental Protection Agency. Because of what we have done, America's air will be cleaner, its water will be purer, and its land will be better protected. And that is important because it means not just a cleaner environment, but because it also means a healthier America.

Thank you very much. I look forward to taking your questions.

Chairman LIEBERMAN. Thanks, Governor Whitman, Administrator Whitman. In Connecticut, once you are a Governor, that title never leaves you, so I say it with respect.

Ms. WHITMAN. That is fine with me.

Chairman LIEBERMAN. I pick up from your initial words, and I do think that you and I have common goals, and it is always a pleasure to work with you. I say that not just because of the testimony you have given before Congress but what I know to be your record as Governor of New Jersey.

The problem is, I am skeptical that I have common goals with others with whom I think you may be doing battle within the administration. I want to ask some questions along those lines.

Let me begin with the New Source Review program. I want to refer to an article in *The New York Times* last month, on February

19, 2002, which described, as you will remember, internal EPA documents that the newspaper obtained in which EPA personnel indicated that some of the New Source Review proposals were, “in conflict” with legal requirements of the Clean Air Act and that some aspects, according to those documents, were “silent regarding air quality impacts analysis,” and that “the proposals would ‘vitiating’ the Nation’s clean air policy.”

The article actually begins with this statement: “The Environmental Protection Agency has strenuously objected to the Energy Department’s recommendations to the White House to revise air pollution regulations, saying the proposals would vitiating the Nation’s clean air policy. The dispute, detailed in recent internal EPA documents, is indicative of a fierce battle between the two agencies as the Bush Administration prepares to announce final plans for revisions to a program that requires factories to modernize their pollution controls when they upgrade their plants.” And this pitched battle portrays you definitely on a white horse on one side and Spence Abraham and the so-called high-powered energy lobbyists including Marc Racicot and Haley Barbour on the other.

So this morning my question is what is the status of the battle, and more particularly, what assurances can you provide that you will not promulgate any rules—just to go from the document cited in the time article—that “conflict with the law, that ignore air quality analysis, or that will undercut clean air policy”?

Ms. WHITMAN. First, let me say that I would not characterize anything as fierce battle but as a vibrant discussion.

Chairman LIEBERMAN. Hear, hear.

Ms. WHITMAN. And obviously, there are different constituencies that the Agency and the Department represent, and it is appropriate that the Department of Energy is reflecting the needs for energy, sustainable energy, affordable energy, for the United States, and that we have as our first priority our concerns about the impact on the environment.

However, those two things are not in conflict. They can and they must in fact work together, and we are continuing to do that.

It is important to remember on New Source Review that in fact there are two parts of it that we are looking at. Back in 1996, the Clinton Administration put forward proposals that would in fact streamline New Source Review. They characterized it and say “The requirements and procedures that have evolved under the New Source Review program are complex and prescriptive. Under certain circumstances, these requirements have limited facilities’ operational flexibility or inadvertently impeded the conversion of older, higher-polluting processes to more efficient and environmentally-beneficial new ones.”

We agree with that assessment and feel there needs to be an assessment of New Source Review. Those proposed rules were first put out in 1996; the Agency has been taking comments since then, and those are ones that we feel we are close to being able to move forward with. We could go final with those, because they have been subjected now to almost 10 years of discussion and input; there have been two public hearings and over 50 stakeholder meetings. Since the energy proposal first came out and there was the 90-day review required of the Agency on New Source Review, we have re-

ceived many, many more comments on those proposals, and all of them really reflected what had been submitted before for the record. However, there is another suggested set of improvements that could be made to New Source Review that could not possibly be enacted without going through the full and complete public review that every regulation is subjected to, and that means publishing in the *Federal Register*, and taking comments; it is about a 3-year process.

These are two separate tracks; they are two different sets of enhancements to New Source Review. But certainly, we would not do anything that would undermine the Clean Air Act, and in the interim, we are continuing to vigorously pursue and ensure that we are enforcing New Source Review regulations.

Chairman LIEBERMAN. So you are foreseeing—obviously, there is concern about your going straight to final on New Source Review without an additional period of time for official comment—so if I understand you correctly, you are in some ways dividing this into two tracks.

Ms. WHITMAN. If we were to go forward with any final rules, it would only be on those rules that were first proposed in 1996 and on which we have been receiving comments since then. Again, it is a very complete record, it is a very full record. After the energy policy came out and we were asked to do a 90-day review, which is continuing, so it is a little longer than 90 days because of the complexity, we have received lots more in the way of testimony and comment. Some comments are directly on what was proposed back in 1996 by the Clinton Administration, and that testimony and that information has supported what was already on the record. So we have not seen a big change.

Now, there is another area that goes to more comprehensive changes, and those would have to have the full review process.

Chairman LIEBERMAN. So at this point, going back to the documents quoted in *The New York Times* article and documents that I have seen beyond that, how are you doing in the vibrant discussion—or the pitched battle—with the Energy Department?

Ms. WHITMAN. Again, we believe very strongly that this is not an either/or proposition; that in fact we need to ensure that we have a healthy economy and a clean and healthy environment. And we are looking to ensure that what we do is comprehensive and that it meets those two goals, and I believe that we are close to achieving that. But again, anything that we would do that is of any kind of broad nature on New Source Review that has not been discussed would have to go out to the public and have comments directly on those recommendations.

Chairman LIEBERMAN. Let me just ask a final question on this round, and then Senator Thompson and I will go back and forth.

First, I want to indicate that it seems to me there have been many developments since the 1996 proposal and the 1998 comments—new science, enforcement lawsuits—all of which have not been the subject of official comments. That is why I would really be concerned if you went straight to final on any part of the New Source Review.

Don't you agree that the conclusions in the article in the *Journal of the American Medical Association* yesterday about the 12 percent

higher probability of premature death of people in metropolitan areas where older power plants are emitting pollutants into the air gives a new sense of urgency and importance to the New Source Review proposals? It really requires us to be even more demanding—not to backslide—is what I am saying.

Ms. WHITMAN. Oh, absolutely, Senator. We should be more demanding, and that is why I am so supportive of the Clear Skies initiative, because that enables us to reach those targets faster than we would under the current Clean Air Act.

New Source Review has been in place, as I indicated, since 1977. We have outstanding cases there. There are people who have not been meeting their targets. I think it is time for us to take a good, hard look and ask how can we improve it, how can we move this along faster.

We believe that by setting comprehensive targets for those three emissions and putting on a mandatory cap, letting utilities know what they have to meet, when, and starting that process today, rather than the incremental phase-in of the standards that we currently have under the Clean Air Act. This is because the five programs that really impact these emissions are phased in over time; and, as you know, they often get litigated—there is pushback on what standard the Agency sets. So we think it would be much faster if we could get a law through the Congress, working with Congress, that set those standards and said this is it, you have 10 years to meet them, and you meet them how best you choose, in the way that keeps you economically competitive, but you have to meet these standards. We think that will help us ensure the public health.

Chairman LIEBERMAN. OK. I will come back to the Clear Skies initiative in the second round. Senator Thompson.

Senator THOMPSON. Thank you, Mr. Chairman.

You mentioned pollution in metropolitan areas. Would you believe that on some days, it is more polluted at the top of the Great Smoky Mountains than it is in metropolitan areas?

Chairman LIEBERMAN. I do.

Senator THOMPSON. This is something that has concerned me for a long time. As I indicated earlier, I wrote the President a letter about this last year, and I am very concerned about the air quality in the Smokies. It is the most heavily visited park in this country by far—we are loving it to death. And we have been debating what to do, but clearly part of what we have got to do is to address the emissions problem up there. There are automobile problems and others, but the emissions from the coal-fired plants in that area are certainly a part of the problem.

So when it was clear that the President was going to review the policies here and come up with his own, I wrote him to express my support for whatever he was willing to do, however far he was willing to go.

Governor, I would ask you what in the President's plan will help solve this problem? Why should we believe that it will solve the problem? How will the President's approach be better than the current approach?

Ms. WHITMAN. Well, Senator, we feel very strongly that Clear Skies will make a dramatic improvement to visibility in our Na-



tion's parks, and for a couple of reasons, and will do it faster than under any New Source Review or current Clean Air Act regulations. First, by capping the NO<sub>x</sub> and SO<sub>2</sub> emissions from electric power plants, the President's proposal goes directly to those emissions that most exacerbate the problem of visibility. We will be removing millions of tons of pollutants each year from the atmosphere, and these reductions will substantially improve visibility. In fact, the runs that we have done that we can share with you show that the greatest improvement will be seen along the Appalachians, including the Blue Ridge and the Great Smoky Mountains.

Senator THOMPSON. Clearly, the pollutants that you address are the pollutants of concern to the parks.

Ms. WHITMAN. Yes, but there is another part, if I may, that speaks directly to the national parks in the Clear Skies proposal. The Clear Skies proposal would provide additional protection for the parks and wilderness areas by requiring that all major new sources of emissions built within 50 kilometers of these areas, or the Class I areas as they are referred to, have to meet even more stringent emission standards that are currently required under the Clean Air Act.

Senator THOMPSON. Is that part of Clear Skies?

Ms. WHITMAN. Yes, that is part of Clear Skies. In addition, the President's proposal would require that these new sources perform supplemental air quality modeling to better assess the potential impact of their emissions.

So there are parts within the Clear Skies proposal that go directly to the visibility impact that these reductions would have, and particularly to our national parks and wilderness areas, those Class I areas, have additional restrictions put on any new sources that would come on line.

Senator THOMPSON. It sounds like you are moving away from the kind of command-and-control approach of the past to a cap-and-trade approach. What evidence is there that that will work?

Ms. WHITMAN. The best evidence that we have is the current Acid Rain Program. The current Acid Rain Program has almost 100 percent buy-in by industry. It takes less than 70 EPA employees to oversee—

Senator THOMPSON. That addresses sulfur dioxide, too, I understand.

Ms. WHITMAN [continuing]. And it addresses sulfur dioxide, and the reductions in sulfur dioxide have been much greater in the first phase than were anticipated when the program was first started. It has been an enormous success by every standard, and that is the program that we are using as the model for Clear Skies.

There is every reason to believe that is a good model—we know it is a good model—and every reason to believe that it will be just as effective with Clear Skies.

Senator THOMPSON. I got this chart from your staff,<sup>1</sup> showing improvements in annual visibility under your approach. Can you tell us what we are looking at here? I do not know if you have a copy of it or not; Senator Lieberman and I do.

<sup>1</sup> Chart entitled "Improvements in Annual Visibility in 2020 Under a Multipollutant Scenario Relative to the Base Case," appears in the Appendix on page 347.

Chairman LIEBERMAN. We will get you a copy.

Senator THOMPSON. It looks to me like the heavier the blue, the greater the reductions.

Ms. WHITMAN. Right.

Senator THOMPSON. And the reductions here, as you have it, it looks like I would have drawn it. The greatest reductions are along the Appalachians, including the Blue Ridge and the Great Smoky Mountains.

How did your people derive this and come to the conclusion that under your plan, not only would it benefit this area, but that it would seemingly be of greater benefit to the area that I am most concerned about?

Ms. WHITMAN. Well, it is clear, Senator, that it must have been drawn with you in mind, because it was not with me in mind—New Jersey does not get quite as good reduction as you do. Obviously, this is reflective of what we know about air, what we know about transport, what we know about sources of emissions and where those emissions end up. The modeling done here was very comprehensive. It gets down to—OK, Jeff, come up here to describe the picocuries that are reflected here and how one makes an enormous difference.

This is Jeff Holmstead.

Chairman LIEBERMAN. You are not an expert on picocuries?

Ms. WHITMAN. I am not, I am sorry, Senator.

Chairman LIEBERMAN. We will note that for the record.

Senator THOMPSON. It may be more than we are able to receive here, but we will see.

Mr. HOLMSTEAD. Just very quickly, because we know much more about power plants than any other industrial sector, we actually have a linear programming model that shows the compliance strategy that the industry would use and the specific places where the emission reductions would occur under the President's Clear Skies proposal.

We can then use that and the visibility model, which expresses visibility improvements in terms of deciviews. An improvement of one on the deciview scale is very noticeable to humans, and under the President's proposal—and again, this is because of the location of the areas and the atmospheric conditions around the Smokies—but according to our modeling results, the improvements along the Appalachians are between three and four deciviews, so it would be a pretty dramatic improvement. And again, these go well beyond anything we could get under current law.

Senator THOMPSON. So that basically, you are telling these plants they have to get to certain levels, but you do not tell them how to get there; it is kind of like a performance spec in one of my prior lives, it sounds like to me.

Ms. WHITMAN. Yes. Every plant would have to take some action. They could enter into a trade or actually put some scrubbers or take some action at the plant itself. Everybody would have to do something, but it would be up to them to determine what was the most economically feasible action for them to take, while achieving the goals that we have set out, which are lower than what we can achieve now under the Clean Air Act.

Senator THOMPSON. Is there monitoring along the way? Is there any way to tell until the end of the day whether or not these plants are moving in the right direction?

Mr. HOLMSTEAD. We actually have what are called continuous emissions monitors on each of these plants now, so we actually know continuously what their emissions are. I think they are updated every 15 minutes. So really, more than any other program, we know exactly what the emissions are and exactly what is coming out of which smokestack anywhere in the country.

Senator THOMPSON. If you would, let us make that chart a part of the record of this hearing, Mr. Chairman.<sup>1</sup>

Chairman LIEBERMAN. Without objection.

Senator THOMPSON. And one of these days, somebody on this side of the table will be asking questions of somebody on your side of the table as to whether or not this panned out the way you said it would.

Mr. HOLMSTEAD. If this is going in the record, if I could just mention one thing—this was actually a modeling run of something that was not quite as stringent as the President's proposal, so this actually underpredicts the benefits of the President's proposal.

Senator THOMPSON. If you could supply that, I would bet the Chairman would be willing to file that later, as a late exhibit.<sup>2</sup>

Chairman LIEBERMAN. I would be.

Mr. HOLMSTEAD. We would be happy to do that.

Senator THOMPSON. Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Thompson.

Ms. Whitman, let me go to the Clear Skies initiative, and let me first say that at this point, it is only a couple-page proposal, at least as I have seen it, and I wanted to ask when will draft legislation be ready so that we can evaluate it in more detail.

Ms. WHITMAN. Well, at this point in time, we are working with both the White House and the Congress to determine whether or not we want to put in place a piece of draft legislation or work with the Congress to try to determine how best to implement the targets and standards that the President has called for in Clear Skies

Chairman LIEBERMAN. Yes. I think you know that a real obstacle in that and a concern that I have and obviously that Senator Jeffords has is that the Clear Skies initiative leaves out any control of carbon dioxide.

Ms. WHITMAN. Yes.

Chairman LIEBERMAN. Senator Jeffords, as chairman of the Environment and Public Works Committee, has initiated this process with Senators Voinovich, Smith, and myself. I am not so sure that he is prepared to go ahead with the three-pollutant proposal, but I will leave that to him to say more directly himself.

As you indicated in your opening statement, I like the cap-and-trade idea. It is not command-and-control. It sets goals, and it has worked in the acid rain case and the Clean Air Act, which I mentioned earlier, adopted during the first Bush Administration. And I am working with Senator McCain right now on a cap-and-trade approach to greenhouse gas emissions. My concern here is that the

<sup>1</sup> Chart entitled "Improvements in Annual Visibility in 2020 Under a Multipollutant Scenario Relative to the Base Case," appears in the Appendix on page 347.

<sup>2</sup> Chart entitled "Visibility (2020)" appears in the Appendix on page 348.

cap is too low, and the time frame that you have allowed in the Clear Skies initiative, which is to 2018, is so far off that in the end, it is going to provide actually less protection, less reduction, in these three pollutants than the current Clean Air Act does.

See if you can stick with me, because I will give you an overview and try not to give you too many numbers. In September, our Committee received—and maybe it was my staff, through the other committee, Environment—modeling that was done of emissions of the three pollutants, NO<sub>x</sub>, O<sub>x</sub>, and mercury, under the Clean Air Act. It actually showed reductions by 2012 that were greater reductions—that is, business as usual—than the new Clear Skies initiative.

Then, last month when you came out with the Clear Skies initiative, you had a different model which did not show as successful reduction in the pollutants of NO<sub>5</sub>, SO<sub>2</sub>, and mercury as the earlier modeling.

And incidentally, these two Clean Air Act models—and I apologize for all the detail, but the baseline is important here—have goals by 2012, whereas the President's Clear Skies initiative does not set these goals until 2018.

I am going to submit the numbers to you in detail, and you can answer for the record. But basically, if I am reading this right, what changed between September and February that altered your estimates of what reductions would be achieved under business as usual and which ended up showing that the Clear Skies initiative would improve business as usual whereas the earlier did not?

Ms. WHITMAN. Senator, I think you are referring to the EEI chart that was submitted, and I have to tell you that I have had several discussions with staff as to how that got labeled the way it did.

What that does—and when you see the time frame, and you see 2012, and I believe it is 2.5 million or 2 million tons, for the SO<sub>x</sub>—

Chairman LIEBERMAN. Under the September?

Ms. WHITMAN [continuing]. Yes, the 2012—in any event—

Chairman LIEBERMAN. Yes. SO<sub>x</sub> goes down 2.4 million tons emitted; I am not sure what the reduction—

Ms. WHITMAN. Those were his hypothetical scenarios, based on business as usual—that would be the day when that regulation would go into effect, and you would not get there then; that was just when it would kick in.

That is the problem with the way we are set up now, where we have essentially five different sets of regulations that impact clean air. They do not all come in at the same time. When a company knows immediately, up front, what that target is going to be by a certain date, then it is worth their while to start immediately to implement.

If a target is set, and it says that in 2012, this regulation will start to go into effect, there is still lead time for them to achieve it; so it would not be that they would be at that number in 2012. This was a hypothetical scenario of business as usual, and it was designed to demonstrate the benefits of a multi-pollution approach. It has confused the life out of me, and I have gone back at them many times as to how it got labeled that way. But also, we should

recognize that under the Clear Skies proposal, the President calls, in 2010, for a review of where we are and the ability at that time, and in fact the recognition that we might at that time, want to set even more stringent standards then.

But we would see between now, the date on which you would pass legislation that set out those targets and 2010, every run that we have done shows us getting better reductions faster than under the current Clean Air Act, because those targets are phased out over time, and they do not become real for some time out.

Chairman LIEBERMAN. Why don't we leave it there for now. I hope I have made it clear what my concern is as I read the numbers, I welcome a response in writing—

Ms. WHITMAN. I understand how confusing this is.

Chairman LIEBERMAN [continuing]. And we can continue the discussion—that the gains in air quality under the Clear Skies initiative, because of the cap and the length of time to achieve the goals, will actually be less than if we did nothing and just stuck with the Clean Air Act as it is now.

Let me go on to the question of enforcement, and as you know, we are going to hear testimony this morning from Mr. Schaeffer, former Director of the Office of Regulatory Enforcement at EPA. He raised concerns, as you know, in his letter of resignation about the impact of cuts on staffing, and I quote here: “The proposed budget cuts would leave us desperately short of the resources needed to deal with the large, sophisticated corporate defendants we face.”

What is your response to those concerns and allegations?

Ms. WHITMAN. What Mr. Schaeffer is essentially talking about is work-year reductions, and I think it is misleading to equate those with actions, quite frankly, because work-years do not directly translate into positions filled, and in fact normal levels of staffing attrition keep us well below that.

In each of the last 2 years, EPA's enforcement program has lapsed 120 of what we could call funded vacancies or work-year positions each year, and yet last year, we saw some of the best results ever from our enforcement program. We have a very active and a very accomplished enforcement program.

What the President is calling for in this budget is to recognize—and again, we have had this discussion before—the enormous amount of work that the States do on compliance and enforcement. Ninety percent of the compliance is done by the States. They are under enormous budget pressures, and we want to enhance their efforts and enable them to do more so that we can focus on the areas where the Federal Government has the real ability to take action and where we can really make a difference.

But the facts speak for themselves in our record over the last year—there was the highest level of fines and moneys spent by those deemed responsible for pollution to rectify and remedy what they have done. We have seen the highest level, actually number of jail sentences, given out.

Those are the kinds of things that we are trying to do, while on the other side, we try to nudge people toward compliance. And although work-year ceilings have been reduced, the \$102 million that we are requesting for civil enforcement is \$7.6 million more than

President Clinton requested in fiscal year 2001. Where you start to run into the problem in the number of actual bodies you have is that they are more costly, with COLAs and everything else.

But in fact we are asking more. This year's budget for enforcement is higher than we have had before, and we believe that we can continue to see the kind of production that we have seen out of an enforcement staff that we have had in the past.

Chairman LIEBERMAN. I do not know if you can put numbers on it, but you did mention 120. But one estimate that my staff did is compared to the last Clinton budget, which was fiscal year 2001, the budget the President has now proposed for fiscal year 2003 would cut the number of full-time employees in civil enforcement by 200. This excludes Superfund.

Ms. WHITMAN. Again, you are talking work-years. We have put no ceiling—there is no hiring freeze in that part of the Agency. The OECA National Program—including headquarters, regional, and field offices—accounts for about one-fifth of the total personnel of the Agency. It is a very vigorous part of the Environmental Protection Agency. Again we are talking about work-years. We have to recognize the fact that we have had these—in the States, I used to call them “funded vacancies”—we have had the ability to hire, and we expect to be hiring 100 new people into that office this year. We also expect that people will retire. People leave and retire. Mr. Schaeffer had his job for a least a month before he actually submitted his letter of resignation. And actually, it is a big problem. The Agency stands to lose 56 percent of our senior personnel by 2005 as they reach retirement. That is a very serious manpower challenge.

Chairman LIEBERMAN. We will ask Mr. Schaeffer to respond when he comes up.

I do want to caution you—and I know that from your background, you will be particularly sensitive to this—that the notion of pulling back on Federal enforcement and giving more authority to the States to enforce now comes at a particularly difficult time for the States. One estimate we have seen, State enforcement budgets are down an average 6 percent already from last year, so I worry that the net effect will be not to enforce. And as much as I believe in cap-and-trade and am skeptical about the old command-and-control, there is no question that one of the things that got the country to the point where there was a broadly-held pro-environmental consensus was the fact that there was enforcement. So we need to have that tool on one hand, the fear of enforcement, to both punish those who do not play by the rules, but also to encourage everybody else to have some fear, if not positive motives, to protect the environment.

For some reason, my clock was not going this time, but I would guess that I am over my time. I will yield now to Senator Thompson.

Senator THOMPSON. I could not agree more that enforcement is very important. I think the essential question, though, is what is it that we are enforcing. And correct me if I am wrong, Governor Whitman, but when I analyzed this New Source Review, when I first got interested in this, I did not particularly care about these thousands of pages of regulations and statutes that I could not un-

derstand; I just wanted to get a result, and that is what I have been pushing for. But as I get into this and learn more about it, I am somewhat amazed that anyone could be critical of an effort to readdress this New Source Review permitting process that we have.

Senator Voinovich put up a chart there. It is a no man's land that any company, no matter what they were doing, good or bad, would do anything in the world to avoid. I think the noncompliance rate is 70 to 80 percent. I mean, if a government Agency has something like that to deal with, then maybe they are dealing with something other than just bad people, because not all of these other programs have that kind of result. The law has been on the books for 25 years, and it has such definitions as "major modification"—what in the world is considered a "major modification"? How many millions of dollars have been spent trying to get an interpretation as to what a "major modification" is? "Significant increase in emissions"; what is "routine maintenance"—all of that—there are over 4,000 pages of complex and somewhat contradictory guidelines and still really no guidelines as to what a "major modification" is.

So that is what we are dealing with, and the Clinton Administration to its credit in 1996, after all those years, tried to deal with it, could not get a rule change, could not get a consensus. The groups even on the same side could not agree among themselves. They tried again in 1998.

So that now, when I look at all of this, as intent as I am on these emitters doing the right thing and being required to do the right thing—and as I said, TVA is now spending \$500 million a year in that effort—I must say that I have no vested interest in continuing a regulatory scheme based upon lawsuits to enforce that regulatory scheme that is resulting in the conditions that we have today. And others may be building their professional careers on maintaining that and going lawsuit by lawsuit by lawsuit, under the impression that every case is going to be the same and that the EPA is going to win every case, when one bad decision could totally knock your props out from under you. But that is not where I am. I am interested in a result. And now, everything is kind of on hold. People are saying, we are being undermined now, because you have the audacity to take another look at New Source Review and Clear Skies.

The TVA now has a case in the 11th Circuit, and people say that folks are walking away from the bargaining table now because this bad administration is talking to lobbyists. I think they are probably walking away because they think they are going to win that case in the 11th Circuit against you. I know of distinguished law professors who have analyzed that case and feel like the TVA is going to whip you in the 11th Circuit.

Maybe they will, and maybe they will not, but these are real, grown-up kinds of things you have got to consider, rather than just throwing accusations back and forth at each other. But it looks to me like we are coming down to a basic difference of approach—whether we want to be wed to the past and what that has bought us, and attack these things lawsuit by lawsuit, or whether to have a scheme which is a results-oriented process, with hopefully a good

hammer at the end of that scheme if people do not do what they are supposed to do.

Am I missing it, or do you share that analysis, or what?

Ms. WHITMAN. I share that, Senator. I think we all agree that over the last 30 years, we have seen improvement in the environment, and that has come from the approaches that have been taken in the past. But we have also seen that we seem to have plateaued out. We are not making the kinds of advancements that we can make. We do spend an awful lot of time in court. We do spend an awful lot of money that could go to enhancing the environment into legal fees. And I have nothing against lawyers, but I do have when it is taking away from the time and the resources to address environmental issues.

What you are touching on, the routine maintenance, repair, and replacement, is a very sensitive issue, and we need to be careful as we go forward on that. That would be something that would be subject to full review before any action was taken by the Agency. But it also clearly, as Senator Voinovich's chart shows, goes to the heart of the complexity of this whole New Source Review. And as you pointed out, back in 1996, the Clinton Administration said we need to make changes here. The National Governors Association has called for changes here. The Environmental Council of the States has said that we need to simplify this.

I believe that we are obligated in good conscience to take an honest look at New Source Review and how we can make it more efficient and more effective. We all share the goals that New Source Review is supposed to get for us—cleaner air, a healthier environment—but we have also seen that it is not happening.

I would also say that I think you are absolutely right—that TVA case is a major case. If I were a plaintiff's attorney, I would not settle anything until I knew what happened with that case. We should be getting a decision sometime in April, and I think that will determine whether other companies come to the table or not.

We did have a major settlement just last month with Public Service Electric and Gas, and that was major. That would belie the charges that we are not going forward with settlement and that everything has stopped. It has not. We are in settlement negotiations every week with a host of companies, but the cases vary. They are not all the same; they are not all as strong—I hesitate to say that, but they probably are not all as strong. They are certainly not on the same premise. And the companies differ; what they are going to be willing to settle for is going to be very different. And I would agree with you that I would far rather see us take aggressive action and move forward to reduce pollution than to spend a lot of time in court if we can do it.

Having said that, we need to have a strong enforcement part of our effort—that has got to be there—and there will always be companies against which we are going to need to bring action, and we will not hesitate to do that.

Senator THOMPSON. I was looking at the TVA situation and trying to figure out what is “major modification” on the one hand and what is “routine maintenance” on the other. There is a whole list of things here that I have never heard of—“steam chest replacement”; “pressured furnace penthouses”; “replacement cyclones”;



“well repair”; “replace failed tube”; “turbine blade design materials”. Most of these things, the EPA said no, this is a major modification, and you cannot do that; you are under the scheme. A couple of them, they said, yes, this is routine maintenance.

But this is what is going on all over the country with regard to these lawsuits—or the negotiations. People are sitting down with stuff like this and trying to put things into categories, knowing that if you cannot resolve it, you are going to court.

It just seems to me like a monumental waste of time.

Ms. WHITMAN. Well, I would say, Senator, that as you know, the Justice Department did a review of all the cases that we have pending and has determined that those cases were all appropriately brought. So we are vigorously prosecuting them now. I do not know what will happen, but as to settlement talks, those ebb and flow; it is not a given that everyone will settle in the same way for the same thing under the same circumstances, because the circumstances are not there, and clearly there is a difference of opinion, or we would not be in court.

Senator THOMPSON. The facts are different—the repairs are different in every case.

Ms. WHITMAN. Yes, absolutely.

Senator THOMPSON. Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Thompson.

I have just one or two more questions. Incidentally—and I will ask Mr. Schaeffer this, and maybe I will ask you to submit it for the record—my sense is that the successes that you had in enforcement actions have been the result of legal actions that were started during the Clinton Administration. I would be interested in having a record of what the pace of initiation of enforcement actions has been in the last year.

Ms. WHITMAN. I would be happy to give that to you, Senator, because it has been vigorous over the last year.<sup>1</sup>

Chairman LIEBERMAN. OK, fine. Let me go to a few of the battles that the EPA has been involved in and just ask for a response. Obviously, you know that we are debating the energy bill now on the floor of the Senate, and one of the crucial questions is to what extent we are going to use energy more efficiently, which is a great way to avoid our dependence on foreign oil.

On January 22, 2001, a final rule, which is called the 13 SEER rule, was issued by the Department of Energy establishing energy efficiency standards for residential air conditioners and heat pumps. It would have required a 30 percent increase in efficiency standards for air conditioners. It was twice delayed. Then, last July, the Department of Energy announced that it was proposing to withdraw the rule. In September, it proposed a lower standard. State attorneys general and others have challenged the authority and process for delaying this rule.

I want to explore EPA’s views here, because to your credit, in October, EPA submitted comments to the Department of Energy on the proposed withdrawal of the final 13 SEER rule. EPA said that the data which DOE provided to justify the reduction in the stand-

<sup>1</sup>“Clean Air Act/New Source Review Enforcement Activity” appears in the Appendix on page 349.

ards from what had been issued before—and I am quoting from EPA—“overstates the regulatory burden on manufacturers,” “understates the savings benefits of the 13 SEER standard,” and “mischaracterizes the number of manufacturers that already produce at the 13 SEER level” which the previous administration had approved.

Last summer, Larry Lindsey, who is the Assistant to the President for Economic Policy, sent a letter to the American Council for an Energy-Efficient Economy, stating that the administration “decided the increase to the 13 SEER was unwarranted.”

So it sounds to me like the decision has been made. I want to know whether you think it is still open, and what was the basis for DOE’s conclusion that the lessening of the standard, as this administration is doing, was warranted.

Ms. WHITMAN. Well, Senator, we continue to support the effort to achieve maximum efficiency; we stand by that, and we are doing a number of things through our Energy Star Program that will result in more efficient air conditioners particularly. We have finalized new energy efficiency specifications to meet Energy Star at the 13 SEER level, and those specifications will become effective in October 2002.

Energy Star and minimum efficiency standards work together to improve the overall efficiency of equipment like air conditioners, and we are going to continue to proceed along those lines and continue to ensure that we do everything that we can within our purview to give consumers the choice that will provide greater energy efficiency.

Chairman LIEBERMAN. OK. I guess I would say bottom line that I am glad you are continuing to advocate the more demanding standard, because it is certainly in the interest of energy independence for the country.

We have a second panel to hear from, but we have not touched much on natural resource questions. Probably, it is more appropriate to ask Secretary Norton and others to come in and discuss that, but maybe I will ask you just one question.

I know that you have emphasized the role of science in making policy decisions, so I want to very briefly explore with you decisions that the administration has made regarding the settlement of a case involving the phaseout of snowmobiles in Yellowstone and Grand Teton National Parks.

The stories from there are really stunning. I gather some of the park rangers, because of the pollution, are wearing masks and that the Department has actually provided some of them with portable respirators to wear.

But last year, in June, I guess, the government and this administration entered into a settlement agreement with those who were challenging the rule that had been proposed by the Park Service to do another environmental impact statement. EPA—and this was under the previous administration—had determined that the original environmental impact statement supporting the reduction of snowmobiles in the national parks was “among the most thorough and substantial science base that we have seen supporting a NEPA document.”

In light of the fact that EPA considered the science so strong in this case, are you in a position to indicate why the administration would go to the expense of doing yet another study rather than defend the rule?

Ms. WHITMAN. Well, Senator, I cannot comment on what the Department of Interior saw and what my colleague Gail Norton felt was lacking in the record as far as she was concerned. I know this is a very controversial area. As you know, EPA never requires a particular technology to be used. We set the most protective emissions standards, and we are continuing to do that relative to snowmobiles wherever they are used. We have proposed a two-step program. The first takes effect in 2006 and requires a 30 percent reduction in VOCs and CO emissions, while a second standard that takes place in 2010 would reduce emissions by 50 percent.

We will continue to move forward with that regulation, as we are on all enforcement and with those regulations, but as far as actual access to the park and the roads and the timing of that, that is something that the Department of Interior has responsibility for, and I just could not comment on that.

Chairman LIEBERMAN. Understood. We will call Secretary Norton before us to answer those and other questions.

Senator Durbin, I had raised the hope with Administrator Whitman that she would soon be liberated, but you are entitled to a round of questions.

Senator DURBIN. No, Mr. Chairman. I thank her for joining us. I have just come from the Judiciary Committee and will not hold her any longer. If I have questions, we will submit them for the record.

Ms. WHITMAN. Thank you. I will be happy to respond.

Chairman LIEBERMAN. Thank you, Senator Durbin.

Thanks to you, Governor Whitman. Keep up the battle. I look forward to your answers to the questions that we have asked, and I hope we can find common ground to move ahead in the interest of protecting our environment and the public health of the American people who rely on a clean environment.

Ms. WHITMAN. Senator, if I could, just in response to the one question that I was going to respond to for the record—and we will do that, but just to give you a sense—since January 2001, EPA has made 87 information requests to power plants, refineries, and other facilities, paper mills, etc., issued 22 notices of violation, filed and concluded seven cases, engaged in numerous other enforcement efforts such as depositions, motion practices, and ongoing settlement discussions—I will give you all of that for the record,<sup>1</sup> but just so you have a level of confidence that we are in fact continuing to move forward.

<sup>1</sup> Charts entitled “NSR § 114 Information Requests and Notices of Violation Issued On or After January 20, 2001—All Facilities,” and “Table 1, 2001–02 NSR Settlements,” appear in the Appendix on pages 350 and 365, respectively. Some of the information provided is not consistent with the time frame identified.

Chairman LIEBERMAN. And if you would—and I have no idea what the facts will show here—but if you would compare that to the preceding 4 years.<sup>1</sup>

Ms. WHITMAN. Certainly.

Chairman LIEBERMAN. Thank you very much. I will now call the second panel, and I appreciate that they are here and that they have waited for a while.

The second panel includes Eric V. Schaeffer, former Director, Office of Regulatory Enforcement, U.S. Environmental Protection Agency; E. Donald Elliott, Co-Chair, Environmental Practice Group, Paul, Hastings, Janofsky and Walker, and Professor of Law at Yale and Georgetown Law Schools; Thomas O. McGarity, W. James Kronzer Chair, University of Texas School of Law; and Greg Wetstone, Director of Advocacy Programs for the Natural Resources Defense Council.

Thank you all for being here, thank you for your patience.

Mr. Schaeffer, I particularly appreciate that you are here. Some aspersions have been cast on the fact that you had arranged for another job before you resigned from the one you had. To me, this proves that you are not only a principled person, but you are also practical.

Mr. SCHAEFFER. Thank you. I do have small children to support.

Chairman LIEBERMAN. Yes, I was just going to say that I am sure your family appreciated that sequence of events as well.

We welcome your testimony at this time.

**TESTIMONY OF ERIC V. SCHAEFFER,<sup>2</sup> FORMER DIRECTOR,  
OFFICE OF REGULATORY ENFORCEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. SCHAEFFER. Thank you, Senator Lieberman, Senator Thompson, and Members of the Committee, for inviting me to testify today. Last week, as you know, I wrote to Governor Whitman to share some of my concerns about the state of our enforcement program and particularly with respect to the Clean Air Act. I would like that letter submitted for the record if that is all right.

Chairman LIEBERMAN. It will be printed in the record in full.<sup>3</sup>

Mr. SCHAEFFER. I cannot resist responding to several points that Ms. Whitman made in her statement and in her response to your questions.

I think I heard the Governor say “If I were a plaintiff’s lawyer, I would not settle with EPA and the Justice Department until the TVA case is decided.” And I must tell you that in my 12 years at EPA, I have never heard that come from the Administrator of the U.S. Environmental Protection Agency. And if you want an illustration of our concern—and this is a concern felt by the career staff at EPA—I give you that statement. If that was not a clear signal to the utility industry to stand down until that case is decided—and that may be a year away—I do not know how else to read it.

Chairman LIEBERMAN. I agree.

<sup>1</sup> Charts entitled “NSR § 114 Information Requests and Notices of Violation: Issued Before January 20, 2001—Coal-Fired Utility Power Plants and Refineries” and “Clean Air Act § 114 Information Requests: Vendors,” appear in the Appendix on pages 368 and 381 respectively.

<sup>2</sup> The prepared statement of Mr. Schaeffer appears in the Appendix on page 125.

<sup>3</sup> Resignation letter from Mr. Schaeffer to Administrator Whitman appears in the Appendix on page 382.

Mr. SCHAEFFER. She said something about work-years, and I have to say that I could draw you a chart showing you the EPA budget process, and it would make New Source Review look easy. It is a lot of smoke and mirrors. You need to get to the numbers, you need to look at the operating plan.

We lost positions in 2001 and 2002, not because we lapsed work-years, because we were late filling them, but because we were told that our work-years were being reduced. Work-years is not an abstraction. We are talking about a cut in staff. We are talking about not being able to replace expertise. So this is real, and I urge you to follow up. If my information is somehow suspect, I ask that you ask the General Accounting Office or the Inspector General to confirm that, and I think they will.

Chairman LIEBERMAN. We will definitely follow up.

Mr. SCHAEFFER. I would like to make one more point and then I will, with your indulgence, read my statement. We settle 95 percent of our cases at EPA. We take great pride in that. I would like to settle them all. There has been a lot of talk about protracted litigation and endless lawyer bickering and so on. We try to avoid that, and we can avoid that, and we have been pretty successful, and I think you heard the statistics from Ms. Whitman last year. Those statistics are from our settlement of cases.

We have been successful because we have been able to convince people on the other side of the table that we are serious and that if we have to, we will go to court. And I have to tell you that I have a lot of respect for the industry lawyers that we deal with. But they are practical people, they are hard-headed people. They are not running charities; they are not the Boy Scouts. Negotiations are not a tea party, but they do respect the fact that the government has a position, and they will settle with us if they think we are serious.

What has happened here is that we have lost settlements that we had in hand. We have lost settlements that would have gotten us 750,000 tons of reduction—not off in the future after some piece of paper becomes a bill and then works its way through Congress, but now, today. We had those agreements publicly announced. In the words of our attorney on the case, “The defendants cannot find their pens to sign them and have not been able to for 16 months.” That is what my frustration is about.

Finally, I must question this notion about how complicated it is. These are sophisticated plant managers and industry lawyers who deal with incredible feats of engineering and make very tough, difficult decisions every day. I particularly encourage you to look at the transcript of the TVA trial where we deposed and cross-examined TVA witnesses, and asked them in brief, Do you understand the difference between routine repair, which is exempt—and the Agency has made that exemption—do you understand the difference between that and major modifications?

We set up on the boards a series of projects. We thought they were big projects. We thought they were major modifications. Here is the question, and it is in the record, and I would be happy to include it. This is to a former plant supervisor at TVA, somebody who worked there for 12 years.

“At the time that these projects were performed, did TVA consider any of these projects to be routine maintenance or routine replacement?”

“No, sir.”

That seems pretty clear to me. That does not seem very complicated. That answer is crystal clear.

We have talked a lot about putting aside the rhetoric. I welcome a look at the facts. I encourage you to take a look at the record in that case, and I think you will see that it might be a little easier than it is made out to be.

Chairman LIEBERMAN. Thank you.

Mr. SCHAEFFER. Until last Thursday, I did manage the EPA program responsible for civil enforcement of most environmental laws. As you know, 2 years ago, we brought lawsuits against plants owned by nine electric power companies. Together, they are responsible for releasing about 5 million tons of sulfur dioxide every year and another 2 million tons of nitrogen oxide. That is acid rain; it is choking smog, which I think Senator Thompson alluded to. That kind of pollution is a killer. Pollution on that scale we estimate gives us 10,600 premature deaths every year—that is information that has been provided to the Congress—5,400 cases of bronchitis, about as many hospital emergency visits, and 1.5 million lost workdays.

I think these are appalling numbers, and I think they should make you a little emotional. This is not a dry, abstract policy question. This is something that affects human health that is in front of us today.

I think it is an outrage. I think it can be stopped if we are willing to enforce the Clean Air Act. But our efforts to do so are under attack. They are under attack politically—I think we have heard some of that rhetoric today—and they are under attack in a way that, again, I have not seen in 12 years at EPA.

We have energy lobbyists working closely with people in the White House and the Department of Energy to try to weaken the laws that we are trying to enforce. I want to make clear that we have in these lawsuits the bulk of the coal-fired power plants, either named in lawsuits or actively under investigation. These are not a few stray cases. We have basically brought these actions against an entire industry. So we are not proceeding case-by-case. We rejected that strategy. We put this on the board for the entire industry.

Given these efforts to weaken the law, we have watched defendants slip away from the negotiating table one-by-one, and we are now dancing with ourselves. That has been the situation for the last few months.

Many of the plants that we sued go back to the forties and fifties. They were all built before the Clean Air Act New Source Review program became law more than 24 years ago. They have not caught up with the law in more than two decades. None of them has the modern pollution control standards that we ask new plants to have, new plants that compete with these dinosaurs. These old plants were allowed to avoid tough new standards for pollution control as long as they were not modified in a way that increased their emissions.

One thing that is important to understand—you can put the fancy chart away if you do not increase your emissions. If you are planning to make changes and avoid pollution control and increase your emissions without a permit, then, yes, maybe you need to look at that chart. If you put on a scrubber, you can throw that chart away. So if these plants will update, upgrade, put on pollution control, then they are covered under the Clean Air Act, and it gets a lot simpler.

Our lawsuits allege that this bargain with all plants was not kept. These companies undertook a lot of projects, some costing over \$10 million, that increased their pollution and without putting these controls on. Again, we have done a lot of work on this. We have investigated it closely. These cases were not brought lightly. You heard TVA's response to our question when we asked did they understand the difference between what was exempt and what was not. They understood. And we look forward—I should say I look forward—to the 11th Circuit case. I think we will win.

Now, just before we took office EPA, working with States like New York and Connecticut, was closing in on these cases. And I think you are going to hear the same thing from State attorneys general. These cases were brought with States. This is not the Federal Government flying solo. We had States in the cabin working with us.

We had Cinergy and Vepco agree publicly 16 months ago to cut their emissions 750,000 tons. We have the Tampa Electric settlement, which is nearly 200,000 tons. And again, I am talking about real reductions, not something that may or may not happen if and when a bill gets through Congress. I am talking about real reductions under current law.

Now, in the spring of 2001, it started getting obvious that the energy lobby was working inside the administration and in the words of their attorneys—and I got this from a number of sources—to “undermine” the cases by changing the rules we are trying to enforce. We heard this over and over again. So one by one, they left the negotiating table.

As I said, Cinergy and Vepco are still looking for their pens to sign their agreements. I need to make clear that we did not get any calls from the White House telling us do not do these cases. This is not the movies. This is basically defendants saying, “Why should I comply with a law that you are going to eliminate?”

And we are not talking about should there be a bright line or not. You can always improve existing law. We are talking about an effort to paint themselves out of the Clean Air Act. That is what is going on here. That is where the effort has gone.

The energy policy announced by the White House last May calls for a review of those cases and the New Source Review law itself. One point I do want to make is that the Department of Justice has looked at some of the concerns that Senator Voinovich raised—that EPA's interpretations have been inconsistent, that we are basically making up law, which I think is a very serious charge and one that needs to be answered.

In January, I think the Department answered that question and came out with its report, saying that our position was clear, reasonable, consistent. I want to say that again—consistent. We have

not changed our interpretations. We had not engaged in illegal rulemaking. The lawsuit should go forward. And that was reviewed at the highest level of Justice Department and approved by Mr. Ashcroft. But now the Justice Department needs a client if they are going to succeed in bringing these cases.

The latest drafts in circulation, just to illustrate the concern and why this is about eliminating the law and not just making it easier to understand, would take narrow exemptions and turn them into giant, canyon-sized loopholes that would wipe out the act.

My favorite proposal would allow the replacement of virtually every part of the utility boiler over and over, down to the concrete pad, without ever triggering New Source Review. We have had in depositions attorneys put up blow-up charts showing all the parts of a boiler, and our attorneys would ask the defendants one-by-one, "Suppose I replace the economizer"—with a brand new part—"is that routine repair?"

"Yes."

"Color it in for me, please. Suppose I replace the wing walls"—big parts in a boiler—"is that routine repair?"

"Why, yes, that would be."

So we color that in. Pretty soon, the entire unit is colored in. It is all routine repair. There is nothing going on here but routine repair, and it goes on forever, and you never have to comply with the Act.

As to Clear Skies, all that I will say today is please read the fine print, put aside fancy talk about caps and allowances. All that is very attractive, but look at the fine print and ask what are the actual emission reductions that we are going to get under this proposal, under this new bill, if and when it ever passes. And I am assuming first that it passes; second, that EPA gets its rules out on time, which would be a first; and third, that we are not sued by every utility in the country to delay those rules and haggle over interpretations.

So if you think that legislation is clean and easy for EPA when it arrives at the Agency, that it is somehow quicker than these lawsuits, I would just ask you to think about that. We have a long, long rulemaking process if we are going to start over.

Now, at a banquet, accepting what amounts to the Academy Award for the best lobbyist, the head of the Edison Electric Institute quoted from Machiavelli and summed up what seems to me to be the energy industry's guiding philosophy these days: "It is good to be feared." That was a revealing moment. Maybe that is business as usual for the utility industry.

But with more than 10,000 premature deaths a year, I think the stakes are too high for that kind of talk and that kind of fear. We are asking for a fair fight. We are asking for a fight out in the open, based on the facts. And then, we need to choose. We need to choose between the law and the lobbyists who are working overtime to try to undermine it. We need to choose between children with asthma and influence-peddlers who do not seem to care. And if the Environmental Protection Agency will make the right choice, we will all breathe a little easier.

Thank you, Mr. Chairman.



Chairman LIEBERMAN. Thank you, Mr. Schaeffer, for what I found to be compelling testimony and for your years of service, which were not political and I know began in the former Bush Administration, and for having the courage not only to make the statement you did last week, but to not run after that, to come out and defend what you have said and even amplify on it. I think this is a clarion call that I hope everyone will listen to, including particularly those in the administration.

Our next witness is Mr. Elliott.

**TESTIMONY OF HON. E. DONALD ELLIOTT,<sup>1</sup> CO-CHAIR, ENVIRONMENTAL PRACTICE GROUP, PAUL, HASTINGS, JANOF-SKY & WALKER AND PROFESSOR (ADJ.) OF LAW, YALE AND GEORGETOWN LAW SCHOOLS**

Mr. ELLIOTT. Thank you, Mr. Chairman.

It is a great pleasure to be here testifying in front of my neighbor from my home State, Senator Lieberman. The last time I was before the Committee, Senator Lieberman made a remark about “old-timers’ day,” which I am still smarting from, but I feel that way up here with Tom McGarity. He and I were together at my first academic conference about 23 years ago, and we disagreed then, and we disagree now.

I do not agree with the assessment that the Bush Administration is somehow “rolling back” environmental protections. It seems to be clear that the Bush Administration is in what I would call the “sensible center” with regard to environmental policy. It is an area where Senator Lieberman and I usually find ourselves.

The Bush Administration in its first year has proposed a number of initiatives to make progress and to move forward, and it is not engaging in rollbacks. Of course, it is always possible to question whether the initiative goes far enough, but there is a very significant legislative proposal in the Clear Skies initiative and in the brownfields legislation. And note that this is after 8 years in which we did not have any significant environmental legislation taking place.

I think, as Senator Thompson said, that most of the concern here is really fear about what EPA might do or is based upon speculation, and it is really kind of a shot across the bow. I can certainly sympathize with my friend Eric Schaeffer with whom I served at EPA, but it is sometimes frustrating when one is at the Agency and feels that other people in the administration are advocating different policies. But as Administrator Whitman said, I think that is really normal. We at EPA sometimes do have tunnel vision, and I think that sometimes our goals and objectives need to be balanced within an administration with other goals and objectives, and I think that is what is happening.

There is obviously a lot of debate, particularly in Republican administrations, but if you look at what the administration has actually done to date, I feel very confident that it is in the sensible center, it is moving forward on the environment.

I would like to talk a little bit about New Source Review—and again, my friend Eric Schaeffer is a strong advocate for his point

<sup>1</sup>The prepared statement of Mr. Elliott appears in the Appendix on page 127.

of view. It does seem to me terribly wrong to equate NSR with environmental enforcement. NSR is the wrong fight. NSR is a deeply flawed, broken program. As has been pointed out, we have had it for more than 25 years. It has been deeply unsuccessful.

The notion that one can get significant reductions by slugging it out, case-by-case, suing power plants one-by-one, and negotiating settlements—that is the old way. That is the strategy that we have used for 30 years. And it has achieved some successes, but it is time for a second generation, it is time for a new approach, it is time to have a better way of getting reductions than this case-by-case approach.

That is why I support the President's Clear Skies initiative, which I think is really a much better way to deal with this approach.

Congressional hearings are not the place to try cases, and as I said, I think Mr. Schaeffer is a very strong advocate for his position, but I think we should point out that no court has yet ruled or upheld EPA's position in an enforcement case against the utilities, and I think it is a little bit premature to grab the high ground of talking about violating the law in a very sanctimonious fashion.

EPA has staked out a very aggressive interpretation, a very aggressive position here. The definition of what constitutes a modification runs for three pages in the *Federal Register*. I remember when I was EPA General Counsel, and one of the senior air lawyers, the head of the Air Program in the General Counsel's Office, said to me, "You have got to promote this guy rather than this guy, because he is the only one in the Agency who understands what these New Source Review rules mean." And I was not smart enough to understand that if the top air lawyer at EPA was telling me that he did not understand the rules, then the rules were too complicated.

Ninety percent of the allegations in the government's cases involve tube replacement. When you have a utility boiler, the tubes gradually plug up. The regulations specifically exempt routine repair and replacement. When my former Agency was asked to define what a routine repair and replacement was, it said officially in the *Federal Register* that a routine repair and replacement is what routinely happens in the industry. That gave nobody any clarification or guidance.

For 20 years, EPA inspectors were in these plants, and they never suggested that what was going on in these plants was a violation of the law, because it was not a violation of the law as everybody in the industry understood it at that time.

With regard to the Justice Department report, the Justice Department specifically says in a foot note that it is not ruling on the company's fair notice arguments, as to whether they had fair notice—they do not deem that to be part of it.

So there are plenty of these issues that need to be thrashed out in the place where they belong, which is in the courts.

I also think that it was a useful thing for the administrator to say that settlements ought to be different. There are major differences in the companies that have been sued. EPA sued these companies before they investigated the facts of what happened. They sued these companies because they were large, and then, they

insisted on the same settlement for companies that are clearly guilty and have increased their emissions and companies that have not increased their emissions. If the administrator's policy that she enunciated today, that there can be differences of settlements that take those facts into account, actually works its way into practice, I am sure there will be more interest in settling these cases.

But the main point I would like to leave you with, Senator Lieberman, is that NSR is the wrong fight. It is not the equivalent of environmental enforcement. There is a much better way to control the power plants in the Midwest, the old power plants that are polluting, and that really is the model of the Acid Rain Program. It is a proven success.

The NSR program is a proven failure. It has failed to achieve the results for 25 years, and we should not be investing more resources in a failed program. We should build on the model of what has been successful.

In the last 10 years, a little, tiny program with one-half of one percent of EPA employees has been responsible for more pollution reductions than all of the other EPA programs put together, including all of Mr. Schaeffer's enforcement cases, and that is the Acid Rain Trading Program. One-half of one percent of EPA's resources is producing half of the air pollution reductions.

What the President's proposal is and what you support in cap-and-trade programs is to build on the successful elements of the program.

When Senator Muskie was involved in designing the Clean Air Act, he talked about it as a "toolbox." It is not one set of programs, but it is a set of tools. We certainly should not abolish environmental enforcement, but on the other hand, I think that environmental enforcement ought to be the tool of policy rather than the other way around.

One of the things that has been very troubling to me in the last few years is that the enforcement tail has increasingly been wagging the dog at EPA. It used to be that the programs made the decisions, and enforcement then was a tool to carry out those policy decisions. A few years ago, it began to be that the enforcement folks would take the position that the policy programs cannot do this anymore, because that would screw up our enforcement case.

It has now gotten to the case where enforcement is saying that the President cannot consider legislative or administrative fixes to a broken program because it would screw up one of our enforcement cases.

That is an extraordinary claim. It is in my view an outrageous claim. I think that the folks at EPA enforcement should not be the ones who are making our national environmental policy, and I think it is perfectly appropriate and long overdue to really reconsider whether it makes sense to devote so many resources to these NSR cases which have produced very little results.

I respect Mr. Schaeffer, but his projections of the ton reductions and so on assume that he is going to win all of his cases, and that has not been the experience. When you go into a major litigation like this, there are delays—this is going to go to the Supreme Court four or five times—we are going to be back here in 10 or 15

years, finally maybe knowing what those very complicated EPA rules mean.

But if the last 30 years have taught us anything, it is that there is a much better way to get real reductions for the environment rather than slugging it out in these enforcement cases.

Chairman LIEBERMAN. Thanks, Professor Elliott.

Mr. Schaeffer, we will give you a chance to respond in the question-and-answer period.

Let us go now to Professor McGarity.

**TESTIMONY OF THOMAS O. MCGARITY,<sup>1</sup> W. JAMES KRONZER  
CHAIR, UNIVERSITY OF TEXAS SCHOOL OF LAW**

Mr. MCGARITY. Thank you, Mr. Chairman.

My name is Tom McGarity. I hold the Kronzer Chair at the University of Texas School of Law, where I have taught environmental law and administrative law for the last 21 years. I am pleased to testify today on the current implementation of the environmental laws in the United States. I will attempt to briefly place the Bush Administration's implementation activities in historical perspective. I have tried to do that in a larger or broader sense in the prepared testimony, which I would ask be included in the record.

Chairman LIEBERMAN. We will include it in the record, and let me thank you for that prepared testimony. We get a lot of testimony here, and that definitely should be and perhaps will be 1 day a law review article. I appreciate the time you took on it and the footnotes—I cannot say that I have checked them all personally, but—

Senator THOMPSON. We will see who shows up as the author when it comes out. [Laughter.]

Mr. MCGARITY. My mother taught me a long time ago to footnote everything I said.

Chairman LIEBERMAN. It was well done. I appreciate the time you took on it.

Mr. MCGARITY. Thank you.

I can agree that it is early in the process for an assessment. I was asked by the staff to identify major themes, and I have attempted to do so and have identified six major themes that are happening now. Things could change, and in many ways, I hope they do.

The first theme is the Bush Administration's skeptical reassessment of the late-arriving Clinton Administration environmental initiatives. The Bush Administration declared a time-out at its outset so that it could reexamine a number of so-called midnight regulations that were issued during the outgoing Clinton Administration. This happens at the end of lots of administrations, at the end of Congress, and at the end of court regimes as well.

Most of the final rules, as was mentioned, ultimately did go into effect, but the administration allowed some of them to go into effect only very reluctantly and under a great deal of pressure. Some of the final rules have not gone into effect because they were challenged in court and either abandoned by the administration or stayed pursuant to settlement agreements. Still other final rules

<sup>1</sup>The prepared statement of Mr. McGarity appears in the Appendix on page 134.

were allowed to go into effect but are now under active consideration by the Bush Administration for possible amendments to reduce their stringency. And a few of the final rules never went into effect at all, and we have already mentioned DOE's air conditioner rule in that regard.

After that, the second theme was the Bush Administration's ambivalent stewardship of common resources. The Bush Administration has adopted a much less protective approach, I think, so far toward public lands and other commonly-held resources than the previous administration. By the end of 2001, the Forest Service was already weakening the implementation of the recently promulgated Roadless Area rules. I did testify before Senator Craig's committee last session on that.

The Bureau of Land Management has replaced the Clinton Administration's final Hard Rock Mining regulations with new regulations that greatly reduce environmental protections. The administration had made it clear that by the end of 2001, it opposed any additions to the national park system for the foreseeable future.

The administration has taken several other affirmative actions that allow greater private use of commonly held resources that may have significant adverse effects, and I have elaborated on those in my prepared testimony.

Although perhaps not as overtly aggressive as the Reagan Administration's attempts to allow private use of public resources, it seems clear that the Bush Administration assigns a higher value to private development and a lower value to preservation than the previous administrations. In the end, the Bush Administration's less abrasive approach may ultimately bring about a greater reduction in dwindling commonly held resources than any Presidential administration since the latter part of the 19th Century.

The third theme is the Bush Administration's reluctance to regulate private polluting activities. The Bush Administration has by no means been a proactive protector of human health so far. The Clear Skies initiative has been talked about a lot, so I do not want to spend a lot of time on it. The heart of it is a cap-and-trade regime, and I, too, am a supporter of cap-and-trade programs. I do want to point out that this one is going to be harder than the Acid Rain Program, which by and large was met by switching fuels. It is not clear to me that we are going to meet the goals of the Clear Skies initiative simply by switching to natural gas and low-burning coal. Real technologies are going to have to be installed. The reclaim program out in California suggests some of the difficulties that come up when people presume that they are going to buy emissions credits and do not install technology, and if enough of these people do this and presume they are going to have the credits, they will not be there to buy, and we will see huge spikes.

What we need is—and I was pleased to hear that we are going to be monitoring this—monitoring of the progress not just of the emissions through continuous emissions monitoring, which is absolutely critical to the cap-and-trade regime, but monitoring to see who is installing actual pollution reduction technologies so that we do not see in 2008 that nobody has done anything, and the price of these credits spikes, at which point, as in California, we will de-

clare a time out, and we will not see those actual emissions reductions.

On global warming—we have also spoken about that today—this idea of emissions or greenhouse gas intensity is a novel concept. I do want to correct my prepared testimony there. In a late night cut-and-paste, I got it exactly backward. We actually could increase emissions if economy goes forward, not if it goes backward, and still be consistent with these goals.

A similarly optimistic voluntary emissions reduction permit program that I have watched in the State of Texas for grandfathered facilities which was implemented or put into place when President Bush was Governor of Texas has thus far induced only 10 plants to acquire voluntary permits, and this has achieved reductions in total emissions of about one-hundredth of one percent from those grandfathered facilities, and this is after 4 years—nowhere near to the 18 percent that this greenhouse gas emission voluntary program is supposed to bring about. I think that should serve as a warning to us.

There have been new initiatives to roll back environmental protections, to ease restrictions or otherwise reduce health and environmental protections. There have, of course, been missed opportunities, but those opportunities are still available, and hopefully, the administration will take advantage of them.

There have been some positive initiatives during the Bush Administration. Most of these have been in response to court orders requiring that the Agency take those initiatives. As I mentioned, the administration has been a strong proponent of voluntary initiatives that rely primarily on the good citizenship of the regulatees.

In the final analysis, I have been unable to identify a single important new rulemaking initiative during the Bush Administration's EPA to require private polluters to take action to protect human health and the environment that was not already in the works prior to January 20, 2001.

The fourth theme is the Bush Administration's tighter oversight of the environmental agencies through OMB's Office of Information and Regulatory Affairs, or OIRA, as we call it.

Although again it is still early, it appears that OIRA is asserting an aggressive oversight role in the Bush Administration that is reminiscent of the role that it played during the Reagan Administration. The process does remain transparent with the Office's commendable expanded use of the internet to become more transparent, and it is becoming more transparent than ever, and for that, I commend it.

There are indications, however, that OIRA may see a substantive role for itself in the review process that goes beyond simply insisting that the agencies calculate the costs and benefits of major regulations properly.

OIRA has begun to interject itself into the process much earlier than in the case of past administrations; it has even offered advice to EPA on how it should carry out its research into health effects of pollutants.

It has been reported in OIRA's year-end report that there is a so-called hit list of 23 high-priority regulatory review issues that in OIRA's view either warrant further attention and might possibly

result in a prompt letter to the Agency to demand additional attention.

OIRA may now be viewing itself and its centralized review function as a vehicle for encouraging EPA to revisit regulations that regulatees find overly burdensome and for forcing EPA to exercise extreme caution in promulgating new environmental protections. I strongly suggest that this Committee keep a close eye on OIRA's activities in the next few years.

The fifth theme is the Bush Administration's apparent reluctance to hold States accountable for poor implementation of delegated Federal programs. Again, it is early, but the action, as I detail in my prepared testimony with respect to Houston, is an example perhaps of this.

The sixth theme is the Bush Administration's efforts to reduce transparency in the decisionmaking process, and here, I will simply make reference to the October 2000 Justice Department memorandum on implementing the Freedom of Information Act.

In conclusion, I would like to use an athletic metaphor, perhaps. The Bush Administration did not hit the ground running with an agenda for improving the environment. Indeed, it does not appear that the administration was even really jogging in the direction of environmental improvement. Viewed most charitably, the Bush Administration has been running in place on environmental issues while it focuses its attention on other matters.

In recent weeks, however, there are actions that strongly suggest that the administration may be about to sprint off in the opposite direction. If so, irreparable harm to human health and the environment is a predictable consequence.

Thank you.

Chairman LIEBERMAN. Thanks, Professor McGarity, for a very thoughtful statement. I agree with you—I must go back to my friend and neighbor Mr. Elliott—that we are often in the “sensible center.” My problem with the Bush Administration environmental record is that it has not been in the “sensible center”; it has too often been, if I may say so, on the nonsensical right. Much as I respect Administrator Whitman, I am ultimately not reassured by the record here, and that is why—to use the awkward metaphor that I did at the beginning—instead of athletic, I am going to go to canine metaphors—this watchdog is going to continue to bark.

The next and final witness is Greg Wetstone, from NRDC. This is a report that NRDC put out in January titled, “Rewriting the Rules: The Bush Administration's Unseen Assault on the Environment.”<sup>1</sup> It was for me a very important piece of work. I read it. It summed up a lot that has happened; in some sense, it is part of what led directly to these hearings, and I appreciate, therefore, the work that has been done.

I must also give particular credit to the anonymous person who wrote the chapter titles, which are among the most memorable I have ever seen in a serious report—for instance, “Wetlands Protection—Rotten at the Corps”; “Everglades Restoration—Watered Down”; “Public Lands—Open for Business”; “Mining Policy—Get-

<sup>1</sup>“Rewriting the Rules: The Bush Administration's Unseen Assault on the Environment” appears in the Appendix on page 385.

ting the Shaft”; and “Air Quality in Houston—We Have a Problem.”

Senator THOMPSON. We appreciate that objective analysis, Mr. Chairman. It is stuff like this that gets me out of the center.

I notice we have “The Bush Administration’s Environmental Record: A Year of Accomplishments.”<sup>1</sup> I wonder which one is thicker? We will put them both in the record.

We will at least put the subtitle chapters in this one against that one. Mr. Wetstone, I am just trying for a little humor here as the hearing goes on. We are now happy to welcome your testimony.

**TESTIMONY OF GREGORY S. WETSTONE,<sup>2</sup> DIRECTOR OF  
ADVOCACY PROGRAMS, NATURAL RESOURCES DEFENSE  
COUNCIL**

Mr. WETSTONE. Thank you very much, Mr. Chairman. I want to commend the Committee for undertaking this hearing and thank you on behalf of our 550,000 members for giving the Natural Resources Defense Council the opportunity to participate today.

I will briefly mention, if it does not raise Senator Thompson’s ire, that Rob Perks in the audience gets credit for the titles and the headings.

The topic before the Committee today is, I think, an exceptionally important one to millions of Americans, and the reason is that the environmental laws, which are really a remarkable bipartisan achievement, have been among the most successful legislative endeavors ever. That includes most dramatically, given today’s discussion, the Clean Air Act, where we have seen dramatic reductions across the country in levels of urban smog. There is a long way to go, but we have made huge headway. We have seen reductions in acid rain, reductions in air toxics, we have seen real progress toward protecting the stratospheric ozone layer, and the Acid Rain Program, which has been mentioned, has been a success, but it was overlaid on top of existing programs. There was no effort to weaken other programs to put that in place, and that is a vitally important difference.

But these laws have gone far beyond clear air. We have improved the quality of water in our rivers, in our drinking water; we have protected threatened species, put in place programs for cradle-to-grave management of hazardous waste, cleanup of waste sites, we have protected some of the last wild areas and threatened species. We have a long way to go in all of these areas, but I think it is very important to take note of what a huge success this body of law is, and it is especially important to note that today these bipartisan laws are—and we feel that we have documented this case quite well—very much at risk, not from an effort in the Congress to change the laws but from a subtle effort, a quiet effort, to subvert the fundamental government structure that is vital to making them work.

And as I know this Committee is very much aware, simply having a law on the books does not change behavior. That law has to have credibility; the provisions of that law have to be translated

<sup>1</sup>“The Bush Administration’s Environmental Record: A Year of Accomplishments” appears in the Appendix on page 439.

<sup>2</sup>The prepared statement of Mr. Wetstone appears in the Appendix on page 163.



into very specific requirements for industry and regulated parties; and there has to be credible enforcement for the entities that are subject to those laws to understand that it is in their interest to comply. And in fact, if there is a weak signal on enforcement or in the credibility of these laws, a complying private entity may actually be placed at a competitive disadvantage to its competitors, who may see that they can get away with not complying. So this is vitally important.

The discussion of clean air that has taken place for much of this morning and early afternoon is particularly relevant here. I was not really going to talk much about clean air, but as someone who has devoted decades to that issue and worked on that issues as a committee staffer in the House of Representatives. I have to comment that what happened in this room earlier today was in my mind unprecedented and remarkable. The Administrator of the Environmental Protection Agency, as part of a statement which I thought was intended to reassure this Committee and the public that she is committed to enforcing the Clean Air Act, actually advised polluters' attorneys against settling with the enforcement actions brought by her own staff, and even suggested that there may be some questions about the legality of the underlying provisions in the law.

I think that is an astounding and deeply troubling occurrence, and I certainly hope that that was not her intention, but that is what she said. I would certainly call on the Administrator to publicly reassure this Committee and the public that she does support the Clean Air Act, that she does support these enforcement actions, because these kinds of signals are what will turn the Clean Air Act and these provisions into writing on paper and nothing more. You have to have credible enforcement, as I know this Committee is aware, for the laws to be real.

It is important to note that these New Source Review provisions are not, as some of this discussion might suggest, some arcane provision of the law that is additive to the law's central provision. This is a part of the basic compromise in the clean air law which has held up since it was first enacted in 1970. That compromise was that when you build a new facility, you are subject to very tight pollution control requirements; but if you have an older facility, you do not have to install those tighter requirements unless you rebuild. And the anticipation and the expectation was that over time, these facilities would either be replaced or rebuilt, and then they would have to install the same state-of-the-art controls as their competitors in industry.

What these enforcement cases are about is fundamentally making that compromise stick as these sources have gotten older and older and older. And the definition of "modification" which was mentioned really addresses the question, are these sources basically rebuilding from the inside out to become new sources? And I submit that that is exactly what has happened and that it has been well-documented, and there has been a relatively transparent effort to categorize these changes as "routine maintenance," when the people doing them understand that this is not routine maintenance.

My mission here this morning is really to speak much more broadly than the Clean Air Act and to give a little bit of flavor for, broadly, how we see the efforts of the Bush Administration to carry out environmental law. Sadly, it is increasingly clear to us that this administration is employing the full force the Federal Government, including the environmental agencies, the White House, and even the budget process, in a sweeping campaign to undermine the programs that protect our air, water, lands, and wildlife.

I just want to give you a few brief examples, and I will not go into a lot of detail or try to be exhaustive; I would defer to my written statement and our report for that, and with the Chairman's permission, I would like to submit this report for the hearing record.<sup>1</sup>

Chairman LIEBERMAN. Without objection.

Mr. WETSTONE. I would like to just briefly hit a couple of the examples that we see that go across the spectrum of law and then talk a little bit about the tactics, because what we see is, increasingly, a reliance on approaches that are designed to basically not be penetrable readily to public scrutiny or to have a great deal of public participation.

Let's start with wetlands. The cornerstone of wetlands protection policy in this country since 1990 under the first Bush Administration has been a fundamental tenet that there should be "no net loss" of wetlands. If an acre of wetlands was destroyed, another acre somewhere else had to be protected and preserved.

What has happened is that last October—on Halloween, ironically enough—the Corps of Engineers issued a regulatory guidance document—no public comment, no public participation—and that document essentially eviscerated the "no net loss" of wetlands policy, and it did so essentially by saying that you could trade off a wetland against an upland area, a stream buffer or other areas, which are not wetlands. If you take a wetland away and instead protect another area that is not a wetland, you are losing wetlands. The environmental community terms this new policy "new net loss" of wetlands because that is what we see going on.

On mining activities and public lands, this is no small matter. In the year 2000, an EPA report documented that 40 percent of all Western watersheds have been despoiled by mining waste. In October, the Department of Interior issued new rules on hard rock mining that were a step backward in many ways. Most notably, the rules rescinded that Agency's own authority to say no to a mining permit on the grounds that it could result in irreparable harm to the environment or to nearby communities. So we have a review process where they have no capability to say no because of environmental destruction, and this is on an issue that creates a great deal of environmental destruction.

Raw sewage in America's waters—most of us would say that is a bad thing. There is a problem that we have in this country where sanitary sewers overflow into waterways and other places. According to EPA, this occurred 40,000 times in the past year. The Agency, years in the making, produced a rule on sanitary sewer over-

<sup>1</sup>"Rewriting the Rules: The Bush Administration's Unseen Assault on the Environment" appears in the Appendix on page 385.

flows. All the stakeholders, the localities, the water companies—everybody was in agreement. This was a consensus rulemaking. But the rule was held up in the early days of the Bush Administration with Andrew Card's regulatory moratorium, and then it was put into what we could only consider some sort of a regulatory limbo. Now, over a year later, it has never gone forward. So you still have people swimming in waters that are at times contaminated by sewage, and there is no effort to prevent the contamination. Equally offensively, absent this new rulemaking, there is no public notice—you do not find out when your local river is being contaminated by sewage, so you cannot even make the informed decision that maybe I do not want to go swimming today because there is sewage there.

The concern that we have is not just what is happening, but the kind of approaches that have been taken here. In many cases, we are looking not at a formal rulemaking but efforts that are highly technical guidance that have no public participation. One example is the rulemaking on wetlands that I mentioned; another is the issue when the forest rules came up. Those changes have been effected through interim guidance that has immediate impact to change the Forest Service Manual, which as you might imagine is not a particularly high-profile activity, but it has hugely significant repercussions.

I mentioned enforcement, and that has been a lot of the focus, so I will not go into that more. But another approach has been funding. The refusal to request reauthorization of the Superfund tax—EPA officials have publicly conceded that this is slowing down Superfund cleanups, which is a massive problem.

The failure to defend environmental requirements in court is a huge problem. Recently, the Fish and Wildlife Service went before a Federal court and said they were willing to forego protection of 500,000 acres of critical habitat in California that is considered essential for endangered species. Similarly, the Interior Department rolled over for a legal challenge by the International Snowmobile Manufacturers Association, delaying a very important rule that would have barred snowmobiles in Yellowstone National Park.

We find ourselves facing a variety of fundamental changes with no public process and minimal opportunity for public comment. When we look overall at what is happening, we see big problems with the way the Office of Management and Budget is managing these environmental reviews. Taken together, we see this as the most serious assault ever to America's landmark environmental protection programs. If it is allowed to proceed unhindered, we see it as leaving these bipartisan environmental laws technically unchanged but dramatically reduced in their credibility and effectiveness and increasingly irrelevant to what polluters, developers, and those who would log, drill, and mine on public lands have to do in the real world. Thank you.

Chairman LIEBERMAN. Thank you very much, Mr. Wetstone, and thanks to all of you.

Mr. Schaeffer, let me first give you a chance to respond to some of Mr. Elliott's comments. In a most targeted way, he said that your position regarding the New Source Review cases is that EPA is going to win all the cases without appeals or setbacks, but in fact, no court has ruled in EPA's favor on New Source Review en-

forcement cases. And then, finally, he said that EPA has in fact staked out a bold new theory in these cases.

How do you respond?

Mr. SCHAEFFER. Mr. Elliott and I have been on panels before, and we kind of do a Punch and Judy show on some of these issues. If I had a copy of the *WEPCO* decision, I would whack him with it, because that is a utility case, and we did win it—I think he was at the Agency in fact when that was argued. That is the case that we are relying on in bringing the cases we have today; that was 10 years ago and is established law.

We won a slam-dunk decision in Murphy Oil this summer. I am going to send Mr. Elliott a copy of that. The judge rips the defendant for clearly understanding what the requirements were and doing everything this particular company could to avoid it.

We won a New Source Review case on BP Oil. That was summary judgment, so I will share a copy of that as well.

As to not being able to get anything done on New Source Review, I think you heard in the Administrator's statement taking credit for in fact what we have been able to get done in settlements. We have been able to get one-third of the U.S. refining capacity under global settlements, addressing New Source Review violations, almost doubling—maybe more than doubling—the number of scrubbers that these plants put on, putting in new technologies, and experimenting with new options that make control cheaper.

These settlements are practical, they are flexible, they have gotten us 150,000 tons of reductions, and that is something that is in place and operating today, not something we have to wait for or debate any further.

I think if you ask the companies—and they really are the best source—about how the process went, they will say that we were pretty reasonable and they are pleased with the result.

Chairman LIEBERMAN. Do you take a position on the question of whether the New Source Review program has inefficiencies that need to be improved?

Mr. SCHAEFFER. Sure. We can improve the program, no question. We can improve lots of rules at EPA, and there are definitely ways to make it simpler.

To this argument that, gee, the law is too complicated for polluters to understand, so they should not have to comply—in a couple of weeks, I am going to have to start doing my taxes. I am old enough to be itemizing these days, and I know that you all are working really hard on simplifying the Tax Code, but it still gives me a headache to do my return. And I guess my question should be—am I supposed to comply with the tax law or wait for somebody to change it? Is there somebody I can call about that and maybe get some help?

Chairman LIEBERMAN. So in other words, the shortcomings of the program—I will answer that question later—the shortcomings in the New Source Review program do not justify stopping enforcement of it.

Mr. SCHAEFFER. I do not think so. They have broken the law, and they need to comply.

Chairman LIEBERMAN. Particularly as you said very compellingly at the end of your statement, because of all the data that is accu-

mulating on the real health effects of air pollution—in your statement this morning, you said that “EPA’s efforts to enforce the Clean Air Act are threatened by a political attack on the enforcement process that I have never seen in 12 years at the Agency. The energy lobbyists, working closely with their friends in the White House and the Department of Energy, are working furiously to weaken the laws we are trying to enforce. Not surprisingly, defendants have slipped away from the negotiating table one by one, and our momentum toward settling these cases has effectively stopped.”

I said earlier—and this is partially because of my past experience as Attorney General of Connecticut—how important enforcement of the law is to encouraging voluntary adherence to the law by a lot of other people. But let me ask if you want to say any more about these very strong statements about the energy lobbyists working “to weaken the laws we are trying to enforce.”

Obviously, there has been a fair amount of discussion about this in the media, but from your own knowledge, can you give us any more evidence of that?

Mr. SCHAEFFER. Sure. I am talking about having the defendants attorneys tell us: “This is being reworked, this law is being reworked, and we do not really have to talk to you right now”—and saying it in a nice way, and sometimes not in such a nice way, and then getting up and looking for the exit. That is what we have heard, and if you want to confirm that and talk to some of my staff and the manager of the Air Enforcement Division, I think they will tell you the same thing.

Chairman LIEBERMAN. But just to clarify, you said in your testimony that there was never a time when anybody over you said “Do not go ahead with this enforcement”—or was there?

Mr. SCHAEFFER. No. I cannot say that. I cannot say that the telephone rang and I was told do not do the case.

You heard seven complaints have been filed. We have made a decision that we really could not file additional companies in the utilities sector with the confusion over where the government stood right now, and nobody has argued with that decision; it seems kind of sensible.

The new complaints the Administrator mentioned that were filed are complaints that were filed when the settlement was reached. Those were the refinery settlements. And you file a complaint when the deal closes. But these were not new complaints. We have not filed any since the new administration took office on utility plants for NSR violations.

Chairman LIEBERMAN. We have talked a lot about air quality, New Source Review particularly, and yet the cutbacks in staff that you have testified to, I presume, affect other environmental programs and their enforcement. What other environmental programs were staff responsible for enforcing who are no longer there or whose positions are no longer filled?

Mr. SCHAEFFER. A good example is in the wetlands program. About 2 years ago, we had our senior technical staffperson—and we only had one—leave and take a new position. We have not really been able to replace that person.

I think we are desperately short in clean air cases. Just to give you an idea of the magnitude, when we brought these lawsuits—

Mr. Elliott and his friends were not idle; they are basically requiring the Agency to dump thousands and thousands of documents in discovery. I know they do not like this long, protracted process, but they are pretty good at it.

Chairman LIEBERMAN. You mean Mr. Elliott in his capacity as an attorney.

Mr. SCHAEFFER. Right. I will not pin that on Mr. Elliott particularly.

Mr. ELLIOTT. Yes; I do not represent any of the defendants in the New Source Review litigation.

Mr. SCHAEFFER. Right.

Other counsel have basically asked us—required us—to dump thousands of documents. So we have not been able to pursue cases, because we are trying to dig out from under those discovery requests, and as our staff have shrunk, and we have not been able to replace people, it has gotten harder and harder to have any forward momentum.

Chairman LIEBERMAN. My time is up on this round. Thank you, Mr. Schaeffer. Senator Thompson.

Senator THOMPSON. Thank you.

First of all, with regard to this hand-wringing about what Governor Whitman said a little bit earlier, it should not be a shock to anyone that these people involved in this litigation are not going to have their decisions made as to whether to go forward based on the opinions of the head of EPA or anybody else. They are making their decisions as to whether or not to settle based on a lot of things, including whether they can afford to fight the Federal Government, including what they think their chances of prevailing are. And Christie Whitman made the mistake of telling the simple truth, which we so often call for up here, and saying that she can understand why nobody would settle a case while this TVA case was pending. And you have a list of professors and a lot of lawyers better than I with very split ideas as to how that is going to turn out.

But in talking to her office, she wanted to verify that she certainly does support clean air, the Clean Air Act, and has said so time and again, and does support enforcement moving forward. But she is not an attorney, and her comments on TVA clearly were an example of the variables and hurdles facing settlements and therefore how difficult it is to predict gains from settlements.

Mr. Elliott, I guess you are to be complimented, because you are supposed to be able to deal with all the issues that these three gentlemen raise here in bashing the administration. I guess I might have been more critical in some areas myself if some of this did not seem so over the top and unfair, quite frankly.

So I guess what I ought to do in this first round is just allow you to respond to any and all that you have heard so far.

Mr. ELLIOTT. First of all, may I ask to have my prepared statement made part of the record?

Chairman LIEBERMAN. It will be. Prepared statements of all the witnesses will be included in the record.

Mr. ELLIOTT. I am well aware of the *WEPCO* decision. I was EPA General Counsel when that decision was rendered.

Senator THOMPSON. Was that a total victory for the government?

Mr. ELLIOTT. No. The analogy to tax law is an interesting one, because tax law is complex, but at least it is relatively clear.

The problem with the *WEPCO* decision is that it is one of these court decisions that says there are six factors. The analogy is if you had to take a deduction based on the IRS weighing whether or not this was a necessary expenditure and whether or not you made it in good faith, and you had a multiplicity of these really squishy tests. After *WEPCO* came down, in the 1990 amendments, both Houses of Congress passed legislation that we should “fix” the *WEPCO* problem.

What is now being portrayed as this fundamental premise, the Clean Air Act, is in my view nothing of the sort. Major modification language was added in the 1977 technical amendments, and that is what the controversy is about. This is a program that has just grown, and I do not think it is a fundamental part of the Act.

To the extent there was a fundamental compromise in 1970, it was a judgment to treat new plants and old plants differently. I think that is a fundamentally misguided policy. Increasingly, we are going to have to treat plants equally. The real question is whether the way to change the law is by legislation or by enforcement cases.

Senator THOMPSON. When did that policy come about?

Mr. ELLIOTT. That was in the 1970 Clean Air Act, in the statute. But what has been controversial is that in 1977, in these technical amendments, the concept of modification was introduced as a gloss on what it meant to be a new plant. The whole problem has been trying to figure out if you do something to a plant, does that trigger the notion that it has become a new plant.

With regard to my friend Tom McGarity’s point that not a single new rule has come out under Bush Administration that was not in the works under the Clinton Administration has been promulgated, that may be true, but it is certainly misleading.

The average period of time from the start action on a new rule to the time it actually comes out is in the range of 24 to 36 months. So there is a tremendous continuity between the Clinton Administration and the Bush Administration. It is still early, as you said, but it is very rare that you would have a final rule out 13 months into an administration that had not been worked on or started in the previous administration.

With regard to the notion that OIRA is getting in at the front end, I am glad to hear it. I wrote an article in 1992 saying that one of the things that was wrong with the OMB process was they came in at the 11th hour with a lot of good ideas that we could have gotten the benefit of if we had heard of them earlier.

Senator THOMPSON. I thought that was an interesting point, too. The very idea that OIRA, which is set up to review regulations, the very idea that they review these regulations, how dare they.

Senator Carl Levin and I had a bill a couple of years ago on regulatory reform, and it was clear that a lot of these regulations were simply not getting the job done, that these things could be done cheaper in many cases, sometimes they were counterproductive; by not having sufficient review and thinking things through and getting sufficient input and being afraid to make any changes when necessary because of the vast interest groups that would come in—

we got things like the asbestos situation and the seatbelt situation, where our regulatory process was killing people.

So in a bipartisan way, we tried to address that. We were not able to get that done, but that is what the OIRA thing is all about and trying to bring a little bit of common sense to some of these regulations.

I have the solution to the Smoky Mountain problem. We can just keep people from going in there and shut down the plants around the area. It is no trick to totally solve some of these environmental problems if you consider absolutely no other considerations. It lends itself easily to a litany of weakening this and rolling back that and so on if you do not consider all of the complex considerations that go into any of these decisions, and the defenders will always be on the other end.

I have been very critical in some of these clean air areas, but I must say that some of the renditions and orchestrated movement here that, after 1 year of this administration, have been held up for the most part from even getting a team together—this business of Ghengis Kahn riding across the plain, swinging his sword at all decency and everything good about America, is just a little bit difficult.

Mr. ELLIOTT. Could I respond very briefly to that?

Senator THOMPSON. Yes.

Mr. ELLIOTT. I think this hand-wringing about OMB tends really only to occur in Republican administrations. As I have talked about in my statement, we have had a continuity of OMB performing this role over the last five administrations. I think they are doing it very well and increasing public transparency.

What is really new about OMB in this administration has been the notion of prompting agencies to make regulations tougher in certain areas, which never happened before. I used to kid the guys at OMB when they were reviewing our rules—when are you guys going to ask for one to be made tougher? Well, that has actually begun to happen in this administration. That is what is unprecedented. But for some reason, OMB in Democratic administrations is not criticized; it is mostly the same staff people over there. These are career staffers.

Senator THOMPSON. They are criticized for what is looming out there, some indications that indicate wrong directions of what might happen.

Mr. ELLIOTT. Yes. Actually, the overwhelming trend, with all due respect, that I see is tremendous continuity between the Clinton-Gore Administration and the new Bush Administration. There are some changes at the margins, but I think they are well within the sensible center of good policy.

Senator THOMPSON. There is a lot of improvement we can make to all of these areas if we can avoid exacerbating these issues so much.

Mr. ELLIOTT. We have talked about NSR, for example. One thing that the Clinton-Gore Administration advocated was less adversarial approaches and more reliance on trading systems and the stakeholder process. That was called “reforming government.”

Now, when the Bush Administration is doing those policies, it is called “rollbacks.”



Senator THOMPSON. It is called "reinventing government."

Mr. ELLIOTT. It seems to me to be a double standard. There is an awful lot of continuity here.

Senator THOMPSON. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Thompson.

Needless to say, I have a different point of view, because I do believe that there have been real changes in direction and cutbacks in enforcement as Mr. Schaeffer testified from within. And we can see here in Congress, and it is pretty clear in the media, that there has been disproportionate weight given to so-called regulated industries, those who emit pollutants. And that is going to have an effect, if it is allowed to go on, on the quality of our environment and our health, in fact.

Professor McGarity, Mr. Elliott criticized your statement that there have been no new environmental initiatives under the Bush Administration. Correct me if I am wrong, but I heard you to be more specifically referring to new rules; is that correct?

Mr. MCGARITY. That is correct.

Chairman LIEBERMAN. So, obviously, the administration says by its title, they have a "Clear Skies" initiative. I have indicated today that I do not think it puts us in a better place than the current Clean Air Act does, but nonetheless, it is an initiative.

But you are talking about an environmental rule initiative.

Mr. MCGARITY. I am talking about something that will result in, after the notice and comment process, a final rule that people will have to comply with.

Chairman LIEBERMAN. Yes. Let me get into this OIRA discussion. I was very concerned about Mr. Graham, when his nomination was made to oversee this program, and after a lot of concern and thought, I decided to vote against him. And I have been troubled by some of the things that have happened since he has been in there, and you testified to this.

You had an interesting piece of testimony where you talked not just about the way in which OMB is getting involved more in the early stages of the regulatory process, which then creates a kind of substantive input into what the agencies are deciding, but you talked about them providing instructions to EPA regarding targeting research that is being done. The handy example, obviously, is the *American Medical Association Journal* report yesterday on the higher incidence of lung cancer as a result of dirty air.

Would the changes as you understand them that are occurring now through OIRA allow EPA to consider the changing nature of information that we have about health effects, such as that in the report?

Mr. MCGARITY. What troubles me most about the recent guidelines or information guidance that OIRA has provided to the agencies—and it was pursuant to an appropriations rider to the fiscal 2001 appropriations bill—the requirement that the agencies allow affected entities to come in and attack these studies as they are performed is very troubling to me, before the Agency really moves with them.

The study that was just published in the *Journal of the American Medical Association* under these procedures is not a perfect study. No epidemiological study is perfect. There will be potential con-

founding factors. There will be criticisms that can be made of the study.

What this new OIRA process allows is for all these criticisms, for people to come in with their experts that they sometimes have paid, sometimes have had on the payroll for a long time, and basically tear these things apart. You find all sorts of blunderbuss attacks on these studies. This is a little bit troubling to me, because I am engaged in research right now and have been for the last 3 years on the tobacco industry and the environmental tobacco smoke issue, and that is exactly their strategy and has been for years and years, and you can just see it happening now—we are going to come in, we are going to hire these scientists; if they disagree with us, we fire them, and we go forward with these huge blunderbuss attacks on scientific studies, and I don't think we get anything done.

I have used the word—and I have borrowed it from my good friend, Don Elliott—“ossification” in publications that I have written, and I think that is a very real risk here.

Chairman LIEBERMAN. Mr. Wetstone, let me invite you into the discussion of OMB's use of cost-benefit analysis which you referred to in your testimony. Could you be more specific about the concerns that you have here, particularly in the context of protection of health and the environment?

Mr. WETSTONE. Absolutely. What we see happening now is in fact very different from what we have seen in past administrations. The head of OIRA now has a history of supporting certain very controversial analytical assumptions, and what you get out of a cost-benefit analysis, of course, depends on the assumptions that go into it.

One of those assumptions, for example, is that when you are looking at the impact of a rulemaking that would save lives, you do not evaluate the number of lives as you used to, but instead you look at the age of the individuals who will suffer, and if someone is elderly, their life is considered less valuable, because the metric you use is a measurement of life-years. There is even a quality element, where there is also an implication that the quality of life is somewhat lower for someone who is more elderly, and therefore, that has a lower value, too.

These are the kinds of judgments that we see as inappropriate. And not only is it the nature of the assumptions, it is the trend toward monetizing everything from clear air in the Smokies to protecting a threatened species to a child being able to breathe freely versus having asthma. How much is that worth? Although there is a rhetorical bow to the reality that you cannot quantify everything, John Graham who heads this office has put in place a system where, if he gets a rulemaking and does not see enough efforts to monetize particularly the benefits side of the equation, it is sent back to the Agency with what they call a “return letter” for more analysis.

There have been 17 rules sent back so far to the agencies. There is yet to be one sent back because it was not adequately protective. They have covered things like the transport of hazardous materials, EPA's proposed rule for reducing emissions from off-road vehicles like snowmobiles, and so far, what these measures have done

is to basically derail rulemakings. We have not seen what comes out of it, but certainly, it seems highly unlikely that we will see stronger rules emerge from this process.

And finally, I think it is worth coming back for a moment to the regulatory reform debate of past years, which I know both yourself and Senator Thompson were very much involved in. I think that if you look together at what you have when you mix these analytical assumptions and the return letter, which applies even if the directive in the statute is simply to protect health or use the best available technology—and that is supposed to be the calculus that Congress set—under the approach being used now at OIRA, those rules can be returned by virtue of inadequacies in cost-benefit analysis. This is in essence what we and the environmental community, as well as many here in the U.S. Senate, fought as a super-mandate in the original regulatory reform proposal, the Dole proposal. I would submit that this is quite different, Senator Thompson, from your draft with Senator Levin.

I think what we are looking at is effectively an administrative super-mandate here that overrides the congressional directions, and I see that as also an issue with the OMB prompt letters. You have, instead of Congress telling the agencies what they should be doing and how to move forward in protecting health, basically, a political official interjecting political considerations and making relatively offhanded suggestions to agencies about what they should be doing, some of which can be enforced from the standpoint of whether the Agency can succeed in a rulemaking to protect public health or the environment.

Chairman LIEBERMAN. Just for the record, those letters were sent by whom?

Mr. WETSTONE. The return letters are sent to the agencies from John Graham, the head of the Office of Information and Regulatory Affairs.

Chairman LIEBERMAN. This is a real concern to me, and we are going to keep our eyes on it, because it is exactly the kind of concern I had when Mr. Graham's nomination came before us.

Senator Thompson.

Senator THOMPSON. Well, what this highlights is a basic, fundamental disagreement that we have here in Congress, that the Chairman and I have—Senator Levin of Michigan agrees with me—as to whether we ought to interject cost-benefit analysis into this regulatory process. And we continue to disagree. John Graham believes that it should, after a very distinguished record at Harvard and supported by many academicians and others, pointing out that we have produced a lot of bad rules, we have produced a lot of inefficient rules, and we should not be afraid to put some of these rules to the test.

As you know, in our legislation, we said on cost-benefit, it is not putting a dollar on somebody's life; intangible considerations are also relevant—even though juries put dollars on people's lives every day—and some people think it is not outrageous in allocating resources to take into consideration that my mother is in her eighties, and my grandchild is 5 years old.

So that is a fundamental debate, and to criticize this administration in that regard—they won the election. They believe in cost-

benefit analysis. They are considering intangible as well as tangible. At OIRA, if there is anything John Graham believes in, it is rigorous scientific review and peer review and open comment. EPA in large part in times past has had a little, closed society, and they do not want anybody messing with them; they know it all, and they will put out the regulations, and you just obey them and do not question them.

What this does is open up the process to peer review and to public commentary as these things are being formulated. Certainly I can see the other side to all of this, and I see your concerns, but again, to hold this out as some kind of a monumental attempt to roll back environmental progress—it is actually benefitting.

I do not think that the American people will sustain a system that continues to in some cases kill people. Under the guise of clean water, we spend money over here where the threat is lower and ignore over here where the threat is higher, and we have put out seatbelt regulations that wind up not addressing the problem with small children. We required the tearing out of asbestos when we realized that was not a good idea in times past.

So let us just recognize and acknowledge that we have different views on these issues, and they are both legitimate views, and neither one of them is an attempt to roll back environmental progress, but a legitimate dispute as to what is best for not only the environment but other legitimate concerns. You apparently do not want to acknowledge it, but I am serious when I say I have a solution to the Smoky Mountain problem, and the deaths on our highways problem, if you want to make automobiles like tanks.

We clearly have various considerations to put on the table when we do all of these things, and it is just not fair to load up on one side and interpret everything that has to do with an analysis or a reanalysis of a rule that Clinton left on the table as he was leaving town; it is just unfair.

One thing I wanted to ask was under NSR, it has been on the books for all these years, and I think someone said most of the modifications—maybe I read this—have been 10 to 20 years ago, something like that. Is that a fair statement?

Mr. ELLIOTT. Many of them, even prior to this *WEPCO* decision that they rely on.

Senator THOMPSON. OK. And as I recall, just parenthetically, the court there said that this business of proving that you are going to have greater emissions and therefore you are going to have greater pollution does not necessarily follow. That is what the EPA was operating under at that time. The court did not buy that.

Mr. ELLIOTT. Right. The statute talks about an emissions increase, but EPA over the years has interpreted “increase” so that if your actual emissions decrease, that is still considered an increase. That is because when you make a physical change to one of these plants, they compare your actual emissions to your hypothetical potential emissions. So they have really taken a very simple concept in the law, which Mr. Schaeffer referred to, that your emissions have to increase, and through this elaborate process of interpretation, they have interpreted it to mean exactly the opposite.

Senator THOMPSON. Well, without even getting into the merits of it, that is what makes for lawsuits. Incidentally, Mr. Schaeffer, I would not have been overly concerned if somebody had called you up and said do not proceed with an enforcement action. I have been an assistant U.S. attorney, and I have been a defense lawyer, and I have been told by clients in both positions not to move forward on cases; my boss, a U.S. attorney, for good reasons in terms of evidence, in terms of precedence, in terms of risk of losing, in terms of the fellow has been punished enough—for whatever reason—and for clients on the other side.

So I think that the American public surely understands the difference between policy and enforcement and that those who are elected to make policy have a right, if they comply with the law, they have a right to make policy, and we may disagree with it, it may interfere with what we have been doing for a living for some years, but if they feel like there is a better way, they have a right to consider that.

What I understand is that these lawsuits were filed in 1999—is that nine lawsuits?

Mr. SCHAEFFER. That is right.

Senator THOMPSON. And the noncompliance rate, as I understand it, is very high—70 to 80 percent, I have read.

Mr. SCHAEFFER. Very high.

Senator THOMPSON. What happened in the decade preceding 1999 in terms of enforcement?

Mr. SCHAEFFER. To respond to your first point—we refer our cases to the Justice Department. The Department is pretty conservative. They assess risk all the time. So it is not unusual for us to pull back, compromise, even withdraw, when we feel like we have litigation risks. That is part of the game.

What I am saying is that I have not seen a situation where a defendant said, “We are getting this law knocked out; we are not going to settle.” And I want to be clear—I am not talking about a parade of horrors, something that might happen—I am talking about something that has already happened to the enforcement program.

Senator THOMPSON. Do you believe that it is inappropriate for an administration, any administration, if they view that the policy that you are enforcing is an unwise policy, that they have got to wait however many years it might be for you to finish your lawsuit before they can do anything about that policy?

Mr. SCHAEFFER. I am not suggesting they do not have the right certainly to change the law. I am saying that what is going on here is that people now feel, based on the signals they have gotten, that they do not have to comply until the law is changed.

Senator THOMPSON. Well, you are just talking about the results of what I just said.

Mr. SCHAEFFER. Right.

Senator THOMPSON. If in fact policymakers have a right to make policy, and you have litigation going on, as you do all the time, then they are going to be aware of that, clearly, and have got a right to be aware of that, and they have a big lawsuit pending in the 11th Circuit, and they are going to wait around and see what happens. Is that a shocker?

Mr. ELLIOTT. Could I just make one—

Mr. SCHAEFFER. It is fair to say, if that is directed to me—

Senator THOMPSON. Mr. Schaeffer, please.

Mr. SCHAEFFER. It is fair to say that I am describing the effects. I am not saying this is illegal behavior. I am saying the effect of the administration changing, swapping horses in the middle of the stream, when we have pending lawsuits against really what amounts to more than half the industry if you consider the cases under investigation, is very unusual, and it has killed our settlements, and that is the statement I will make.

Senator THOMPSON. I want you to address that, Mr. Elliott, and I also want to ask both of you why, after all this time, did you wait until 1999 to file all these lawsuits?

Mr. Elliott, do you want to address either one of those questions?

Mr. ELLIOTT. It is very important to be clear about the dates. As Administrator Whitman pointed out, the Clinton-Gore Administration proposed in 1996 and 1998 that NSR was a broken program, that it needed major revisions, and the lawsuits to enforce this broken program were filed in 1999.

So even prior to EPA filing all of these enforcement lawsuits, the previous administration concluded that this NSR program was confusing and difficult to understand. There has been a norm in government in all my years that when an administration concludes that a part of a law is unclear, needs to be fixed, needs to be changed—and this was a conclusion on a bipartisan basis; that is not new with this administration—that you do not make that your primary enforcement initiative.

I remember saying to my friends at the agency, this is crazy. We have a program here which everybody knows is broken, does not work well, both administrations have proposed to change. It is not just a matter of enforcing the law. This is what EPA has made its number one enforcement priority.

Senator THOMPSON. And as I understand it, during all these years leading up to 1999, you had EPA officials in and around these plants apparently okaying what they were doing.

Mr. ELLIOTT. Absolutely.

Senator THOMPSON. When I first got into this, my concern was, and I kept asking my staff to get an analysis of these lawsuits, get an analysis of where the merits are and where the strengths are and what the courts are likely to do. And I have never been able to get one where I could say it is going to go one way or another and I imagine you did what a lot of government agencies do—you put in a couple of small ones that you feel like you can settle because they cannot afford not to, and then you get some big ones that you can leverage the small ones against, and now you have a real big one that is not going to be leveraged, apparently. And my concern has been who is going to win, because a lot is going to fall on that. And nobody knows the answer to that.

Then I got to thinking about the ramifications of that. What if the EPA lost that lawsuit, and then, the President came along with an initiative. And I can understand—I have been a prosecutor, and I have been a litigator, and I understand that you believe in what you are doing, and you want to keep on keeping on, and you feel like you can make the world a better place lawsuit-by-lawsuit.

But others think that there is another way to do it. I must say that with a law that has been on the books for 25 years—and most of these modifications have been done 10, 20 years ago, with a non-compliance rate of 70 to 80 percent—

Mr. ELLIOTT. No. EPA has said the noncompliance rate is universal, that there is no plant in the utility industry that has operated that has not violated this law.

Senator THOMPSON. So the Clinton Administration waits until the last year in office to file nine lawsuits and now, some do not want a re-analysis of the underlying statutory and regulatory framework even though that administration itself did it on at least two different occasions.

Mr. Schaeffer, do you want the last word? That sounded like Bill O'Reilly; I should not say that.

Mr. SCHAEFFER. I would like to order lunch, actually.

Senator THOMPSON. I would, too. I will make a deal with you—I will go if you will.

Chairman LIEBERMAN. Yes, we are heading there rapidly.

Mr. SCHAEFFER. These cases did not just come into being out of some spontaneous generation in 1999. The investigations began before that. The kind of risk assessment that has to be done for a big case was done before that, so they began at the investigative stage several years before.

In the early nineties, under the Bush Administration, under the President's father's administration, we got a major decision in the *WEPCO* case. In that case, with due respect to Mr. Elliott, the court found that electric utility to have tripped New Source Review requirements and said that it needed to put on controls.

For the next several years, we pursued New Source Review cases in the wood products industry; we have settled every one. We also began investigations in refineries, and in the mid-nineties, we started with power plants.

The notion of EPA lawyers and staff swarming all over these plants is fanciful. We do not have that many people. And as Mr. Elliott knows, it is the responsibility of the company under the law when it is making a modification to come in, let the permitting Agency know what is going on, and tell the government, "Hey, I have this change."

Now, if you want a bright line drawn, if you have a question and you want it answered, we have a process for that. It is called getting an applicability determination. You come in and say, "I have a change. What is happening here? Is this New Source Review, or not?"

We did not have a lot of business—we did not get those questions—because I think the utilities did not want to hear the answer that we were prepared to give.

And I have got to close by saying that this notion of flip-flopping around on the law, making up interpretations—the Justice Department has settled in its January report, and I am sticking with Mr. Ashcroft on that issue.

Mr. WETSTONE. Could I make a quick point here?

Chairman LIEBERMAN. Yes.

Mr. WETSTONE. I think it is important to note that this was not a Clinton Administration proposal, and I would urge a review of

what was proposed and to perhaps bring Carol Browner in here, because I think she would say that it was not the signal that she was sending that this was a program that was not working. And I do not believe that this administration has ever, unless they did so today—and I hope they did not, but they might have—said publicly that they do not believe the New Source Review program is one that either does not work or should not be enforced. So I actually do not think it is the kind of situation where there has previously, at least, been any effort to publicly walk away from this, a core element of the Clean Air Act. But if the message is that the cop is off the beat, then the speed limit is going to cease to apply, and people are going to drive however fast they want, not comply with the Clean Air law. I think that is the concern now.

Chairman LIEBERMAN. All right—only because you are my neighbor, and I like your children.

Mr. ELLIOTT. Thank you so much. My daughter heard you last Thursday and was very impressed, so I will give her your regards.

Just one factual correction. It is not that there is just one case. It does not all ride on this 11th Circuit case. The government has the advantage of bringing its strongest case first, and if we go down the litigation route, as opposed to amending the law, this thing will go for 10 years. EPA is going to win some of these cases where they have a very good record of the sort that Mr. Schaeffer referred to, and they are going to lose some of the other ones. There is going to be a conflict in circuits, and it is going to go to the Supreme Court, and it is probably going to take a couple of Supreme Court cases to clarify the law.

So if you really pursue NSR enforcement as the primary way of dealing with this national policy problem, you are committing yourself to a long period of uncertainty and litigation. Enacting a cap-and-trade program is a much better way to solve the problem.

Litigation was brought originally to set up the conditions that would support legislation, and that was something that people from NRDC and people from EPA said publicly. It has worked. They have created enough pressure that we can now do legislation. But the end-game strategy here should be a cap-and-trade system, not slugging it out in court cases. And they have only got the 10 biggest companies in court now. They would have to bring 500 cases to be as effective as a cap-and-trade program.

Chairman LIEBERMAN. Of course, I agree with you, and then the debate is what kind of cap-and-trade program will it be. I will just say two things, one to my dear friend and Ranking Member. Our disagreement about cost-benefit analysis is not whether it is appropriate to be used. It should be used, and it helps if used properly. The question is how it is being used and whether it is being used in some cases to try to quantify what is hard to quantify and also to protect regulations.

Then, second, since I asked you the question, Mr. Schaeffer about whether you had received calls telling you not to go ahead and prosecute, I was really trying to pick up and clarify that although you and I both think, I take it from your testimony, that the regulated industries have disproportionate influence on the formulation of the administration's environmental policy, and environmentalists



and others are not listened to as much, that you have never been told by anyone in the administration not to pursue an enforcement.

So of course, the administration has a right to change policies. My argument is with the way in which they are changing those policies and the message that that sends out to anybody out there who is covered by these environmental protection laws: Maybe they do not have to comply or maybe the cop is not going to be quite as aggressive on the beat, so they do not have to go ahead with the settlement agreement. That is a concern that we have, and we will continue to explore that.

I am going to leave the hearing record open for 2 weeks so we can submit additional questions to the witnesses. You may make additional statements if you wish.

This has been a lively debate which has been joined. It is an important debate. At the end of it, I must say that I am unreassured about my concerns about the direction of the administration's environmental policy. We will go forward to the next hearing next week.

Thank you very much. The hearing is adjourned.

[Whereupon, at 1:06 p.m., the Committee was adjourned.]



**PUBLIC HEALTH AND NATURAL RESOURCES:  
A REVIEW OF THE IMPLEMENTATION OF OUR  
ENVIRONMENTAL LAWS—PART II**

---

**WEDNESDAY, MARCH 13, 2002**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:43 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman and Thompson

**OPENING STATEMENT OF CHAIRMAN LIEBERMAN**

Chairman LIEBERMAN. The hearing will come to order.

I apologize to my colleague and the witnesses for the lateness of the start. What is normally a 25-minute trip became a 45-minute trip today. That is the impact of rain on Washington streets and traffic, so I apologize.

I want to welcome everyone to this second hearing being convened by the Senate Governmental Affairs Committee to review the Bush Administration's enforcement of environmental and public health protections.

In our first hearing last week, we heard from EPA Administrator Christie Todd Whitman, also from the recently resigned head of EPA's civil enforcement, Eric Schaeffer, and from two lawyers, among others, with significant experience in environmental law—all of it in an attempt to get what might be called the experts' view of the administration's policies and enforcement strategies. Today, our purpose is to get a citizen's-eye view of these same policies.

I want these hearings to be fair, and that is part of why we began last week with EPA Administrator Whitman and why I, and I know the Republican Members of the Committee, had hoped to have another witness at the table on the first panel. But, unfortunately, scheduling made that impossible for this morning, and I regret it. I hope we can have another occasion in this series to hear from the people that we had hoped to have here.

But looking fairly at the administration's record does not require checking our own sense of justice and our own values at the door. To me, safeguarding our air, water, and land is a critical American value, and consistently enforcing the law is another important American value. Environmental laws, like any others, are passed by Congress, signed by the President, and the Executive Branch of Government has a responsibility to enforce them with the same

rigor that it enforces any other law. If it does not agree with the laws as written, of course, it can come to Congress and seek a change in those laws.

My own assessment a year into the Bush Administration is that we are seeing some very troubling policies regarding environmental enforcement, interpretation, and implementation—tendencies that have real consequences for the air we breathe, the water we drink, the water we recreate in, and the land we live on.

I want to highlight three of the patterns that I see emerging, based on last week's hearing, on a review of the first year of the Bush Administration, which lead me to conclude that our existing environmental laws are not being adequately enforced. And here I am not talking about the debates that are going on, including the debates on the floor of the Senate right now, about energy and environmental policy, that is, changes in law that are being sought. I am talking about the failure to adequately enforce and implement existing law.

First, there has been highly selective implementation of our environmental laws. It appears, if I may put it this way, that when the administration doesn't agree with a particular environmental protection requirement, it finds ways to delay it or take the teeth out of it. That might be accomplished through changing guidance documents, postponing decisions or seeking settlement agreements that weaken existing rules, or using a variety of other administrative tactics.

In last week's hearing, there was some evidence of some of those administrative tools, including the moment when Administrator Whitman suggested that power plants being sued by the Federal Government for violating pollution laws might want to hold off on negotiations rather than working to settle their cases with EPA while court decisions are pending. Unfortunately, the statement comes in a context of a larger policy which we heard testified to last week by Mr. Schaeffer. Through winks and nods and sometimes more explicit signals, the administration seems intent on separating environmental laws into two piles—one required and the other optional—and the optional is beginning to cast a large shadow.

Second, I see the administration sending an inconsistent message on the authority of States and localities. As a general rule, the administration wants to give State and local governments more latitude in determining environmental policy. However, at the same time, the Federal Government is frustrating States' efforts to solve their air pollution problems, as we will hear today from Attorney General Blumenthal.

In fact, the administration seems to consult more carefully with industry than with anyone else. Now, it is, of course, appropriate to consult with industries that are regulated by environmental laws, but the voice of industry does not tell the whole story. The views, voices, and values of others must be given equal weight if our environmental laws are to be fairly enforced.

And, third, the other related pattern I fear we begin to see is what might be called a lack of truth in advertising. I said at last week's hearing that I was troubled by the false promise of innovation and some of the administration's new environmental pro-

posals, specifically the vague and inadequate clean air and climate change blueprints. I am equally troubled by what I see as the administration's inaccurate packaging of its enforcement actions which tend to put bright green ribbons around packages that don't deserve them. I want to give two examples.

A document delivered at last week's hearing by Administrator Whitman entitled "The Bush Administration's Environmental Record: A Year of Accomplishments" gives the administration's view of what it has achieved. The report says, "The Bureau of Land Management is focused on increasing domestic energy production of both renewable and non-renewable energy sources through sound environmental management and maintaining its commitment to protect the resources of the public lands."

In fact, the Bureau of Land Management has clearly communicated to its staff that the top priority is to be given to non-renewable resources, such as oil, particularly, and gas. And the Bureau seems willing to open even sensitive public lands to energy exploration. On February 21 of this year, *The New York Times* reported that the Bureau of Land Management employees were instructed that the processing of oil and gas leases for exploration are the first priority for action by local offices.

The administration's year of accomplishment report also says that on May 4 of last year, Secretary Veneman announced that she would implement the Clinton Administration's Roadless Area Conservation Rule and further reports that a Federal judge enjoined USDA from implementing the rule. In fact, the administration failed to defend the rule and then implemented administrative policies that undercut it.

So what is therefore crucial is that we focus not just on what the administration says but, in fact, on what it does. That is the purpose of today's hearing. We are going to hear from some people from throughout the country who can tell us firsthand what is happening to the air, land, and water above, around, and beneath them. We are going to hear, for example, from a former commercial fisherman who was forced to retire because of pollution in the river that he worked. He has since become the river keeper of that body of water. Also from a resident of Arizona, who is fighting hard against hard rock mining on Federal land because he believes it will do irreparable harm to the environment in his community.

We will hear from others as well, including a great State Attorney General from a great State, with, I might add, truly great men's and women's college basketball teams.

Did you find that last statement provocative, Senator Thompson?

Senator THOMPSON. The most provocative one had to do with the women's basketball.

Chairman LIEBERMAN. Since the last hearing, Senator Thompson, as we know, has announced that he is not going to run for reelection. There will be occasions, I am sure, to speak at more length, but let me just say, since this is the first time to be on the record, how much I have enjoyed working with him. Fred Thompson is a person of real ability and honor. Occasionally we disagree, as we might this morning, but it has never become personal. So I am going to truly miss my Ranking Member, whom I served under in a previous existence as his Ranking Member.

Anyway, with that, and a certain amount of good wishes to Tennessee's basketball teams—but not too much—I call on Senator Thompson.

#### OPENING STATEMENT OF SENATOR THOMPSON

Senator THOMPSON. Hopefully we won't need that much, but I appreciate the good wishes, and I appreciate your comments, Mr. Chairman. We have had a good relationship, and I think we have done some good work here on the Committee. And my losing the chairmanship has nothing to do with my decision. I think it is in good hands.

Chairman LIEBERMAN. Thank you.

Senator THOMPSON. And I want to recognize the importance of the subject that we are dealing with here today, although, as I have indicated previously, I think it is a little premature to be doing a policy review on any administration's efforts in any regard no further into it than we are. Especially in light of the fact that they don't even have the full team together.

But be that as it may, we have had over three decades of environmental legislation now, and there is no question that our environment is much cleaner than it was 30 years ago. So we have done some good things, I think, here in the Congress and various Presidential administrations and Members of both parties.

Last week, I believe we learned the Bush Administration has in its first year made some meaningful proposals to strengthen our environment, especially in its Clear Skies agenda. It has also enhanced brownfield remediation, proposed to improve drinking water safety, expedited toxic-release reporting, and proposed the highest environmental and natural resources spending ever.

We also examined the administration's policy of carefully reviewing the flurry of last-minute regulations issued by the prior administration on its way out the door. This type of review is not at all unusual but, to the contrary, is routine.

We learned that most of the regulations subjected to review have been reaffirmed and promulgated as proposed. In my estimation, our initial review last week demonstrated that the Bush Administration has gotten off to a good start, despite the fact that a number of its nominees to environmental positions have not yet been confirmed, impairing its ability to assemble its team.

That is not to say that at the margins it is unfair to criticize some particular decision that they have made. The overall sense, however, is that this administration falls clearly within the "sensible center," as Professor Donald Elliott testified last week, the mainstream of domestic politics on its environmental policy.

So I agree on the need for balance and a sensible approach. It is easy to look at only one side of the ledger and see either assets or debits, depending on which side of the ledger you want to examine. Mr. Chairman, as we have learned through Enron and Global Crossing, accounting must be done carefully with an eye on the total picture. Nowhere is the need for a balanced accounting more important than in the environmental area. That the need for balance is imperative is especially true today given some of the witnesses we will be hearing from.

If we look only to one side of the ledger, we can see that human activity degrades the environment. That has been the case since man first harnessed fire. As I tried to emphasize last week, if we look only to the debit side of the ledger, we can see nothing but trouble. But human activity creates benefits, too, for human society. It is not enough to look only at the assets either. We need a careful balancing of the benefits and the adverse effects of all activities. Only in such a way can we develop meaningful environmental policies that will enjoy adequate popular support to be sustainable over the long term which is needed to achieve real gains in the quality of the environment.

And I really believe that is the case. I do not think that we do the long-term goals that all of us who have children and grandchildren and want to leave a legacy are interested in, in terms of clean water and clean air, if we spend an inordinate amount of our time talking about the negativity of the process, when we know that there must be a balance. If we spend all of our time trying to make the proposition that the more stringent the rules, the better per se, that ultimately cannot prevail, because, clearly, we could take all the automobiles off the road and shut down most all of the factories and make the environment better. So logic tells us and experience tells us that there must be a balance. But if we spend all of our time in one area, then the other side is going to want to spend more and more time on their area and denigrate the efforts that are being made in the first area. That is not a good way to go.

If we take the position that any deviation from the prior administration's rules and regulations, or whatever they did going out the door, after having had 8 years, and that any deviation from that is a cutting or a slashing or a raping or a pillaging of the environment and so forth, that is going to cause the other side of the debate, which we must acknowledge is a legitimate side, not an anti-environmental side but a balancing side, one that oftentimes says let's look at cost/benefit analysis and things of that nature, that is going to cause them to overreact, and we are going to be at each other's throats and not coming up with some sensible recommendations as to how we can serve the legitimate purposes that we must serve, how we want to reduce emissions, for example.

But the question of how much we can and how soon is a real legitimate policy issue and policy question, and all the horror stories that we might hear about that we might be exposed to does not change the fact that ultimately we are a policy body and we have to make policy decisions, and it is a balance that we must strive for.

So I fear that what we are seeing now is a criticism of the administration, in large part because of what is feared they might do based on what someone leaks to a newspaper, winks and nods and indicators and so forth, rather than hard policy decisions that are illegal or improper or flat bad policy that we can debate on here.

I see very, very little in terms of real taking issue with flat-out decisions that have been made. You can't call Christie Whitman a wonderful steward of the environment and a great public servant, on the one hand, and totally denigrate the people that she works with and for, especially in areas where she had substantial input,

on the other, it doesn't look to me like. And as far as her statement the other day in all these lawsuits that she can understand why people wouldn't settle the lawsuits while the re-evaluation of the policy is going on, she is simply stating the obvious.

I don't know whether she slipped up and stated the obvious truth, which is a very dangerous thing to do around here. We demand that our public officials do that, and then when they do, all hell breaks loose. But, of course, people who are tied up in litigation are going to look at the fact that the underlying policy which brought about the litigation is under review, and legitimately so.

So I think she is doing a good job. I think that this administration, like any other, has different people with different views, but I think this administration, like the last administration, is trying to struggle for a balance that will allow us to make progress on areas that can't be done overnight.

I have been on my own little crusade for the Smoky Mountains, trying to do something about the quality of the air situation there. I have written the President about it. I take a back seat to no one in these areas. But it makes it difficult for people like me if all of the criticism comes at one side and does not allow me to make my case while still recognizing the fact that the plants in that area are not going to be shut down. We are not going to ban automobiles from the park tomorrow, but there are some things that we can do. How much can we do? We have got to make the plants do better. How much better? How quickly? I think we have got to do something about the automobiles in the park. How much? How quickly? Public transportation? Are we willing to take the money that would go to some of these other programs around here that we think are absolutely vital and put it into a transportation system for national parks?

These are policy debates, so let's keep in mind as we go along here that this is not a zero sum game, and that what we should be striving for is a balance: On the one hand, strong enforcement of current laws for sure, but a recognition that just because the rules are more doesn't necessarily mean they are better. And just because you take a look at something the last administration did going out the door that is not even in effect yet, is not even legally the law yet, it does not mean that is necessarily a bad thing.

So I look forward to our witnesses today, Mr. Chairman. Thank you very much.

Chairman LIEBERMAN. Thank you, Senator Thompson.

We are delighted to have Attorney General Richard Blumenthal from the State of Connecticut. I am going to make an apology to him and ask his indulgence if I share with you, Senator Thompson has heard this story only about 300 times. But after I was elected to the Senate and Dick Blumenthal succeeded me, there was what I thought was a testimonial to me at which one of the speakers said he was quite excited because now Connecticut would have not only a better Senator but a better Attorney General. [Laughter.]

And we are very happy to have that better Attorney General here.

Senator THOMPSON. It reminds me of the story about the guy who switched parties, and the comment was he raised the intellec-



tual level of both parties. It was a long time ago. It is nobody currently. [Laughter.]

Chairman LIEBERMAN. Anyway, Attorney General Blumenthal has been an extraordinarily able, honorable Attorney General who has been really persistent in enforcing laws and being an advocate for the people of Connecticut. He has also been a national leader in a host of different areas.

So we are honored to have you here today. We look forward to your testimony.

Senator THOMPSON. You can see what that job leads to. [Laughter.]

Chairman LIEBERMAN. Watch out.

**TESTIMONY OF HON. RICHARD BLUMENTHAL,<sup>1</sup> ATTORNEY  
GENERAL, STATE OF CONNECTICUT**

Mr. BLUMENTHAL. Well, I am very, very honored to be here, as I am to be filling the shoes of a truly great Attorney General—attempting to fill the shoes of a truly great Attorney General. For some reason, I don't tire of hearing that story that you just told. But I am honored to be here on this subject particularly, rather than women's basketball, which I know is probably more controversial, even in this chamber.

You are absolutely correct, Senator, when you say that environmental enforcement is a critical American value. It is also a matter of life and death for many people around the country, and particularly in the Northeast. As you know, it has real financial and human costs. Contaminants such as sulfur dioxide and nitrogen oxide from Midwestern power plants—just two of the pollutants that are emitted by those plants—cause 300 deaths and 6,000 asthma attacks in Connecticut alone every year, and the toll nationwide is in the range of 10,000 premature deaths every year.

So we are really at a crossroads, as you have put it quite aptly. We are at a crossroads in enforcement and a place in history where we simply cannot afford to compromise those basic critical values that are at stake, not just financial but really human and health values.

We have faced and fought this battle together, States and the Federal Government, forging a historic partnership over the years. Under both Republican and Democratic Presidents, there is a strong and proud tradition of bipartisanship among the States and with the Federal Government, and we have worked hard as a team very successfully to approve and enforce laws such as the Clean Air Act and the Clean Water Act, reclaiming our air and water from years of disregard and degradation.

The partnership, a very proud partnership, has produced real environmental progress, and as important as the millions of dollars that we have recovered in fines or civil penalties, the cleanup that we have accomplished, are the judicial orders forward-looking in cutting pollution in our States and across our Nation, and we have accomplished those victories essentially by sharing resources in very resource-intensive, costly, time-consuming litigation that are time-consuming and costly because we are against billion-dollar

<sup>1</sup>The prepared statement of Mr. Blumenthal appears in the Appendix on page 170.

corporations that have huge amounts of money to spend because they have profits gained from disobeying the law.

If I can leave one message with this Committee this morning, it is the importance, the profound significance of that partnership, not just in resources but in commitment to enforcing the law. We are not talking about setting new policy, articulating new goals, but enforcing the law that is on the books now passed by the U.S. Congress that deserves to be enforced not only because it saves lives but is essential to the credibility of our justice system.

And I say very regretfully that this administration is abandoning that partnership, undermining the values and effective enforcement, and undercutting the States. The present administration has swept aside Federal enforcement of existing law, picking and choosing, as you put it, Senator, which laws it wishes to enforce depending on which industries are at the table at the time. But it has also shut out and shot down the States as partners. In fact, we are no longer partners. We have neither input nor power. Our seats at the table have been occupied by energy interests, the Enrons and Ohio Edisons of the Nation, and now behind closed doors.

So our task going forward is to keep up the battle, as you urged Administrator Whitman to do in the last hearing, to keep up the battle so that her advocacy within the administration can be supported and deserves to be supported because that battle is already teetering toward defeat in three critical areas. And they are diesel exhaust regulations, new source review standards, and air conditioner efficiency requirements.

I want to briefly talk about those three areas, but just on the theory that a picture is worth a thousand words, you have before you a chart that shows what enforcement can do. Enforcement works. This chart has been prepared by the office of my colleague, Eliot Spitzer, New York Attorney General, who has been a steadfast leader in fighting for clean air, showing how enforcement of the existing laws can dramatically and profoundly reduce the levels of nitrogen oxide, sulfur dioxide, and mercury in our air. Again, these are graphs based on the administration's own numbers, the EPA and Department of Energy statistics, that it produced and they are, in fact, if anything, conservative estimates showing the different levels of achievement that can be realized through enforcement of existing law.<sup>1</sup>

Mr. Chairman, on diesel exhaust regulations, we all know now the lethal effects of particulate matter that come from diesel exhaust, the importance of stopping these kinds of emissions, and the administration itself recognized the importance when it continued to enforce regulations that were promulgated under the previous EPA in 2001.

The States joined in supporting those regulations. Indeed, we intervened in the lawsuit that resulted from a challenge by the industry, and now we have found in the midst of that litigation that the administration has begun secret negotiations on a number of key points, issues that are critical to the enforcement and calculation of what levels of diesel exhaust will be permitted.

<sup>1</sup> Chart entitled "The Importance of Enforcement: Pollution Reductions Achievable Through Enforcement of Current Clean Air Act Compared with Clear Skies (Bush) and S. 556 (Jeffords)" appears in the Appendix on page 480.

We went to court, sought to be permitted at the table in the course of these negotiations. The EPA objected and the court sided with the EPA.

So we are continuing that battle, and we are committed to continue that battle, hopefully with the administration's continued support of those regulations, but we need to know from the administration whether we will be partners or whether we have been abandoned in that litigation where we have formally supported the administration in that litigation. So here is a very specific, concrete example of the abandonment of that historic partnership.

On new source review standards, we joined with the administration, again, in a historic partnership, bringing litigation, four separate actions against 16 power plants throughout the country, principally in the Midwest and the Southeast, because our air is so polluted by these plants that we could shut down our power plants and eliminate all our cars and our air still would fail to meet the Federal standards. And that is true generally of the Northeastern States, which is why, again, on a bipartisan basis we have been united in support of the administration.

It now has embarked on a review of the Clean Air Act regulations that undermines and undercuts its own position in those lawsuits, indeed its authority in settlement negotiations that are on the verge of success with two companies—Cinergy and Dominion—that would historically change the way that they do business environmentally; and particularly with Dominion, that result is tragic because it undermines the credibility of both the Federal Government and the States in that litigation.

We will continue that battle. We are committed to continue in court. We are committed to sue the Federal Government, if necessary, to uphold the Clean Air Act if it eviscerates new source review in the course of its continuing review. But in the meantime, we have been shut out of the review process. We have been consulted in a very cursory and superficial way. We have met once with the administrator, but she could not—either because she didn't know or didn't feel at liberty to do so—give us specific information about the direction the administration was heading. And we will continue and keep up that battle, we hope, again, with the administration on our side.

Finally, on air conditioner efficiency requirements, again, we have gone to court, this time against the administration because it has violated the law, the Energy Policy and Conservation Act, in its modification and weakening of the seasonal energy efficiency ratio standards that were promulgated first in a way that was acceptable, and then tremendously diluted by the administration—first delayed, and then diluted, without consulting, again, the States or providing proper notice and comment opportunities for the public.

The litigation there is now pending. It has again involved a number of Northeastern States, and the very unfortunate lesson that we are learning is that there is a pattern here. Again and again, States and environmental organizations are disregarded and dismissed, publicly dispatched rather than treated as partners; industry leaders are invited privately to the table as new partners; and

the net effect is to weaken and eviscerate enforcement of our environmental standards.

And I should just say in closing, these are not novel laws. The Clean Air Act has been on the books, as you well know, for decades and has been violated blatantly and flagrantly for decades by power plant operators that have upgraded and expanded without adopting pollution control technology that is fully available and affordable, as the settlement with Dominion shows. And these levels of pollution reduction are practical and achievable. They would not impose undue costs. They are a balanced and sensible approach to environmental enforcement.

Thank you very much.

Chairman LIEBERMAN. Thank you, General Blumenthal, for a very thoughtful statement. I appreciate the time you took to come here and the time you took to prepare the statement.

You have made a case, as I listened to you, that there has been a measurable change in the involvement of the States in partnership with the Federal Government. And yet, on the other hand, both last week in our hearing and in other statements, we heard this administration say that they want to turn more enforcement over to the States.

I wanted to ask you first to comment on the latter, which is, have you seen any indication of that? And, of course, we expressed some concern about budget problems at the State level which are making it harder for the States to pick up that enforcement.

Mr. BLUMENTHAL. I have seen no evidence that the administration is constructively delegating authority to the States. It may be abandoning and abrogating its own enforcement authority. But it is simply leaving a vacuum that the States are seeking to fill without help in resources from the Federal Government. And the problem of resources is a very real one at the State level, just as it is at the Federal level. The EPA budget has been cut, but all the more reason that the States and Federal Government should continue their partnership.

The new source review litigation is a classic example of how resources can be pooled and how this relationship can be mutually supporting and very effective in the courtroom, even in preparation for litigation, in depositions and document searches and review. And so resources are a real challenge, and all the more reason that the partnership is a necessary part of enforcement, and I think was envisioned by Congress to be so.

Chairman LIEBERMAN. How, ideally, would we divide responsibilities in the partnership? I know that is a big question, but I will proceed. Are there certain areas where the Federal Government is better suited to handle enforcement than the States, for instance?

Mr. BLUMENTHAL. I think that the Federal Government ought to be responsible for setting standards and assuring uniformity in those standards nationwide, as it has done on new source review, on the diesel exhaust regulations, on the SEER regulations, because there is an interest on all sides in uniformity and assurance that there won't be piecemeal enforcement of either those regulations or the States' regulations. But I think the States have a very legitimate role in enforcing and participating in those cases, even where national regulations and laws are involved, and there ought

to be room for State initiative. The States ought to be permitted in some areas to set a higher bar or standard where they have a particular interest, for example, in Long Island Sound or in other critical bodies of water. And I think that there are ways to tailor those regulations to fit those local needs without obstructing the national standards.

Chairman LIEBERMAN. Well, that is a good answer. Let me just ask you about one or two of the specifics you mentioned.

On the diesel emission standards, I remember when the administration—I guess it was Administrator Whitman who said that she would stick by the position. That was last year, and I think she said she gave it a green light. I and others praised her for it. But now, obviously, you are concerned about what is happening in the lawsuits that are going on.

Let me ask you to try to describe what interests and rights of the people you represent in Connecticut are compromised by the extent to which you have not been allowed to be at the table in the discussions that are going on regarding the diesel emission standards. In other words, why does it matter?

Mr. BLUMENTHAL. Well, it matters in a number of ways, Senator, and that is obviously a very good and pertinent question to the reasons that we became involved in the first place in support of the Federal Government. A number of States—Delaware, Pennsylvania, New York, Rhode Island, Maryland—and a number of environmental organizations intervened in that lawsuit, *National Petrochemical and Refiners Association v. EPA*, because we wanted to jointly be involved in supporting those Federal standards. And the standards themselves are critical to reducing the particulate matter that is so lethal to our citizens, and citizens of those other States. It is more than just an abstract or conceptual problem. It is literally a matter of life and death.

So we have a real stake in this fight, and we have a stake in the standard that is applied to those emissions. Right now we understand—we don't know because we are not at the table—but we understand that the discussions are about the Federal Test Procedure standard versus the NTE standard. The Federal Test Procedure standard we think is lacking in a number of key areas when it is applied to vehicles that are actually on the road.

So we think that we have a real stake in the outcome of those discussions, and that is the reason that we asked the court to intervene. It declined to do so. And we were particularly astonished that the EPA opposed our motion to be at the table because it affected the arguments that would be made in court by all the parties, including the intervening parties, the States. So it very directly affects the health of our citizens and the credibility of our position in court as to whether we are actually there talking about these very important issues.

Chairman LIEBERMAN. What was the stated reason why EPA opposed your attempt to intervene?

Mr. BLUMENTHAL. Well, they didn't oppose our petition to intervene. They supported intervention. But they opposed—they filed objections to our motion to the court to be involved in the discussions because they said they ought to have discretion to conduct these negotiations. It was a vague and very unsatisfactory answer.

Chairman LIEBERMAN. Whereas I presume what you are saying is you do not feel that the interests—in this case, the public health interests—of the people of Connecticut would necessarily be adequately protected by the national action, that there are some special circumstances that you feel ought to be represented and argued at the table?

Mr. BLUMENTHAL. Each of those States, whether Pennsylvania or Delaware, New Hampshire, Rhode Island, Maryland—and the others that are involved in these other litigations have a unique perspective, a particular history of environmental involvement, a particular set of impacts that they can bring to the courtroom as well as to the negotiating table, and a set of interests and values to protect. And so they have committed their resources and their State governments to this cause, and I think have been welcomed in that respect by the Federal Government, until now, because until now the Federal Government welcomed us as a partner.

Chairman LIEBERMAN. Thanks. My time is up. Senator Thompson.

Senator THOMPSON. Thank you, Mr. Chairman. Thank you, General Blumenthal.

Let's go through some of these things in a little bit more detail. I want to make sure I understand this correctly.

On the diesel engine, diesel fuel emissions issue, as you pointed out, I think in February, the administrator quickly affirmed the midnight rule that Clinton left them, and the rule proceeded on schedule, and there was no delay in the effective date. And the Administrator at that point apparently was bragging—I don't mean that in a negative sense, but showing her support and pointing out that it will reduce air emissions from large trucks and buses and sulfur levels in diesel fuel and have a significant effect on health, the same things you were pointing out, save as many as 8,300 lives a year, prevent up to 360,000 asthma attacks. It sounds like they were touting that pretty vigorously.

And now the lawsuits challenging this, as I understand it, are in court, and they have been—what?—postponed for a while, while settlement discussions are going on.

Mr. BLUMENTHAL. I don't think they have been postponed, Senator. In fact, one of the key motions was argued just a week or so ago, in late February.

Senator THOMPSON. So the cases are ongoing, but—

Mr. BLUMENTHAL. Very much ongoing.

Senator THOMPSON [continuing]. Your understanding is that settlement negotiations are going on.

Mr. BLUMENTHAL. On some of the key issues that relate to enforcement.

Senator THOMPSON. Well, do you know what the settlement negotiations are covering?

Mr. BLUMENTHAL. In direct answer, we think we know, but we don't have direct knowledge, to be very candid, because we are not in the room. We are not at the table. We can go only by secondhand information, which is one of the problems that I am bringing to your attention.

Senator THOMPSON. They wouldn't be very secret if you knew what was going on, really, would they?

Mr. BLUMENTHAL. Well, we couldn't say if they were secret—  
 Senator THOMPSON. They wouldn't be secret—

Mr. BLUMENTHAL [continuing]. But there are a lot of secrets in this world, particularly in, I should say, the courtroom and maybe in Washington that are better known than others.

Senator THOMPSON. My understanding was that after oral arguments the other day, EPA met with State and environmental groups. Were you a part of that meeting?

Mr. BLUMENTHAL. I wasn't there, but I know about it.

Senator THOMPSON. OK. Do you know what went on at that meeting?

Mr. BLUMENTHAL. I know generally what went on, Senator.

Senator THOMPSON. What is your understanding the purpose of the meeting was and what happened there at that meeting?

Mr. BLUMENTHAL. There was a general exchange of information, but I don't think there was the level of involvement that we would expect of a partner dealing with another partner.

Senator THOMPSON. Is there any particular reason why you were not there? I mean, I assume it would be attorneys general.

Mr. BLUMENTHAL. We had representatives there. There is no particular reason why I personally wasn't there—

Senator THOMPSON. Someone from Connecticut, your state—

Mr. BLUMENTHAL [continuing]. Other than scheduling.

Senator THOMPSON [continuing]. Was there? And you weren't satisfied with the level of what they were doing, but, again, what were they doing?

Mr. BLUMENTHAL. The issue, Senator, if I may respond, is larger than one meeting.

Senator THOMPSON. Well, but I am asking you about a particular meeting, and then you can talk about the larger picture. My understanding was that after the oral arguments, you had a meeting. The complaint has been that there have been secret discussions with industry to weaken the diesel fuel rule. The EPA has said no, there are no discussions like that going on, and they had a meeting and brought some of you folks in and environmental groups in after oral argument to explain to you what was going on. And you are getting secondhand information as to what went on, and maybe they didn't tell you as much as you would like to know, or maybe they didn't tell you what you wanted to hear. But that was the purpose of the meeting, wasn't it?

Mr. BLUMENTHAL. Well, let me respond this way: The meeting was to provide us with information about negotiations that were ongoing without our participation. The litigation is ongoing with our participation. Rather than having a briefing session or an exchange of information, we think we ought to be at the table, in the room, participating in the negotiations. And I can say for myself that I was not happy with the extent of the information that was communicated or with the position that the Federal Government is taking in potential compromises that will vitally affect the citizens of my State and perhaps others who have intervened in this action.

Senator THOMPSON. What do you fear that they are going to compromise?

Mr. BLUMENTHAL. As I mentioned earlier, on—

Senator THOMPSON. The standards themselves or—

Mr. BLUMENTHAL. On the measure that is used to calculate the emissions. The two testing methods for calculating those emissions, as you know, Senator, are the FTP, the Federal Test Procedure standard, and then there is what we consider to be a preferable one, the NTE standard, which tests a broader range of normal driving conditions. And these issues are enormously complex, and I have to confess I may not be as fully conversant with them as you or other people in the room or the litigators on my staff who represent the State of Connecticut, but I think they are absolutely critical and they can be put very starkly and simply in terms of enforcement that the FTP procedure is lacking in a number of key respects.

Senator THOMPSON. Well, it does look like that you and the EPA are together, though, on what is going on. I think that somewhere along the line they have been able to impart to you what is happening, that it is not about the standards themselves they are negotiating. A lot of the discussion, I think, has been that they are secretly going to lessen standards or something, but I think you correctly point out it is not about the standards themselves, but EPA has said publicly—and I assume informed you—that they are apparently discussing the testing methods. As you point out, there are a couple of different methods, and you are concerned that they are going to agree to use one when, in fact, they should be using another.

Mr. BLUMENTHAL. And I don't mean to sort of engage in a semantical debate, but obviously there is a point at which different standards have enormously and profoundly significant effects in terms of enforcement. The levels of particulate matter that are permitted depends on which of these standards and testing procedures is used, and I would come back to the statement you made earlier, Senator, which is that the administration, I think, deservedly touted its adherence to these regulations. We ought to be together, not just in a private meeting after the negotiating session, but in the room when these key points—and this testing issue is only one of them—are discussed and debated and possibly resolved.

Senator THOMPSON. Well, I can understand your desire to want to be involved in all the details of it, and my time is up. But I wanted to go down these issues because I think it is important to compare the broad statements that we hear sometimes that the administration is rolling back all the regulations, they are abandoning enforcement, and States are no longer a part. And then when you get down to it, you are finding out—that they are not engaged in secret negotiations to undercut the rules and everything. When you get right down to it, what you find out is that they are doing like they do in most cases, and that is, somewhere along the line they engage in negotiations with the party on the other side, and it has to do with something that I am sure is important, as you point out, like a lot of things are important, has to do with the testing methods by which these automobiles go through in order to see how they live up to the standards, not the standards themselves.

So, frankly, I think the broader statements, accusatory statements sometimes I think are not supported, frankly, when you get into the details of some of these issues that you are talking about.



That doesn't mean to denigrate the fact that they are important to you and all of that, but I wish we could spend more time on the details of some of these things that we are concerned about and understand there are two sides to every lawsuit, and different people looking at things different ways create lawsuits, and not so much time on these broad accusatory statements.

Thank you very much.

Chairman LIEBERMAN. Thanks, Senator Thompson.

I must say, just to add a word, having been here a while now, that in the 1990 consideration of amendments to the Clean Air Act, there was a lot of time spent, and argument and discussion ultimately before we passed it, arriving at the standards for emissions, including diesel. It was important stuff, I see your intervening in the lawsuit as continuing exactly that battle. It does relate, from our perspective anyway, to public health, according to the statistics you have indicated.

I wanted to ask one more question, just because it is a different kind of case. Can you talk about the energy efficiency ratio for air conditioning and why the State of Connecticut and the other states that you are allied with here support a higher level of efficiency than the administration seeks? What is the status of that particular battle?

Mr. BLUMENTHAL. In that battle, Senator—and both you and Senator Thompson are absolutely right, the devil here is in the details. And the details are enormously important, and I have sought in my written testimony to focus on some of those details. And with the Seasonal Energy Efficiency Ratio, the details are enormously important. Going from SEER 13, which was the original formulation, to SEER 12, in effect, eliminates one-third of the improvements in that ratio. There is no question that SEER 12 is a 20 percent improvement; SEER 13 is a 30 percent improvement. But the consequences for Connecticut and indeed for the Nation are less energy savings, more pollution, and higher costs for consumers. And those are measurable. Indeed, the regulations issued initially set forth specific numbers that are based on incontrovertible data from EPA and the Department of Energy as to the number of plants, four coal-burning plants that wouldn't have to be built, other gas-burning plants that would not have to be constructed to meet the energy needs that will be saved by those air conditioning standards—a highly technical area where the details are, again, a matter of life and death, as well as huge financial costs, in Connecticut, in the Northeast, and around the country.

One of the most telling statistics relates to the amounts of savings that could be realized, for example, in a State like Ohio in the Midwest, which has a great many of these coal-burning plants and could save lives and money through implementation of these standards.

So I think the delay, first delay and then the weakening of these standards not only contravenes the law, but also good public policy, and right now there is a motion for summary judgment in that case that will be argued on March 28. The case is pending in the Southern District of New York. We hope we will prevail on behalf of not only Connecticut but New York, New Jersey, Vermont, Maryland, Nevada, Maine, and, again, joined by a number of environmental

advocacy organizations that no doubt you have heard from in the course of these hearings.

But the real problem is that we would have been supporters, and we were partners in this process up to the point that there was delay and then weakening of the standards, and so there is a real stake on our part in continuing this battle.

Chairman LIEBERMAN. Thanks very much, and as a citizen of your State I urge you on.

Would I be correct to say—I am not familiar with the particular attorneys general—that not all of them are Democrats who are involved in this lawsuit?

Mr. BLUMENTHAL. In all of these lawsuits, there is truly a bipartisan effort, and this cause is a bipartisan one that has involved Republicans and Democrats, attorneys general and governors, for that matter, at the State level.

I think that the States have a stake in these issues that we see, feel, hear, breathe every day. And it is not an abstract or novel issue for us, and we see ourselves as very simply enforcing good law, very good law that this Congress has passed over the years.

Senator THOMPSON. Could I ask a couple of questions?

Chairman LIEBERMAN. Yes.

Senator THOMPSON. On this particular issue, you mentioned the SEER, as I understand it, Seasonal Energy Efficiency Ratios, that air conditioners and heat pumps are measured by, their energy efficiency. Just to make sure I understand, in 1992, the energy efficiency standard for air conditioners and heat pumps was at 10. And in October 2000, the Clinton Administration proposed a rule for SEER air conditioners for 12 and SEER for heat pumps to 13.

When the final rule came—they had comments and discussions, and so when the final rule came about, the SEERs for both were raised to 13. They had originally proposed 12 for air conditioning, but that wound up in the final rule as 13.

Upon completion—this is another one of the rules in controversy. You have a procedural issue here that you claim the prior administration's publication was a final rule and it can't be changed, and this administration says the rule was suspended well before the final rule came into effect and so forth. That is the procedural issue, as I understand it.

But the DOE issued a supplemental proposed rule in July 2001 to withdraw the Clinton Administration's final rule and replaced it with a proposal to raise the SEER, or the current SEERs, which I guess are still at 10, to raise them to 12. And the comments have come in and hearings were held.

Is that your understanding of the history of where we are?

Mr. BLUMENTHAL. That is roughly the procedural issue. As with any procedural issue, I could make it more complicated or less so, but essentially where we are now is that—you are quite correct, Senator—comments were submitted in October, and we brought our lawsuits at about the same time last year.

Senator THOMPSON. It looks like the proponents of both the 12 SEER and the 13 SEER can make compelling arguments because of the broad criteria by which these standards are judged. The Energy Policy Act sets forth a long list of criteria, including economic impact of the standard on manufacturers and consumers, whether

the increased capital cost of the appliance will on average be offset by decreased operating costs. It is a pretty complicated kind of procedure that they have gone through where reasonable people, I would assume, could disagree.

But apparently proponents of the 13 standard tout the energy savings, and proponents of the 12 standard point to the disparate economic impact on low-income consumers and smaller manufacturers, and that is kind of where the issue is, as I understand it.

I don't know enough about it to know which one is correct, but it looks to me like it is hardly the end of the world, and it is something that good people on both sides can disagree on in good faith. Hopefully it will be resolved correctly.

But, again, complicated criteria, a long list of criteria. It is in the courts, competing interests and balance, very valid, legitimate interests on both sides of the issue. And if they are 10 now and it is going to be resolved between 12 and 13, it sounds like that we are on the right track.

Thank you very much.

Mr. BLUMENTHAL. If I could just respond, Senator, I hope we are on the right track because I hope it will be resolved at 13, since at that level the energy savings really would more than pay for the initial costs of the equipment. The debate has been about the costs of installing this new equipment.

Senator THOMPSON. There has been concern about low-income consumers and small manufacturers.

Mr. BLUMENTHAL. And the point is that over a very short period of time, the efficiencies, as the term implies, would more than pay for those additional costs. And that is the reason that the prior administration, after very lengthy and protracted consideration of all of these issues and attempting to balance them all, reached the rule that it did. And our point is that this administration simply changed the rule without any of that kind of deliberate and considered, thoughtful weighing of those considerations with the process that is required under Federal law.

Senator THOMPSON. Well, I had thought that they issued a supplemental proposed rule July 25, 2001. I don't know what happened during that period of time, but they had a few months in which to deal with it. I mean, they are being called on the carpet now to review their entire policy after not a whole lot more time than that. So it looks like we can't have it both ways. Either 6 months or a year is a long time or a short time. I don't know which. But it wasn't January or February 2001 that they made this, but July 25.

Mr. BLUMENTHAL. The rule was to take effect in early 2001, but it was delayed, and we say illegally delayed, on two occasions and then, as you point out quite correctly, issued in final form July 25, 2001.

Senator THOMPSON. Well, I don't see any need to belabor this point. I think the word "illegal"—I think you have procedurally—I think you have the worst of the argument in saying that it was illegal. The court will determine that. But when the rule became final and all that is something for a court to decide. Their position is that it was suspended before the 30-day period ran and, therefore, it was not a final rule. And they can change it any time—they

were left with a bunch of rules in various stages of finality when they took office, and they wanted to look at some of them, and most of them they went ahead and approved, and some of them they wanted to hold up. And there is litigation now along the way as to the various points in which they stop some of these things. You know, that is what makes lawsuits.

But, again, these things will be resolved in due course. Thank you.

Chairman LIEBERMAN. Attorney General Blumenthal, thanks very much for your testimony. It has been very relevant to the purpose of the hearing. It has been extremely well informed, and you hung in there with some tough questioning by Senator Thompson.

I must say as your friend, I haven't had a chance to watch you in this forum before; I was very impressed.

Mr. BLUMENTHAL. Well, thank you very much, Senator.

Chairman LIEBERMAN. I wish you well.

Senator THOMPSON. So was I, General.

Mr. BLUMENTHAL. Thank you. [Laughter.]

Chairman LIEBERMAN. Thank you.

We will call the second panel now: Richard Dove, Kenneth Green, Donald Newhouse, Hope Sieck, and Stephen C. Torbit.

Thank you all for being here. Mr. Green, I like your tie.

Mr. GREEN. Thank you, Senator.

Chairman LIEBERMAN. And I hope it shows well on television. I think it will.

Mr. GREEN. All credit goes to my wife on tie selection.

Chairman LIEBERMAN. As is usually the case with most of us, right?

Richard Dove is the Southeastern Representative of the Waterkeeper Alliance. I thank all of you. You have come really from near and far, mostly far. So your presence here is greatly appreciated, and we look forward to hearing from you now.

Mr. Dove, why don't you go first?

**TESTIMONY OF RICHARD J. DOVE,<sup>1</sup> SOUTHEASTERN  
REPRESENTATIVE, WATERKEEPER ALLIANCE**

Mr. DOVE. Thank you, Mr. Chairman. On behalf of the Waterkeeper Alliance and its more than 80 Waterkeepers across the country protecting American waterways, I want to thank you, Mr. Chairman, for the invitation to come here and address this Committee. It is a very important matter to me, personally, and to people across America.

I started out by going into environmental work when I retired from the Marine Corps in 1987, when I became a commercial fisherman, fishing with my son. It was a childhood dream. The Neuse River—Neuse means “peace”—is a beautiful river that flows by my house. With more than 600 crab pots, and thousands of feet of gill netting, and a seafood store, and a number of boats and crews, my son and I fished that river—

Chairman LIEBERMAN. Just for the record, indicate where the Neuse River is.

<sup>1</sup>The prepared statement of Mr. Dove appears in the Appendix on page 176.

Mr. DOVE. I am sorry, Mr. Chairman. The Neuse River runs some 250 miles from Raleigh, North Carolina, through New Bern and out to the coast. We fished that river, and things were fine for a while. Then the fish began getting sick. They had open, bleeding lesions all over their bodies. The same thing happened to the fishermen—to me and my son. Unfortunately I had to leave commercial fishing.

I went back to practicing law for a while until a job at the Neuse River Foundation opened up, and I became a riverkeeper. For some 8 years, I served as a private citizen out on the river being paid by a nonprofit group to take care of that body of water on behalf of its true owners, the people of America. In that 8 years, I learned an awful lot. I come to you today, sir, not as a tree hugger, and I do not kiss fish. My role really is in understanding the environment and its meaning to us economically, as well as in every other way.

There is one particular kind of pollution I want to address today. I want you to imagine for one moment the City of New York, the City of Los Angeles, or any other large city in America taking the fecal waste produced by all the people in that city and storing it in their parks in open lagoons. And when the lagoons filled up, it would run down the street, into the storm drain and into the water.

Fortunately, that does not happen in America because 30 years ago the Clean Water Act was passed. When that Clean Water Act was passed, laws were put in place to prevent municipalities treating human waste in that way. Fortunately, at the time, Senator Dole, who was very instrumental in getting the Clean Water Act passed, added a provision that added CAFOs, Confined Animal Feeding Operations, to that law. That law says that these operations are factories, that they are to be treated like factories, and they must have National Pollution Discharge Elimination (NPDE) permits. That means they are required to treat their waste in essentially the same way as cities.

Thirty years later, Senator, across America, in particular North Carolina, animals are being raised in meat factories, not by farmers.

Chairman LIEBERMAN. Explain, just for a moment, the difference that a Confined Animal Feeding Operation is not a farm, as we would normally know it.

Mr. DOVE. Not at all, sir, and America is waking up to that. Here is the difference. In the past, animals were raised by farmers across America for the supermarkets. They were raised on small family farms spread out all over the country. Their animal waste was spread out all over the country, but what the industry did is “citify” the animals.

They brought them into little confinement buildings. They never see the light of day. They do not breathe fresh air. Many are put in tiny cages so small they cannot turn around. They are raised in their own stench. This is the treatment the animals receive in these facilities.

When you confine animals or you “citify” them, you have to do the same thing for animals you do for people. You have to provide wastewater treatment facilities. But this industry has somehow

been able to escape treating their animal waste. Whether it comes from people or pigs, it is the same. The technology needed to treat it is a wastewater treatment plant. It is very expensive. If you live in the country, you can get away with an outhouse. If you come into a city, you cannot. But this industry has avoided the law. The law has never been enforced to require this industry to get NPDE permits and to treat their waste with wastewater treatment plants, the same as we do human waste.

In Eastern North Carolina, east of I-95, we have 10 million hogs. According to a formula of Dr. Mark Sobsey, a hog produces 10 times the feces of a person every day. If you take a look at the amount of fecal waste being produced in the very environmentally sensitive area of the coastal plain of North Carolina, it would take all of the people in the States of North Carolina, California, New York, Texas, Pennsylvania, New Hampshire, and North Dakota to equal what hogs, just hogs, are producing in Eastern North Carolina.

When I became the Neuse riverkeeper, I sought out the sources of pollution in my river. There are many. Hogs are not the only one. Nutrient pollution was the No. 1 culprit causing the problems, and most of it was coming from these animals.

Getting to the final line, Senator. We had finally began to make some progress. The Natural Resources Defense Council had sued the EPA and had won a judgment, and under the Clinton Administration, we began to see new regulations coming out of the EPA that would at least make the situation better, but now those regulations are being revisited by the EPA and being revisited in a way, and the testimony—I mean it is so detailed, it is all in my written testimony—but they are revisiting it, and that will weaken their regulations.

I have looked at President Bush's regulations and what he did in Texas on the animal pollution and welfare issues. If you look—I think it is page 99 of my brief—that record is a frightening record. Citizens across America are suffering from health problems, because they are forced to live with the animal stench every day. Fishermen who fish the waters see this animal waste running down the rivers. We cannot back off from tight regulations. The law is the law. The Clean Water Act says that animal factories must treat this waste. They cannot be allowed to get away with dumping this waste into the environment by using spray fields any more. I do not think my President gets it, sir.

There is a nexus between a healthy environment and a strong economy. We will not have a strong economy over the long haul by giving away our natural resources to polluters in the short term for economic gain. The environment in our country is the house in which we live. If we do not protect it, we do ourselves in.

Thank you, sir.

Chairman LIEBERMAN. Thank you, Mr. Dove. Thanks for your testimony.

I do want to indicate to you and all of the witnesses that the full testimony that you have submitted in writing will be printed in the record. I appreciate the time that you took to prepare it. It is really quite impressive. I will have some questions for you after we hear from the other witnesses.

Now Dr. Kenneth Green, chief environmental scientist at the Reason Public Policy Institute.

**TESTIMONY OF KENNETH GREEN,<sup>1</sup> PH.D., CHIEF ENVIRONMENTAL SCIENTIST, REASON PUBLIC POLICY INSTITUTE**

Dr. GREEN. Thank you, Mr. Chairman.

I am, as you said, with the Reason Public Policy Institute, a project of the Reason Foundation, which is a nonprofit, nonpartisan policy, research and education institution headquartered in Los Angeles.

My interest in environmental policy originates quite a ways back, in fact, over 27 years ago, to the year when I was diagnosed with asthma, living in California's smoggy San Fernando Valley. Actually, diagnosed is not the right word. I was running the 600 1 day, and my lungs locked up about 450 yards in, and I staggered across the finish line and collapsed, wheezing like a freight whistle. From then on, I was one of those kids that was in corrective PE. I got to sit and play checkers and caroms watching everybody else out on the gym field.

The smog in those days was so thick you did not actually have to watch the weather the night before to know there was going to be a smog alert, and you didn't have to have epidemiology studies to tell you what it was doing to your lungs. It was quite obvious.

Growing up with asthma taught me how important it is to have a healthful environment and how radically environmental health hazards can impact the lives of our children. But growing up with asthma was not my only formative experience.

My father died when I was very young, and after a short stint with an abusive second husband, my mother decided to raise her two sons by herself in Los Angeles. It was a very brave decision that started out very well at a small sandwich shop she opened with a friend, but they ran straight into the teeth of the 1970's recession. As local building projects were canceled, the business failed. And as rents inflated and salaries stagnated, we were bumped from apartment to cheaper apartment.

I went to four different elementary schools in only 2 years. My mother's health, one too good to begin with, was not helped by the stress of fighting to make it in an economy that was fighting against her. We managed to stabilize things by the time I was 13, when my Bar Mitzvah brought me back a certain amount of my outdoor liberty. Though it will no doubt horrify some listeners here today, that is when I took my \$200 in Bar Mitzvah money and bought a small off-road motorcycle, a Yamaha 80cc Endura motorcycle.

Camping was the one recreation we could afford, and though I couldn't hike, even in the clean air of the mountains or the desert, I could ride, and boy did I ride. That bike took me places that would make mountain goats nervous. It let me indulge my budding love for nature in ways that would have been impossible to me without that motorized assist.

My love for things natural took me ultimately through my doctorate in environmental science and engineering at UCLA. My

<sup>1</sup>The prepared statement of Dr. Green appears in the Appendix on page 276.

smoggy childhood taught me these lessons I have never forgotten. Environmental quality is a vital good, a sound economy is a vital good, and the freedom of mobility and the ability to develop oneself are vital goods.

My subsequent studies taught me, fortunately, that one does not have to trade one of these for the other. Indeed, studying environmental science and policy convinced me that choice and economic competition were not the enemies of the environment; rather, choice, competition and technological progress are the wellspring of safety, health, and environmental quality in our country.

I have spent the years since my graduation looking for approaches to environmental problems that embody the wisdom of environmental science that are holistic, flexible, and cooperative. Such approaches that tap into local knowledge are not only more likely to produce results, they are less likely to breed angry litigation, the ultimate waste of resources we need to invest in environmental quality.

There is a big debate right now over the Bush Administration's approach to environmental policy. The arguments from those in opposition seem to embody the old 1970's "us versus them" mentality that holds voluntary, cooperative, and locally-derived approaches to solving environmental problems to be inherently inferior to centralized command-and-control approaches driven from Washington, DC.

It is not my job to defend the Bush Administration. I am sure they have got plenty of able-bodied defenders. It is my job, as a policy analyst, to defend an approach to environmental protection, however, that can move society out of the bitter, recriminating, legislative, regulatory, and judicial battles that have turned environmental policy and pursuit of environmental quality into a battlefield, rather than the shared journey it could and should be.

Now I don't deny that the regulatory approach did considerable good. We have virtually eliminated open dumps, our air is constantly cleaner, we have reduced pollution in our surface waters, and thankfully they no longer burst into flame, though we have a ways to go on cleaning up the Nation's surface waters.

But the low-hanging fruit is pretty much plucked. The environmental problems that remain are not the simple ones of the past that yield to blunt-object approaches. Today's problems require all of the creativity that can be brought to bear from the people with the local knowledge of the problem and the technologies and behaviors that might ameliorate those problems, with them all working together, rather than fighting it out in courtrooms, where—if you will forgive me—only lawyers benefit.

So let's review a few of the voluntary cooperative and locally-derived environmental approaches that have gotten results without the negative baggage of command-and-control regulation.

First, let's consider the air. Under the traditional permit-based approach to cleaning the air, Massachusetts found itself in an uncomfortable position in the 1990's, regulating some 10,000 businesses through 16,000 separate permits. Some 4,400 of those permitted facilities were small mom-and-pop businesses that, combined, only emitted about 5 percent of the State's total pollutant emissions. So the State looked for a better way.



Under the Massachusetts Environmental Results Program, a voluntary approach was tried. Participating firms agreed to comply with a set of industry-wide whole-facility standards developed in cooperation with the Massachusetts Department of Environmental Protection. Signing on to this voluntary, mutually agreeable standard would gain the small businesses of Massachusetts freedom from the equipment-based permitting process that kept them mired in the regulatory morass, and the program worked.

In the first few years alone, the program resulted in a 43-percent reduction in fugitive emissions from participating dry cleaners and a 99-percent reduction in silver discharges by photo processors.

A similar program was implemented in New Jersey, which set emission caps on participating firms, but let those firms achieve their emission reductions in whatever ways they found were most efficient and effective.

For one firm, the old source-by-source permitting processes had generated 10 full binders of paperwork. The new system replaced 80 separate permits with a single permit, dropped the processing time to 90 days from 18 months. And the result—one of the firms in the program estimated it reduced 8.5 million pounds of emissions per year because the new system allowed them to modernize their facility without the pain of going through equipment permitting.

I see I am running out of time so I will skip the next case. I have two cases on water quality I could relate, if you care to extend the time, otherwise I will cut to my conclusion.

Chairman LIEBERMAN. Why don't you go to the conclusion, understanding that the testimony will be part of the record.

Dr. GREEN. Very good. It has become popular to pooh-pooh voluntary cooperative approaches to environmental problem solving, and some groups seem determined to keep environmental policy debates as partisan as possible, portraying any change in means as some sort of a sacrifice of the goal. Polls show, however, virtually all Americans are environmentalists, regardless of where they work, and there are many different means to achieve the same end.

Further, success stories abound showing such approaches have been embraced by members of both major political parties, industry groups, environmental activists and informed systems.

The low-hanging fruit of environmental problems has been plucked in the United States, and the problem that remain are tricky. Solving them, while retaining the choice and competition that are the wellsprings of our safety, health, and environmental quality, will require the cooperation of all parties, flexibility on all sides, the tapping of local knowledge and the avoidance of wasteful litigation.

I urge you, in all of the decisions you make, to ask, first, whether there is a flexible, cooperative and local approach to environmental problem solving before you whip out the blunt object of a centralized, one-size-fits-all regulatory approach run from afar. Not only will we attain the environmental quality we seek that way, we will preserve the benefits of choice, economic competition, and economic strength that are the foundations of our well being.

Thank you for allowing me to speak today, and I will gladly take your questions.

Chairman LIEBERMAN. Thanks, Dr. Green. I look forward to asking you one or two questions.

It is a pleasure to have Donald Newhouse here, representing Guardians of the Rural Environment. It is good to see you again, sir.

**TESTIMONY OF DONALD NEWHOUSE,<sup>1</sup> GUARDIANS OF THE  
RURAL ENVIRONMENT**

Mr. NEWHOUSE. Thank you, Mr. Chairman and Members of the Committee, if there are some. Thank you for the opportunity to express my views concerning the environmental laws.

I am retired and living in Yarnell, Arizona, with my wife and life partner, Beverly. Our community consists of 800 wonderful people. We became accidental activists when a Canadian gold mining company invaded our town. The company proposed Arizona's first open-pit, cyanide heap-leach gold mine just 500 feet from our homes, churches and businesses.

I am a registered Republican. As a Republican, I am truly disappointed in the Bush Administration for overturning important environmental mining rules of benefit to small communities facing irresponsible mining proposals like the one we face in Yarnell.

In the 1970's, open-pit mining and cyanide leaching changed the face of gold mining. Instead of digging out the gold, giant machines simply removed an entire mountain, crush it to gravel and heap it at the leach site. A solution of deadly cyanide is applied. It absorbs the gold and drains to a collection point. The waste rock is then dumped in a nearby canyon. The result is that the mountain and the canyon are both gone forever, and a vast expanse of lifeless rubble will exist for centuries.

Rains will fall on this exposed rock and activate acids that were buried deep in the mountain for eons. In my area, water runs downhill, and thus the groundwater and the streams are contaminated over a wide area. What do I do when my well pumps toxic water? The gold mine proposal would devastate our town. The mine plan calls for 24-hour operations, and extensive blasting would deny our only access to emergency medical services by closing the highway.

The blasting would also cause forced evacuation of private residences due to flying rock. Republicans are supposed to protect property rights. The only property rights that seem to count are the rights of multinational corporations. The completed mine would tear down the site of our 5,000-foot mountain and replace it with a huge, 400-foot-deep open pit, unfilled forever. Add to that the fact that the mine would use 7 million pounds of cyanide to extract the gold, and you have a monumental threat to our town, our water, our health, and our safety.

Our community is united against this mine. It would offer little employment or benefit to Yarnell and destroy the fabric of our close-knit, mostly retired community. Still, despite our strong opposition, the Bush Administration is reverting to the old mining rules favoring mining above all other concerns. This backward step

<sup>1</sup>The prepared statement of Mr. Newhouse appears in the Appendix on page 282.

crushes our hope that protection of small communities and their citizens would come before mining profits.

The new environmental mining rules would have allowed administrators to deny a mine that would do as much damage as the Yarnell mine proposal. The prospect of better protection has been dashed by President Bush's decision to overturn the stronger, new rules and replace them with the past failed regulations.

By overturning new environmental mining safeguards, the administration is saying that 4 years of extensive public comment has no merit. I attended many hearings in Arizona. I commented on these new rules. My comments should count. In fact, the thousands of comments by those of us directly affected and collected over the 4-year rulemaking should count highly, not to be trashed to please the special interests.

I served my country, I serve my community, and I participate in our democracy. With this decision, I wonder if my government is serving me or the special interests. When the Bush Administration gutted the mining rules, Secretary of Interior Gale Norton claimed that the 1872 mining law made her do it. She basically said that under the law it is illegal to deny mine proposals, even one as stupid as the one in Yarnell.

The 1872 mining law has undergone only minor revision since its enactment 130 long years ago. This relic of the past designated mining as the highest and best use of our public lands. The exact opposite was the result. We devastated the American West, my West. Mountains were leveled, the landscape littered with mining debris. Forty percent of the headwaters in the West are contaminated from historic mining. The attempts at clean-up are costing billions of Super Fund dollars, dollars we innocent taxpayers pay, rather than the guilty polluters themselves.

To you I would say, Senator, we have a problem. Thank you.

Chairman LIEBERMAN. Thank you, sir. I will remember your testimony. It makes the matters we are discussing very real, as did Mr. Dove's before.

Next, we have Hope Sieck, Associate Program Director of the Greater Yellowstone Coalition. Thanks for being here.

**TESTIMONY OF HOPE SIECK,<sup>1</sup> ASSOCIATE PROGRAM  
DIRECTOR, GREATER YELLOWSTONE COALITION**

Ms. SIECK. Thank you. Thank you, Chairman Lieberman and Members of the Committee.

My name is Hope Sieck, and I am the associate program director for the Greater Yellowstone Coalition, an organization based in Bozeman, Montana. We are a regional organization founded in 1983 to protect Yellowstone National Park and the lands that surround it. We have more than 10,000 members nationwide and 80 local, regional, and national member groups, as well as 210 business members.

I want to thank you, Chairman Lieberman, also for adding your name to a letter last year to the President asking him to uphold protections for Yellowstone National Park from snowmobile use.

<sup>1</sup>The prepared statement of Ms. Sieck appears in the Appendix on page 284.

I am pleased to be here 2 weeks after the 130th birthday of Yellowstone National Park, (one of the good things that happened in 1872) to share GYC's thoughts and concerns about winter use management in Yellowstone and Grand Teton National Parks.

The future of these magnificent parks is at a crossroads. The choice before the administration is whether to uphold protections of Yellowstone and Grand Teton from snowmobile use or to allow degradation of these parks to benefit the snowmobile industry. The ultimate choice will have a profound and far-reaching impact on these and all national parks.

Winter in Yellowstone is a magical time. The park's vast expanse is blanketed in snow and ice. Geysers and hot springs send plumes of steam into the air and shroud trees and wildlife alike in a coat of frost. Bison and elk move slowly along river valleys in search of food. Winter is a critical time for wildlife. Survival is not guaranteed. And for humans, winter in Yellowstone presents a unique opportunity in our urbanizing world to be transported back to a time of quiet, filled with peace, wildlife and the splendor of nature.

Congress has long recognized national parks and the importance of them. Congress sought to protect the irreplaceable and rare attributes of Yellowstone when it created it in 1872 as the world's first national park. One hundred thirty years ago, as the Senate was debating the formation of Yellowstone National Park, Senator George Vest of Missouri spoke out asking his colleagues to imagine the day when the United States would have 100 million or even 150 million people. When that day arrived, Senator Vest told his colleagues, Yellowstone would serve as "a great breathing place for the national lungs."

Sadly, today, instead of serving as a great breathing place for the national lungs, Yellowstone's own lungs are clogged. For half a decade now, fresh air has been pumped into ranger booths at the west entrance to prevent headaches, nausea, burning eyes and other health problems caused by snowmobile exhaust.<sup>1</sup>

However, this effort did not prove to be enough to protect rangers from carbon monoxide, formaldehyde, benzene, and other harmful air pollutants emitted by snowmobiles.<sup>2</sup> This winter, for the first time in national park history, rangers wore respirators to help them endure a workday in Yellowstone without ill effects. Visitors, too, breathe the same polluted air, and many visitors with asthma and other health problems cannot even visit our first national park in winter.

Also, this winter in Yellowstone we have seen the other problems caused by snowmobiles, problems that the Park Service moved to remedy in its November 2000 decision to phase out snowmobiles. That decision has been placed on hold following a snowmobile industry lawsuit.

This winter, despite an infusion of taxpayer money to beef up Park Service enforcement of snowmobiles, making Yellowstone the most intensively managed winter corridor in the world, damage from snowmobile use, unfortunately, continues. In 1 week last month, rangers issued nearly 400 citations and warnings to

<sup>1</sup>Medical complaints received by the National Park Service from Yellowstone National Park employees appear in the Appendix on page 481.

<sup>2</sup>Photos appear in the Appendix on page 495.

snowmobilers,<sup>1</sup> that was 1 in 10 snowmobilers in the park who broke park rules. They roared through fragile meadows and exceeded park speed limits, sometimes by more than double.

Also, this winter, during the most critical time of year for wildlife, wildlife were forced to waste precious energy getting out of the way of machines. Videotapes, which I will submit to the record, show snowmobiles harassing Yellowstone's wildlife and forcing them to run down roads and up steep slopes and into deep snow. Visitors this winter were again deprived the opportunity to hear and enjoy the sounds of Yellowstone, the splash of Old Faithful Geyser, the bubbling of mud pots, because of the constant whine and roar of snowmobile engines.

The news about the damage to Yellowstone caused by snowmobiles has spread far and wide. Expressions of deep concern have come from all over the country. And from inside the Yellowstone region, for example, the *Idaho Falls Post Register*, taking stock of all of these problems, recently remarked, "The Bush Administration wasted \$2.4 million of your money to learn, for a second time, that removing snowmobiles from Yellowstone and Grand Teton National Parks was justified."

That justified and thoughtful decision to phase out snowmobiles was made 16 months ago and laid out the solution to all of the problems we have seen this winter. A visitor transportation system, using snowcoaches, which are van-like vehicles that hold 10 to 15 people, will do wonders to protect Yellowstone's air, natural quiet and wildlife, while providing a high-quality visitor experience.

That decision to protect Yellowstone resulted from a 3-year public process and more than 10 years of scientific study and analysis. That decision was based on all of the important laws that were designed to protect our national parks, including the Organic Act and the Clean Air Act.

The Park Service decision was affirmed by other Federal agencies and experts. The Environmental Protection Agency reviewed the Park Service's decision and said that it included, "among the most thorough and substantial science base that we have seen supporting a NEPA document."

EPA concluded that snowmobile use in Yellowstone causes, "significant environmental and human health impacts."<sup>2</sup> And a distinguished group of 18 Ph.D. scientists reviewed the information and concluded that the Park Service relied upon sound science. They sent a letter to Interior Secretary Gale Norton cautioning her that "ignoring this information would not be consistent with the original vision intended to keep our national parks unimpaired for future generations."<sup>3</sup>

A snowmobile phase-out is the best decision for Yellowstone, but what about the gateway economies that depend on winter tourism? A significant number of residents, business owners, and elected officials in West Yellowstone, Montana, the main winter gateway to the park, have spoken out to Congress and the media and said that

---

<sup>1</sup>Violation Notices for snowmobile violations in February 2002 appear in the Appendix on page 501.

<sup>2</sup>Letter to the National Park Service from the EPA regarding "Draft EIS for Winter Use Plans" appears in the Appendix on page 594.

<sup>3</sup>Letter from Wildlife Scientists dated October 17, 2001, to Secretary Gale Norton, Department of the Interior, appears in the Appendix on page 597.

restoring pure air, peace and quiet, undisturbed wildlife and a higher quality visitor experience to Yellowstone is not only a good park protection plan, but is the best business plan for gateway economies that depend on visitors flocking to Yellowstone to find qualities that they cannot find elsewhere.

People in local communities and all over the country have witnessed another winter with chronic problems in Yellowstone. They are wondering when will snowmobiles be phased out and replaced with a better form of access? They are having to wonder because the Bush Administration chose to listen not to its own Park Service professionals, but instead to the snowmobile industry.

A snowmobile industry lawsuit forced an additional study that is costing taxpayers \$2.4 million and leading to another season of problems in Yellowstone. The new study, a supplemental environmental impact statement, is predicated on two ideas; first, that public involvement should be increased and, second, that new snowmobile technology is the answer for Yellowstone.

As far as public process goes, during the first 3-year process, the original 3-year process that led to the decision, there were 22 public meetings, 17 of those in the immediate area in communities like West Yellowstone, Idaho Falls and Cody. No hearings have been scheduled in this new snowmobile industry process. And during the first opportunity for the public to weigh in, in this new process, 82 percent of the public said that the original decision to phase snowmobiles out of Yellowstone must be upheld.

A cornerstone of the new process was supposed to be this new information on snowmobile technology that the industry claimed to have, but despite the delays in productions to Yellowstone and the high cost to taxpayers, the snowmobile industry has not offered any compelling new information, and I have some information to submit for the record on that.

The new study makes clear that even if newer generation technologies were used, continued snowmobile use will make Yellowstone National Park far more polluted, noisier, and less protected for wildlife than the solution offered by the snowmobile phase-out.

Yellowstone National Park is at a crossroads. We can either uphold the high standard of protection that our parks have always enjoyed or we can go down a new path of allowing damage that Congress never intended when it created the park 130 years ago. The choice for Yellowstone and for all parks has become clear to the Nation.

Finally, it is often asked of any issue of national significance, how is it playing in Peoria? We were excited to have an editorial come out of Peoria, Illinois, this year. So, in this case, we know what Peoria thinks. Peoria's paper states that "if future generations are to enjoy the Nation's park without the benefit of respirators, efforts to protect them must get more support in Washington."

And in Wyoming, where there is snowmobiling, but also the recognition that the health and reputation of Yellowstone is central to the State's tourism industry, the *Casper Star Tribune*, the largest paper in Wyoming, said this just last week, "If we cannot preserve Yellowstone and the unique experiences it offers, we will have

failed future generations. The best choice for Yellowstone is a complete phase-out of snowmobiles.”

Thank you for the opportunity to testify.

Chairman LIEBERMAN. Thank you very much, Ms. Sieck. That was well done.

Our final witness on this panel is Dr. Stephen Torbit, who is a senior scientist with the Rocky Mountain Natural Resource Center, and is here also for the National Wildlife Federation.

Dr. Torbit, thanks so much. I look forward to your testimony now.

**TESTIMONY OF STEPHEN C. TORBIT, Ph.D.<sup>1</sup> SENIOR SCIENTIST, ROCKY MOUNTAIN NATURAL RESOURCE CENTER, ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION**

Mr. TORBIT. Thank you, Chairman Lieberman. I appreciate the opportunity to submit this statement to the Senate Governmental Affairs Committee.

I am testifying today on behalf of the National Wildlife Federation, Wyoming Outdoor Council, Biodiversity Associates, and myself.

I earned my Ph.D. in wildlife ecology from Colorado State University in 1981 and worked for the Colorado Division of Wildlife, the Wyoming Game and Fish Department, and the U.S. Fish and Wildlife Service. Currently, I am the senior scientist for the National Wildlife Federation.

I am a native of the West and have been involved with energy development on Western public lands for more than 20 years. I am here today to discuss this administration’s national energy policy and its impacts to our Western landscape.

I can assure you that significant pro-energy development policies have already been put in place by the administration. These radical changes have completely reversed the logical sequence of environmental analysis, public input and agency decision.

I will illustrate some of the impacts of the administration’s energy policies on an area that is personally and professionally very important to me, Wyoming’s Red Desert.<sup>2</sup> As a professional biologist, I have been engaged with wildlife issues in the Red Desert since the late 1970’s. Additionally, I have used the Red Desert personally for recreation, including hunting, hiking, photography, and camping.

The Red Desert epitomizes the West. Its wide-open spaces and abundant wildlife resources allow me to reconnect with my Western heritage. I have harvested significant numbers of mule deer and pronghorn antelope from the desert, and those animals were an important source of food for my family when we resided in Wyoming.

I continue to hike, hunt, and camp in the Red Desert, although I no longer live in Wyoming. Despite its name and its appearance to the uninitiated, the Red Desert is not an empty wasteland. I

<sup>1</sup>The prepared statement of Mr. Torbit appears in the Appendix on page 305.

<sup>2</sup>Chart entitled “Sensitive Wyoming Landscapes Threatened by Energy Development,” appears in the Appendix on page 601.

have got some pictures to put up here on the easel and also submitted some for the record.<sup>1</sup>

Chairman LIEBERMAN. I can see it.

Mr. TORBIT. That first photo there is of Honeycomb Buttes in the desert. The Greater Red Desert region includes the largest undeveloped high-elevation desert left in the United States, the continent's largest active sand dune system, 2,000-year-old rock art and Shoshone spiritual sites, portions of the Oregon, California, Pony Express trails, and 10 Wilderness Study Areas.

The next photo will illustrate some of the Wilderness Study Areas on BLM land—Oregon Buttes, next is Sweetwater Canyon, and next is Oregon Buttes being used by pronghorn antelope.

This special area is rich in wildlife because of the integrity of the habitat. More than 350 species of wildlife call this area home, including the largest desert elk herd in North America and the largest migratory big game herd in the United States outside of Alaska, consisting of some 40,000 to 50,000 pronghorn antelope. The Red Desert also provides important habitat for mule deer, sage grouse, numerous small mammals and nesting and wintering habitat for birds of prey.

But now this area, rich in ecological, geological and cultural wonders is at risk from multiple entities that would cast aside these public values and dominate the landscape with energy development.

Our public lands already provide a substantial amount of oil and gas from an estimated 57,000 producing oil and gas wells. According to a 1999 industry report, roughly 95 percent of BLM lands in the Overthrust Belt of the Rocky Mountains are already open for mineral leasing and development.

Currently, public land managers are not considering the multiple assets of public lands and are not working proactively to balance conservation of these assets with energy development demands. Rather, this new administration is using its discretionary authorities to totally skew decisions towards domination of the landscape by extracted industries. Indeed, we are witnessing the rapid industrialization of our Western public lands. At this point, I would like to hold up a smaller photo, which is also available with the material I submitted, and I will submit this, but it gives you an idea of the footprint of gas development in the Upper Green River region of Wyoming.<sup>2</sup>

Until now, Federal land managers were expected to fully evaluate the impacts of their proposed decisions on the environment, to disclose those impacts to the public and consider public input prior to finalizing their decision. In decisions to lease or permit drilling, sometimes prescriptive descriptions were attached to minimize or avoid impacts to public resources, to protect water quantity and quality, the air quality, historical and wildlife resources. In essence, the logical framework was to look before you leap to assure no irretrievable commitments of resources were unknowingly made.

However, this administration has turned this entire process on its head by ordering agencies to first analyze whether any proposed

<sup>1</sup>Photos appear in the Appendix on page 602.

<sup>2</sup>Photo of the "Drill pads in Upper Green River Basin, WY." appears in the Appendix on page 603.



action—for example, improving winter range for wildlife—will impede or accelerate energy development on public lands before issuing that final decision. Specifically, Executive Orders 13211 and 212 now require an Energy Effects Statement to specify any adverse effects on energy supply, distribution, or use of Federal actions.

Furthermore, for energy-related projects, agencies are encouraged to expedite their review of permits or take other actions as necessary to accelerate the completion of such projects. This message has been heard clearly by those who manage the Federal estate. The result is that certain actions are discouraged if they impair the Federal Government's ability to extract energy reserves. If environmental protections are already incorporated into previous existing decisions, Federal managers are encouraged to be creative in circumventing those protections to benefit energy extraction.

Specifically, to the Red Desert, the BLM released a proposal in June 2001 to allow up to 3,800 coal-bed methane wells in the Atlantic Rim Project Area. This area is of critical importance to wintering wildlife. Consistent with the new policies to accelerate oil and gas development on public lands, the BLM is proposing piecemeal development of up to 200 wells before completing a thorough and comprehensive environmental analysis of the entire 3,800-well proposal. This piecemeal approach is designed to leverage the ultimate decision by establishing a “beach head” for energy development by first minimizing the environmental impacts of those smaller projects.

In August 2001, the BLM approved seismic exploration through the Adobe Town area.<sup>1</sup> I believe there is a photo of Adobe Town on the stand now. Seismic trucks drove through roughly 50,000 acres of citizen-proposed wilderness areas in September through December, degrading the landscape, laying the foundation for future development, and thus undermining the integrity of the citizens' proposal. Specifically, exploration continued within the crucial wildlife winter ranges during the winter months in violation of agency commitments to avoid the area during that sensitive time.

The BLM proposed in December 2001 to permit an 8-mile seismic study within the boundaries of this Wilderness Study Area at Adobe Town. Thereby, BLM may have totally undermined the wilderness designation possibilities for Adobe Town.<sup>2</sup>

There are many more examples of the administration looking at impediments to energy development as unnecessary obstacles. For example, BLM authorized seismic exploration in Utah's Dome Plateau area just outside of Arches National Park. The Interior Office of Hearings and Land Appeals halted this project, finding that it was likely BLM had inadequately considered the environmental impacts of this action on public lands.

In January 2002, the Wyoming State BLM director presented an Award for Excellence to the Buffalo, Wyoming, Field Office. This one field office was recognized for approving more drilling permits than all other BLM offices combined, excluding New Mexico offices.

<sup>1</sup>“The Wyoming Bureau of Land Management's Management of Areas With Wilderness Values” appears in the Appendix on page 604.

<sup>2</sup>Chart of “Adobe Town Citizens' Proposal—Portions with Wilderness Character” appears in the Appendix on page 607.

This one area in northeastern Wyoming is proposed to soon be home to tens of thousands of gas wells. The Buffalo Field Office was praised for working diligently and creatively with industry in approving a record number of oil and gas permits.

BLM is overturning lease stipulations designed to protect the important wildlife habitats. The Wyoming BLM has already approved nearly 70 percent of the 88 requests for exceptions to lease stipulations requested by the industry for the Green River Basin this winter. These waivers follow 2 years of extensive drought, when wildlife and wildlife habitat are already stressed.

Previous legislation enacted by Congress, approved by other administrations and consistently upheld in the courts, promote multiple uses of public lands where a mix of resource values are developed or maintained across the public estate. These provisions of the national energy policy ignore the multiple use mandate and propose to eliminate even a token balance between resource conservation and energy exploration and substitute a domination of use rather than multiple use.

I might add real quickly that when I worked for the Fish and Wildlife Service, I became operationally familiar with these oil and gas stipulations and the whole process, and that was during the first Bush Administration when those procedures were operating.

Well-planned, responsible development can balance our country's energy needs with the conservation of wildlife habitat and other natural treasures for future generations to enjoy. Responsible development requires thorough pre-leasing environmental review, full compliance with all environmental and land management laws, measures to protect wildlife migratory routes and other sensitive lands, full reclamation of developed areas and minimization of road building.

Unfortunately, rather than encourage a thoughtful, strategic and balanced approach to energy development, the administration's national energy policy is recreating the chaos of the Western gold rush. Like that archaic approach, these new tactics give no consideration for other users and resources. Like the old Western gold rush, this new Western energy rush will leave impoverished natural resources and cleanup as legacy for future generations.

I invite the Members of this Committee or their staff to come to Wyoming with me and visit Adobe Town, the Jack Morrow Hills and other unique and valuable areas of the Red Desert to view these areas and the consequences of industrialization.

I appreciate the Committee's interest in these critical issues and urge you to take action to ensure that we do not replicate the mistakes of the past and instead manage the public lands and the public interest not only for today, but for tomorrow as well.

Chairman LIEBERMAN. Thanks very much, Dr. Torbit.

Obviously, I have indicated I have a point of view, as these hearings have approached, so perhaps you will not be surprised to hear that I take the testimony that you have offered here as evidence that substantiates my own review and conclusion. Something quite different and bad has happened in environmental and natural resource protection in the last year under this administration.

As your testimony indicated, and we had some to indicate it last week, a lot of modern environmentalism at the Federal level began

in the Nixon Administration. The more recent bipartisan consensus began in the first Bush Administration, but I think you have shown how in the last year some very real changes have occurred that are adverse to your lives and work, to the health of the country and the well being of the land that is our blessing.

So I thank you for your testimony. I am going to ask each of you some questions.

I am sorry that Senator Thompson is not here, but I want to make a submission to the record. Senator Jeffords, who is the chair of the Environment Committee, has sent a message which he has asked me to include in the record on the processing of EPA nominees by the Environment and Public Works Committee. This is in response to Senator Thompson's earlier expressed concern about the pace of nominations, the Senate's consideration of nominations by the administration and whether certain positions were left unfilled. Now, my guess is Senator Thompson had in mind not only EPA, but other relevant positions, but Senator Jeffords wanted to indicate for the record that there have been 12 nominees for EPA positions. Ten have received the advice and consent of the Senate, one has a hold on it, which he indicates is from a Republican colleague, and one withdrew.

So, at our colleague's request, I submit that for the record.

Mr. Dove, I presume that Terry Barker, the Soundkeeper, is a part of the Alliance.

Mr. DOVE. Yes, and he is a very good friend of mine and one of the Nation's finest Keepers.

Chairman LIEBERMAN. Thank you. I agree. That is the Long Island Sound, I should add for a clear reference in the record.

Your testimony identifies a variety of concerns with the Bush Administration's consideration of revisions to the proposed regulations for concentrated animal feeding operations. I wonder if you could just spell out a little more which of those possible revisions concerns you most. Incidentally, I was very impressed by your testimony, and it shows that though you were rescued from the practice of law by this opportunity, you still retain a lawyer's capacity to put together a very detailed brief.

Mr. DOVE. I thank you, sir. I would say that this is an issue which Americans, overall, are very passionate about. It involves their property. When it comes to advocating on behalf of the people's property, it is very rewarding.

When we looked at the regulations that were coming from the Clinton Administration, they were not everything we wanted. They did not get rid of the lagoons and spray fields. To stop storing all of that fecal waste in open cesspools is not a matter of science, it is a matter of common sense. This industry has gotten into a mode of operation, where they think it is acceptable to do that, and they are fighting to hold onto this failed system on the basis that they can't afford anything better. Well, in truth, they can afford it. I mean, the bottom line is not going to be good, but they can afford it.

Under the Clinton Administration, there were some improvements that would have allowed us to move towards getting rid of the lagoons and spray fields. One of the most serious objections we have with regard to what is happening now, under the new admin-

istration, is that they are doing this cost-benefit analysis to determine if the industry can afford to get rid of lagoons. They are trying to change the Clinton Administration rules published in early January. What the industry is asking for is to hold on to this lagoon and spray field use in North Carolina and across the country. The lagoon system has failed in North Carolina. We now have a moratorium, and our governor has said we are going to find a replacement. The industry has kicked in \$50 million over time. That's not much considering they offered the same amount just to name a stadium in Norfolk, Virginia.

The industry has enough money to fix this problem. While it might seem like they are doing that, they are not. The industry is saying, and EPA seems to be agreeing with them, that they want to get out of fixing their pollution problems because while it has not been specified yet in the regulations, the handwriting is on the wall. It is likely they are going to let them off the hook on a lot of these requirements, like monitoring and other things that are needed to protect our groundwater, rivers, streams, and our air. We can't let the EPA do that, Mr. Chairman. We can't.

Chairman LIEBERMAN. Let me ask about one more that is noted in your brief, which is you mentioned the banking of phosphorous. Just explain to the Committee what that means and why you are concerned about it.

Mr. DOVE. Thank you, Mr. Chairman. That is something we are also very concerned about. Essentially, the EPA has said they are going to regulate the amount of nitrogen factory control farms can put on farm fields. They literally dump that stuff out there, but they call them farm fields. We are going to limit how much nitrogen, and that has been under the old regulations, everything was controlled by how much nitrogen could possibly run off. What the scientists have found, however, is that the application of phosphorous which is in that waste is in many ways worse than the nitrogen and the EPA should be regulating that.

What the EPA is now saying, "Well, we are going to let you go on with this banking for phosphorous system." The banking system is this: Put as much of it on your fields as you want as long as you control nitrogen. It can't do any harm. Scientists are telling us that phosphorous is running off just like nitrogen is running off, and there has been so much of it already banked, that there is no room for any more.

Mr. Chairman, these polluters are going to have to control phosphorous. To apply phosphorus at astronomical rates, they are going to have to increase their land mass by such magnitude that it will result in their not being able to operate these pollution systems. Their factory fields are heavily ditched to carry this runoff down to the rivers. That is why factory farms are fighting this. They don't want controls on phosphorus. We cannot allow banking because banking is just another way of letting this industry off the hook.

Chairman LIEBERMAN. Thanks.

Dr. Green, I also was interested in your testimony. I do think that the new, and I am sure you have noted it, that there is a real openness and interest here on Capitol Hill, certainly, in so-called noncommand-and-control environmental protection, a lot of interest

in cap-and-trade. Of course, one of the great stories is the extent to which an environmental ethic has been adopted by a lot of people in the country and a lot of businesses in the country over the years, but here is the contention that I want to make to you and ask you to respond.

That would never have happened without enforcement of environmental laws; in other words, without rules and, if you will, deterrents. If I can misuse an old, familiar expression that necessity is the mother of invention, that in some ways, law enforcement is the mother of voluntary cooperation with environmental laws because it creates an incentive and a deterrent.

So I want to ask your reaction to that. Don't you agree that even to have some of the kind of voluntary or cap-and-trade programs which are not voluntary, but not command-and-control, we need to have the threat or reality of enforcement in some cases?

Dr. GREEN. I would have a two-prong answer to that question. The first is I would have to disagree a little bit with the premise, which is that if you go back as far as Henry Ford, there is a well-known tale in which he goes through his factory and he points out that everything which is being emitted and/or wasted or released into the water is something he had to pay to get into the factory in the first place. And he ordered his people to eliminate those wastes because they were eating up profit, essentially.

And so his interest in reducing waste led to his reducing his environmental footprint, no regulation or requirement was necessary, and in fact that story has been repeated throughout industry throughout history.

At the same time, if you were to look at the remaining wetlands we have in this country, a very large percentage of them were preserved because they were private hunting preserves and private recreational facilities, private parks before they were federalized and nationalized.

So it is not the case that rules precede environmental values. What does seem to precede environmental values is a rising quality of life and the satisfaction of basic economic needs, after which people's interests turn to satisfying their environmental needs, an example being in California, for instance. If you were to look at the improvements in air quality in California and ask what rules were in place when, what you would find out is that the air quality improved from the local rules that were in place, from the smoke rules in the 1950's. Then the improvement was already underway when the rules were made into State rules in California, and the trends were well defined by the time that the rules were made into Federal laws in the Clean Air Act.

So there is actually well-documented evidence—I refer you to an author named Indur Goklany—of the bubbling-up nature of environmental quality from local levels, through local and voluntary actions, and local government actions as well, upward throughout the legislative hierarchy.

Chairman LIEBERMAN. I hear you, but I must say even the Massachusetts program that you cite has an enforcement feature in it if the standards set by the law are not met.

Incidentally, I never heard the Henry Ford story before, but it is interesting because unfortunately most industrialists from Ford up

until the early 1970's didn't follow that ethic. That is why the Clean Air, Clean Water laws, etc., came into effect because there was such wanton emission of pollutants into the atmosphere.

The law expressed our societal outrage about that and set the goal of making it better. It did begin to make it better. Then I think companies began, in fact, to absorb that ethic and not want to be on the wrong side of the law. I will never forget a conversation that some years ago I had with an executive at a large chemical company, who was telling me that his company had just spent hundreds of millions dollars cleaning up its act. He happened to be the person at the firm in charge of that cleanup, so maybe he was the resident environmentalist, but he was convinced that it happened when the daughter of the CEO came home and asked whether it was true what she was hearing, that daddy's company was defouling the air and the water. That sort of sense of shame, if you will, at a very personal level, which came from law enforcement, I think, created the ethic that we have.

So I am going to go on to Mr. Newhouse.

I read a statistic a while ago which sets the context for your experience, which is that EPA estimates that 40 percent of the headwaters of all Western watersheds have been polluted by mining. That doesn't surprise you, does it?

Mr. NEWHOUSE. Not at all. That is I think a conservative estimate, and historic mining being the important point. We are dealing in mining with a 130-year-old law that outlived its usefulness about at least 100 years ago. A lot of those mines in Arizona, for instance, there are at the moment an estimated 15,000 abandoned mines. Now there is some problem there that I do not know the answer to, but these are hazards to people's health, they are hazards to children.

I do not understand why even at the State level that has not been dealt with, but my concern is about Yarnell and its problems. We have tremendous problems, and most of our problems lie in the difference between an environmental interpretation of the law, a provision of a law, a parsing of words, whatever you want to term that, that gave us hope that at some point a mine could simply be denied because it was inappropriate and irresponsible.

Then along comes another interpretation, another administration, and those hopes go out the window because then it has evolved into a matter of what is necessary to perform a mining function. Destruction of a mountain is probably necessary, but it is environmentally terrible.

Does that answer your question?

Chairman LIEBERMAN. It sure does, and that is the point here. We pass laws, here in Congress and then the Executive Branch implements them. There is a lot of room in the implementation for values to be imposed that do not appear to be the intention of Congress in adopting a law like the Federal Land Policy and Management Act.

In your case, just to state it for the record, "November 21, 2000, the Department of Interior published regulations to remedy longstanding problems associated with pollution from hard-rock mining on land managed by the Bureau of Land Management."

Then, on October 30, 2001, almost a year later, in a new administration, BLM issued a final review that removed the regulation's language providing for the denial of mining plans that could cause, "substantial irreparable harm," as well as many environmental performance standards.

So there is a wording change that removes, in a sense, an opportunity for hope from you. That is quite significant.

What is the status of your own efforts and the folks, your neighbors in Yarnell, to try to protect yourselves?

Mr. NEWHOUSE. Historically or currently?

Chairman LIEBERMAN. Right now.

Mr. NEWHOUSE. Right now the whole mining project is in limbo I would call it. It has never been denied. The application has never been denied. The company ceased funding of the EIS process, citing the depressed commodity metals market, but it still has the opportunity, and they have announced that if there is an increase in metals prices, will resume the project.

So it has been, we are neither afoot nor on horseback at the moment. It is sort of they can come back, with certain mitigations, if they will continue funding the process.

Chairman LIEBERMAN. Thanks, Mr. Newhouse.

Ms. SIECK, among the pieces of evidence that you submitted was a picture of a park ranger in Yellowstone wearing a respirator at the west entrance which was just taken about a month ago.

Is there any argument that the air quality problems that the park rangers are facing come from anything else but the snowmobiles?

Ms. SIECK. No, there is not.

Chairman LIEBERMAN. Let me just state for the record, there is not significant vehicular traffic or any other kind going—

Ms. SIECK. No, there is no other vehicular traffic at this time.

Chairman LIEBERMAN. Let me ask this question. I understand that EPA is developing a proposed rule for off-road mobile sources. I want to know what you know about what EPA is doing and how you think their actions could impact, in reality, life in Yellowstone and maybe elsewhere.

Ms. SIECK. Let me just clarify one thing about your previous question. There are snowcoaches on the same roads as snowmobiles, but in small numbers.

Chairman LIEBERMAN. Yes. I wanted to make clear. I know it is clear to you and others who have been there, but there are not a lot of cars or trucks going around.

Ms. SIECK. There are no trucks or cars.

Chairman LIEBERMAN. Right.

Ms. SIECK. Right. As far as the proposed EPA rule, EPA is a cooperating agency with the Park Service on the winter use decision in the supplemental process, and the EPA representative has made it clear to the Park Service and to the other cooperating agencies and states that the Park Service should not rely on EPA to protect Yellowstone's air quality. The EPA rule will be a national rule, and it very likely will not be protective enough for Yellowstone's Class I airshed status under the Clean Air Act and for what all Americans believe national parks should be, which are the cleanest, most healthful places in this country.

What the EPA rule appears to be headed towards is, and the final rule is due this fall, is they are looking at 30-percent to 50-percent reductions in snowmobile emissions within the next 10 years. So there is nothing timely, and there is nothing significant enough to ameliorate the problems that we are seeing right now in Yellowstone.

I would add one final thing to that. The snowmobile industry also has been vocal to the Environmental Protection Agency that they don't believe that EPA should regulate snowmobiles at all, and they are attempting to have their regulations be as mild as possible.

Chairman LIEBERMAN. So the industry's answer is that technology will make this better.

Ms. SIECK. Yes.

Chairman LIEBERMAN. But by when and by how much?

Ms. SIECK. That is the question, and we don't believe that there are answers to that question, and the answers that we have seen are not strong enough to warrant delaying protections for Yellowstone and allowing these problems to continue.

Chairman LIEBERMAN. Am I correct that additional funds have been given to Yellowstone this year to reduce the impacts of snowmobiling?

Ms. SIECK. Yes. There was an additional \$264,000 that went this year to a pilot project to try and mitigate the impacts from snowmobiles. The examples I mentioned in my testimony about the 1 in 10 snowmobilers being cited, the wildlife—

Chairman LIEBERMAN. That is what the money has been used for.

Ms. SIECK. Well, the money was used to try to prevent things like that, and what we have seen this winter is that, in spite of that quarter million dollars, the problems have continued and worsened in some cases.

Chairman LIEBERMAN. Sure. Thanks.

Dr. Torbit, probably appropriate, before I ask you a question or two, to indicate, for the record, that our colleague, Senator Craig Thomas has submitted a statement for the record to be printed in regard to the Red Desert.<sup>1</sup>

Dr. Torbit, the Bureau of Land Management has requested additional funding to update its management resource plans, which are required by law, developed locally, as you know, and provide for the types of activities that will occur on BLM-managed land.

We understand that BLM in Washington recently instructed its field staff to issue leases and permits to drill, even if these plans, management resource plans, are out of date. Are you familiar with that situation? And, if so, could you share what you know about it with the Committee?

Mr. TORBIT. I am familiar with it because that is the way things work in the West with the BLM. Frequently, during the resource management planning process, areas are identified for oil and gas leasing. And whether you work for the State or another Federal agency or you are a citizen and you provide comments that say there are problems with leasing in this area, we probably shouldn't

<sup>1</sup>The prepared statement of Senator Thomas appears in the Appendix on page 608.



do it, you think about these other factors, we are told, "Wait. We will do the detailed environmental analysis later when we actually go through the leasing process."

Of course, then the leases are bought, the companies feel like they have a right to access land, and all of the environmental compliance is done in a hurry-up mode. Frequently, many companies wait until the end of their lease before they even start exploration and development, and it is very common for areas to be leased or developed, even if the life of the RMP has expired. That is kind of business as usual in the West.

Chairman LIEBERMAN. You also testified that BLM is characterizing wildlife lease stipulation as obstacles to production. So I am going to ask you to just explain a little more about what wildlife lease stipulations are and how would they represent obstacles?

Mr. TORBIT. In the planning process, before a lease would be available for any company to purchase, BLM reviews, in the case of Wyoming, it reviews the area with the Wyoming Game and Fish Department to look for wildlife conflicts. It could be a crucial winter range, the only area within 500 square miles where pronghorn can winter, could be a sage grouse nesting area. If they verify that data, then they put the stipulations on the lease. It is sort of the "buyer beware" that before you purchase this lease, there are these restrictions.

So, for example, with the winter-range stipulation, you are precluded from drilling, not producing, but just the drilling phase of the lease, you are precluded from drilling, say, depending on the area, say, from the 1st of December through the 1st of May, simply to allow wildlife access to that site. Similar for the sage grouse nest, during the nesting or the breeding season, you are not allowed to drill. You come in later, you drill, you hit, you can produce, those stipulations go away.

So the buyer is aware that those stipulations are on the lease when they buy them, in theory. They may purchase them for a lower price because of those complications. My experience is that as soon as the company is interested, after they have purchased the lease, they are interested in production, they simply go to the BLM and ask for those stipulations to go away, and frequently they do.

Chairman LIEBERMAN. A final question for you. Your testimony explained that if environmental protections are already incorporated into existing development decisions, Federal managers are encouraged to be creative in circumventing those protections to benefit energy production. Can you give us any examples of that?

Mr. TORBIT. Well, the previous examples of wildlife stipulations I think are the ones I am most familiar with.

Chairman LIEBERMAN. Yes, that is what you were——

Mr. TORBIT. But there are also situations I am familiar with where directional drilling was initially proposed to be done on an area to avoid a watershed or some of these other resources. When it came time to do it, the company simply said we cannot afford it, and so that restriction, too, was waived.

I might just add that one of the things that concerns me is the idea or the rhetoric that somehow things are out of balance, and we have got to put that balance back by being more aggressive

with our energy exploration and development. I think that it is important to point out that these laws have been operational for many, many years. I have worked with many people in the energy business who have told me something must be working if both sides are mad about it. You say they are not tough enough, and I think they are too tough, something must be working.

And so I think that is really what the environmental laws have been in the past. They have struck that balance. And to those who would say things are out of balance, and we have got to tip this scale the other way, I would just mention something my great grandfather said to me a long time ago, "You can put your boots in the oven, but that don't make them biscuits." You can say a lot of things, but that doesn't mean that is what is happening on the ground.

Chairman LIEBERMAN. Hear, hear. I can't top that. [Laughter.]

That is the place to conclude the hearing. "You can put your boots in the oven—"

Mr. TORBIT. But you can't make them biscuits.

Chairman LIEBERMAN [continuing]. "But that doesn't make them biscuits." OK.

I thank all of you. I apologize that more Members of the Committee were not here today. The scheduling is difficult, people probably had other meetings and other hearings. Because I have been so moved by the testimony, I am going to take it on myself to summarize the testimony and submit it to the other Members of the Committee. I think it is important, no matter where you are coming from, to hear these stories that you have told really quite compellingly. So I thank you.

I thank Dr. Green, and I thank the four others of you whom I would describe as environmental advocates or just plain citizens who are upset about a specific problem going on. I promise you that your testimony has truly affected me, and informed my reactions to where we are now in environmental protection. I am going to tell your stories as I go ahead with my work.

Hopefully, all of us together can put the brakes on the direction in which the administration's environmental policy is going before it does irreparable harm. It is not just vague, it is very specific and personal, as your testimony indicated. So I thank you very much for the time and effort you have given us today.

I am going to leave the hearing record open for 2 weeks in case any of the Members of the Committee want to ask you questions in writing or that you would like to add any more testimony to the record.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12 p.m., the Committee was adjourned.]

## A P P E N D I X

---

### PREPARED STATEMENTS OF SENATOR BUNNING

MARCH 7, 2002

Thank you, Mr. Chairman. Today's hearing on the environment is very timely. I suspect that some of the issues brought up today may be debated on the Senate floor as we continue working on the energy bill.

I don't think there is anyone in this room that would argue that protecting the environment isn't important. We may disagree on the best way to do this, but I seriously doubt that anyone in Congress or in the administration doesn't want to protect our streams, forests, and air.

However, some people seem to think that protecting the environment and encouraging businesses to grow cannot be achieved at the same time.

I disagree with this assumption.

It is important that we reach a balance between environmental interests and business interests. With the right technology and incentives companies can continue to grow and the environment can be protected.

Putting in place regulations or laws that are too strict can have a devastating affect on our economy, as companies struggle to meet new costs.

We saw this when the CAFE standards were implemented and the auto manufactures ended up laying off workers to help cut costs.

We have also seen unanticipated consequences of CAFE standards. More than 40,000 people have died in crashes who might have otherwise survived had their vehicles been heavier.

Of course, putting in place regulations or laws that are too weak can damage the environment. That is why it is so important to find the right balance.

I look forward to hearing from our witnesses today, and gaining their perspectives on this important issue.

Thank you, Mr. Chairman.

---

MARCH 13, 2002

Thank you, Mr. Chairman. Today's hearing is the second of two this Committee is holding on the Bush Administration's environmental policy.

Unfortunately, it often seems that when you talk about environmental issues, it turns into an "US-against-them" discussion, with a "winner-take-all" attitude. However, environmental policy doesn't exist in a vacuum, and it must be balanced against business interests, State rights, and land-owner rights, among other things.

We all want clean water and air, and we have come a long way in protecting our environment. But, it's important to remember that growth and productivity do not necessarily come at the expense of the environment.

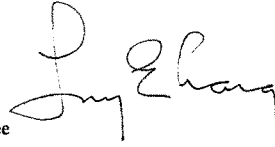
In fact, according to the White House, air pollution has declined by 29 percent over the past 30 years, while our economy has grown almost 160 percent.

Businesses should be given the right incentives and flexibility so they can meet environmental standards, without having to lay off their workers or even close their doors.

I certainly realize that we still have some major environmental challenges to overcome. At the end of the day, however, the programs that will probably have the most success are those that have the support of communities, environmentalists and businesses.

I look forward to hearing from our witnesses today, and appreciate the time they have taken to be here today. Thank you.

Testimony  
Of  
Senator Larry E. Craig  
Before  
Senate Government Affairs Committee  
March 7, 2002



Good morning Chairman Lieberman and Committee Members, thank you for the opportunity to speak this morning. As Chairman of the Subcommittee on Forests and Public Lands of the Energy and Natural Resource Committee I held a series of five hearings between November 1999 and March 2001 to examine the development and potential consequences of the Clinton Administration's Roadless Area Conservation Rule. Our hearing record details numerous questions about the process and data used to develop the Roadless Area Conservation Rule making. While I will not recite every one of those questionable actions, I will highlight a number of the more egregious actions we uncovered during our hearings.

I'm very happy to see the Government Affairs Committee's willingness to examine the Clinton Administration's Forest System Roadless Area Conservation Rule because I believe the process they followed left a lot to be desired. I also plan on making a number of comments on the Bush Administration's efforts to improve the Clinton Administration's wrongheaded Hard Rock Mining 3809 Rule.

To begin with you need to understand that the issue of Roadless Areas within the National Forests has been around for more than 30 years. In 1972 the Forest Service began a Roadless Area Review and Evaluation (RARE I) to examine how much land

might be set-aside and recommended for potential Wilderness. A more comprehensive evaluation, RARE II, was undertaken in 1982. That review examined a little over 62 million acres. Through the 1980's and early 1990's the Forest Service finalized the forest planning documents required under the National Forest Management Act (NFMA). Congressional action on Wilderness combined with those NFMA forest plans resulted in a number of land allocations and yes some timber harvesting in roadless areas.

Those various Wilderness bills passed by Congress allocated 24% of the RARE II lands to Wilderness. The NFMA forest plans recommended 10% of the 62 million acres for Wilderness, 17% of the land for future Wilderness Study, 38% of the land for other multiple-use that excluded timber harvesting, and 14% of the 62 million acres to be considered as potentially available for timber harvesting.

From the time RARE I was completed through 1998, less than 1.1 million acres of the original 62 million acres studied were utilized for timber harvesting. Despite the almost hysterical rhetoric by Forest Service Chief Mike Dombeck and others in the administration, less than 2% of the entire area studied in RARE II had been entered, or would likely be entered in the next five years for timber harvesting. Simply put, this is a problem that has been around for 30 years and is likely to be debated again and again.

I think your Committee also needs to understand the interplay between the Subcommittee on Public Lands and Forests, and the Clinton Administration on this issue. In 1998, after an Interior Appropriations vote on Forest Service Road Construction, I

invited then Chief of the Forest Service Mike Dombeck to my office to discuss the Roadless issue. I offered the Chief my help in working cooperatively to resolve this thorny issue. I was politely informed by Chief Dombeck that they would rather resolve this issue administratively. Let me illustrate the manner in which this was handled.

In May of 1998 then Vice-President Al Gore, in a speech to the League of Conservation Voters, stated that not only would he eliminate all road building, but he would prohibit all timber harvesting in Roadless areas. In effect he announced the selection of the final alternative before the EIS and draft rule making had begun.

On October 13, 1999 President Clinton in a speech at Reddish Knob, on the George Washington National Forest in Virginia directed the Forest Service to develop and prepare for public comment regulations to end road construction and to protect inventoried and un-inventoried roadless areas across the National Forest System.

On October 19, 1999 the Forest Service published a Notice of Intent to Prepare an Environmental Impact Statement to proposed protection of certain Roadless Areas.

In June of 1999 Chief Dombeck, in a letter to his employees on the Roadless issue, stated that "Collaboration does not alleviate our responsibility to make decisions that we believe are in the best long-term interests of the land or the people who depend on and enjoy it." Thus making it very clear that Mr. Gore's statements would be carried out.

In the President Clinton's 2000 State of the Union Address he commended Vice President Al Gore by exclaiming that together they had "in the last three months alone helped preserve 40 million acres of roadless in the national forests."

On November 13, 2000 the final EIS of the Roadless Area Conservation Rule was released and on January 12, 2001 the final Roadless Area Conservation Rule was published in the Federal Register. Therefore the agency theoretically read, absorbed and responded to over 1.2 million public comments in a little under two months which was disrupted by the holiday season.

Mr. Chairman, we may disagree on whether or not this is good policy, but I doubt we will disagree with the perception of many who are astonished that any federal agency could develop such a comprehensive plan in a little over one year, and then sort through, catalog, and respond to over 1.2 million comments in two months.

Given the earlier comments I've sighted by both President Clinton and Vice-President Al Gore it is clear to me that the decision on what to do about Roadless was sealed on October 13, 1999 and the rest of this effort was little more than window dressing.

After nearly a year's worth of hearings about the problems with the development of this rule, it came as little surprise to many, including myself, when on May 10, 2001 U.S. Federal District Court Judge Edward Lodge stayed the implementation of this rule. While Judge Lodge's stay has been appealed to the Ninth Circuit Court of Appeals, the fact remains that no administration, not the Bush Administration, not the Clinton Administration, nor any future administration can ignore his ruling. Thus, even if the Bush Administration were hellbent on implementation, they couldn't carry forward in the face of Judge Lodge's decision. In addition, the Ninth Circuit has not yet ruled on the appeals, and current law makes it impossible for the administration to implement the Roadless Area Conservation Rule. Quite frankly Mr. Chairman, I'm disappointed that the Senate Government Affairs Committee would insinuate, by holding this hearing, that the Bush Administration should behave in a manner that would ignore Judge Lodge's ruling.

Chairman Lieberman, I've known you for a very long time and I have always known you to be a man who believes in the rule of law and who holds our courts in the highest regard. I think you and I would agree that it would belittle this Congress to second-guess a U.S. District Court ruling, particularly one that appears to be as well thought out as this one. I believe that your Committee's examination of the Bush Administration's implementation of the Roadless Area Conservation Rule is at the very least premature.



I know that both the Natural Resource Defenses Council and Professor Thomas McGarity, both proponents of the Roadless Rule, are here today to attempt to convince you that the Bush Administration is somehow skirting the law by refusing to fully implement the Roadless Area Conservation Rule. But, the simple fact is that Judge Lodge in his May 10, 2001 ruling said that: "*The Forest Service is **HEREBY ENJOINED** from implementing all aspects of the Roadless Area Conservation Rule, including (1) the final rule published on January 12, 2001, and (2) that portion of the Roadless Area Conservation Rule that was published November 9, 2000 as part of the 'National Forest System Land Resources Management Planning: Final Rule.'*"

I ask that a copy of Judge Edward Lodge's May 10, 2001 Stay Decision be entered into the record of this hearing.

I also expect that one or more of the witnesses you will be hearing from today will decry the fact that the Bush Administration chose not to argue against Judge Lodge's Stay Decision in the Ninth Circuit Court of Appeals. They are likely to suggest this implies that this Administration is somehow less committed to dealing with the Roadless Issue than past Administrations. I think you would be wrong to draw this conclusion. The fact is that every Administration faced with defending agency decisions in court examines each case on its merit and then decides which course of action is best for the government. In April of this last year the Washington Legal Foundation provided me with an analysis of the Clinton Administration's failure to defend or appeal cases that went against its natural resource agencies during its eight long years in office.

The Washington Legal Foundation found, “13 occasions when the Clinton Administration refused to defend resource management decisions of its predecessors, choosing to accept an injunction or remand from a U.S. District Court rather than defend those decisions in a U.S. court of appeals.” Further, “On at least 28 other occasions, the Clinton Administration refused to defend its own resource management decisions in a court of appeals after receiving an injunction or remand from a U.S. district court.” The Washington Legal Foundation also found that: “The Clinton Administration’s defense effort in the Supreme Court was even worse. Apart from the district court losses that it refused to defend, the Clinton Administration lost more than 20 resource management cases in the U.S. court of appeals after winning in the district court. More than half of these losses were in the Ninth Circuit court of appeals, the appellate court with the highest reversal rate (more than 90%) in the United States. Yet in its eight years in office, the Clinton Administration asked the Supreme Court to review an adverse resource management decision by a court of appeals just once.”

As you can see, Mr. Chairman, it is common for an Administration to make the decision to allow a district court ruling to stand and to forgo an appeal of a case. It is do all the time and even the Clinton Administration’s record on resource management court cases shows this. I ask that a copy of the Washington Legal Foundations April 25, 2001 analyses be added into the record of this hearing.

In 1969 Congress passed the National Environmental Planning Act (NEPA) and the National Forest Management Act (NFMA) in 1976. Combined, these two laws form the foundation for developing new policy for our National Forests. They both involve a significant investment in public input on decisions. Over the years, groups like the Natural Resource Defense Council have brought countless legal challenges against both forest plans and projects that they felt short-circuited one or both of these laws.

On average it now takes the Forest Service up to five years to complete a forest plan for forests that contain 1.5 to three million acres. It can take as long as three years to complete an Environmental Impact Statement for a timber sale project that involves less than 300 acres of harvest units in a 1,500 acre sale area. Yet the Clinton Administration was able to complete both an Environmental Impact Statement and the *Administrative Procedures Act Federal Rule on Roadless Area Conservation Rule* in just over one year.

While I can understand why groups like the Natural Resource Defense Council might like the result they obtained from the Clinton Administration and would prefer that the ruling be implemented immediately, it is a bit disingenuous for them to consistently complain about projects moving forward too quickly and then demand the Bush Administration ignore a U.S. District Court when it ruled against the government. And let me be clear on what Judge Lodge said about the Clinton Administration's process. He said in his April 5, 2001 ruling that: "*It appears from the record that the message disseminated during the development of the EIS was perceived by the public to be, at*

*best, confusing and, at worst, inadequate.”<sup>1</sup> “At this point, the evidence is that the Forest Service did not, and in fact could not, provide meaningful disclosure as descriptions and maps of the areas to be impacted by the rule were unavailable and Forest Service representatives were ill-prepared to answer the questions and concerns of the general public.<sup>2</sup> . . . NEPA requires full disclosure of all relevant information before there is a meaningful public debate and oversight.<sup>3</sup> . . . In fact, this is strong evidence that because of the hurried nature of this process the Forest Service was not well informed enough to present a coherent proposal or meaningful dialogue and that the end result was pre-determined. Justice hurried on a proposal of this magnitude is justice denied. . . Based on the foregoing, the Court conclusively finds that the comment period was grossly inadequate and thus deprived the public of any meaningful dialogue or input into the process - an obvious violation of NEPA.”<sup>4</sup> [And finally], the Court finds it likely that Plaintiffs would succeed on the merits of their claim that the Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.”<sup>5</sup> These are very strong words, Mr. Chairman and I believe for good reason.*

Last summer, my staff took the time to better understand why people are so upset over the Roadless Area Conservation Rule. I would remind the Committee that in their

---

<sup>1</sup>. 01-CV-11 March 5, 2000 - Judge Lodge Order pg - 14

<sup>2</sup>. 01-CV-11 March 5, 2000 - Judge Lodge Order pg - 14 & 15

<sup>3</sup>. 01-CV-11 March 5, 2000 - Judge Lodge Order pg - 15

<sup>4</sup>. 01-CV-11 March 5, 2000 - Judge Lodge Order pg - 15

<sup>5</sup>. 01-CV-11 March 5, 2000 - Judge Lodge Order pg - 17

final EIS, the Forest Service provided maps of designated Roadless areas at the State level. Thus for instance, in Idaho, due to the map scale, most of the Roadless Areas were shown to be very small, but as we sampled forests across the country we discovered why folks are so upset. We analyzed approximately 44 million of the 60 million Roadless acres included in the Clinton Roadless Initiative. In short we found 28,000 acres of Non-Forest Service federal lands within the RARE II (Roadless Area Review and Evaluation II) areas which, at the least, surfaces an interesting questions about conflicting federal agency management goals. We found nearly 43.5 thousand acres of State lands within the RARE II Roadless Areas and more than 421.5 thousand acres of privately owned lands within these areas. Interestingly, we found no evidence in the Forest Service EIS to suggest that the State, private, and other Federal landowners were notified by either national or local Forest Service officials that this policy could affect the National Forests that surround their lands.

Chairman Lieberman, if the local government were going to change the zoning around your home or the home of one of your constituents and then failed to notify you of the change or what it might mean, I imagine you would be upset and skeptical about the process used to develop the zoning rule. This is no different than the Roadless Area Conservation Rule. The Forest Service developed this rule in a very compressed time frame, with little or no description of the potential impacts of the rule at the local level. It is not surprising that so many people are upset, and it is no wonder why Judge Edward Lodge stayed the implementation of this rule.

Our staff analysis found other very disturbing information. For instance on the Boise National Forest we found five Roadless Areas with forest development roads within in them. We also found a fire tower and an FAA radar site in a RARE II Roadless Area where road maintenance and reconstruction will no longer be allowed. In my home state of Idaho, on the Panhandle National Forest, we found 13 Roadless Areas with National Forest System Roads within them, along with at least three mines, one Forest Service campground and one power line.

On the Superior National Forest in the State of Minnesota, we found three Roadless Areas with National Forest system roads in them, along with four public boat ramps, three Forest Service campgrounds, and one mine.

On the Chequamegon-Nicolet National Forests in northern Wisconsin we found 1,317 acres of private land and 2,886 acres of state lands within the RARE II Roadless areas.

On the Monongahela National Forest in West Virginia we found 10 RARE II Roadless areas with National Forest System Roads, along with a pipe line and parts of a railroad right-of-way. One Roadless Area that we examined was made up of 75% private property!

On the Dixie National Forest in the State of Utah we found 14 RARE II Roadless Area's with National Forest system roads within them, as well as one reservoir and one

water pipeline in a Roadless Area. Do you suppose the communities that depend on that water would like to have known the potential impact of the Roadless Area Conservation rule at the local level?

On the Gila National Forest, in the State of New Mexico, eleven of the RARE II Roadless Areas on that forest have National Forest system roads within them, as well as one that had a water pipeline.

I will finish with the Pisgah National Forest in North Carolina, where we found five areas with one or more National Forest System Roads in them, and one Roadless Area with a FAA Microwave Tower Site in it.

The point of going through this litany was to help your Committee better understand why national policy, such as this, can be better developed at the local level, and to help you put Judge Edward Lodge's decision, to stay the implementation of this wrongheaded rule, in a better context.

**The 3809 Hard Rock Mining Regulation**

Mr. Chairman the Hard Rock Mining Regulations seem to be another instance where the NRDC and others seem to be making a mountain out of a mole-hill. It is becoming increasingly clear that the bonding requirements of the Clinton Administration's 3809 rule no longer square with the ability of mines to get bonding in the wake of the September 11 terrorist attacks. I am told that surety bonds are no longer

available to the mining industry at any price! The surety bonding market simply has no interest in writing bonds for the mining industry, especially given the open-ended liability that is attached due to the manner that the BLM is calculating the bond amount. Equally as troubling is a in the 3809 rule is an requirement that the BLM may sponsor public visits to mines on public lands. To begin, with unpatented mining claims are private property and the Secretary has no right under FLPMA to allow or invite members of the public to access mine sites without the express permission of the Operator. The reality is that the BLM lacks adequate staff to properly deal with requests for public visits and provide proper safety training to members of the public prior to a tour.

I understand that some folks in the environmental movement believe that the federal land management agencies should be allowed to write regulations that are not grounded in law. Specifically, they seem to be upset that the new 3809 regulation no longer allows the Department of Interior to deny a permit for a proposed mine on the grounds that it would result in "substantial irreparable harm" to the environment or to historic and cultural resources. When the day comes that we allow our federal agencies to make up regulations that are not based in the laws that Congress has passed, our constituents will wonder just what role Congress plays and whether or not it is needed. While I understand why the environmental groups would want to give the last Administration with such powers, I am at a loss to understand why they would be making this argument at this time. Surely they don't want this, or some future Administration, to ignore the underlying laws on other regulations implementing the Clean Air or Clean Water Acts or heaven forbid the Endangered Species Act. Mr. Chairman, I don't think it



wise to say to our public land managers that it is OK to ignore underlying statute when writing regulations. That is a sword that cuts both ways and such a policy will lead to the complete abdication of power to the federal regulators. I don't think either you, or I, or any other member of the Government Affairs Committee wants to go down that road.

Mr. Chairman we can argue over the environmental policies that currently exist in this country. There is room in this debate for opposing views. But in the case of the NRDC's concerns on the Roadless Rule, I don't think that any of us want this or a future Administration, to ignore decisions by the Federal Courts. In the case of the Mining Rule, I don't think any of the members of this Committee believe it wise to allow the Administration to simply ignore the laws that Congress has passed and that our courts have upheld.

I appreciate the opportunity to testify and would be happy to answer any questions you might have.

**Testimony of Governor Christine Todd Whitman,  
Administrator of the U.S. Environmental Protection Agency,  
Before the  
Committee on Governmental Affairs  
United States Senate  
Washington, D.C.**

**March 7, 2002**

Good morning, Mr. Chairman, Senator Thompson, and members of the Committee.

Mr. Chairman, I want to thank you for calling this hearing to review the environmental record of the first year of the Bush Administration. I am proud of what EPA has accomplished over the past 13 months and welcome any and every opportunity to tell people about it.

I should acknowledge right up front that I know that the chairman does not necessarily share my assessment about the past year. I read your recent speech in California and I understand your concerns. But in reading that speech I also found that we share many of the same fundamental objectives and we agree in many cases on how to achieve them. I think there is a great deal of common ground that we can work productively, and I look forward to doing so.

But to enable us to work together more effectively, I think it would be helpful to change the tone in Washington when discussing environmental issues. I understand that any discussion about environmental policy often generates a great deal of emotion. But I also believe that all of us involved in making that policy share a deep commitment to protecting the environment and safeguarding the public health. Questioning the motives of one another can actually hinder progress and delay policies that will help improve the state of the environment. Let's do better than that for the people we serve.

The bipartisan effort we all made together in enacting brownfields legislation should, in my opinion, be the model for how to advance environmental policy. After being stalled for many years, people from both sides of the aisle came together to advance the goal of cleaning up these blights on America's landscape. There's no reason why we can't do the same with other issues of great importance to the American people.

At my confirmation hearing, and many times since, I said my goal at EPA would be to leave America's air cleaner, its water purer, and its land better protected than it was when I started. I am pleased to report that we have made real progress in meeting that goal and I'd like to take just a few minutes to highlight some of our most important accomplishments to date.

First, cleaner air. Several weeks ago, President Bush proposed what will become, if enacted by the Congress, the most significant improvement to the Clean Air Act in more than a decade. His Clear Skies proposal will achieve mandatory reductions of 70 percent in three of the most noxious air pollutants emitted by power plants – nitrogen oxides, sulfur dioxide, and mercury. These are reductions from today's levels, which represent significant improvements in air quality over the past twenty-plus years.

Clear Skies would also reduce fine particle pollution over the next ten years faster than would occur under the current Clean Air Act. This would also accelerate the implementation of our existing fine particles standard. The new findings published this week by the American Medical Association underscore the importance enacting of Clear Skies to help address this, as well as other health concerns.

The President's proposal will achieve these various reductions faster, cheaper, and with greater certainty than under current law. One might characterize this approach as "a market friendly way that encourages innovation, maintains flexibility for business, and achieves the real environmental results we need."

In fact, Mr. Chairman, that's exactly how you, in your speech in California, described the program on which we modeled Clear Skies – the Acid Rain Trading Program established as part of the 1990 Clean Air Act amendments. We agree with you that, and I quote, "cap and trade works" and has been "a resounding success." That's why we've used the acid rain program as the model for our Clear Skies proposal.

I believe we can make some real progress on this issue and I look forward to working with Chairman Jeffords and with you and your colleagues on the Environment and Public Works Committee to enact historic clean air legislation.

Before I leave this issue, I'd like to say a word about the EPA's review of the New Source Review Program. NSR is a program that needs to be fixed. The National Governors Association said so quite clearly. So did the Environmental Council of the States. We are still deciding how we can improve NSR to make it more effective in accomplishing its goal – fewer emissions from power plants and cleaner air for all Americans.

But despite what some have said, we are not going to eviscerate NSR. We are not going to undermine the Clean Air Act. We are not going to stop enforcing the environmental laws that protect the health of our fellow citizens. We are going to meet our obligation to the American people.

We are also meeting our obligation to the American people and the world community with respect to climate change. Last month the President announced a sensible, responsible proposal to cut greenhouse gas intensity of the United States by 18 percent over the next ten years. His proposal will ensure that our country is meeting its obligation to help create a cleaner, healthier world community without unfairly penalizing American workers or the citizens of the developing world. At the same time, his proposal will allow us to take future actions – as the science justifies – to stop, and then reverse the growth in greenhouse gas emissions.

This proposal is supported by the President's budget request. In it, he provides \$4.5 billion for global climate change activities – a \$700 million increase – which includes an unprecedented commitment to tax credits for renewable energy. This is a voluntary program that will give businesses the incentive to make long-term investments and develop new technologies

to combat climate change.

In addition, the President's proposal includes incentives for industry to act now to cut their greenhouse gas emissions. By taking steps today to achieve such reductions, they can earn credits against any future mandatory reductions. This is a commonsense, market-based idea that I believe will produce real results.

It also complements a program we just launched at EPA called Climate Leaders. The participants in this voluntary program agree to pursue aggressive emission reduction goals. Already, 11 companies have signed on, including Florida Power and Light, Miller Brewing, and Cinergy.

These two proposals build on other action we took over the past year to help improve air quality and protect the health of all Americans. Last year we proposed a rule to control the emissions that have contributed to the haze that has for too long shrouded some of America's most scenic vistas in our national parks. We will restore the views that have captivated and inspired countless Americans for generations.

We will also help restore the health of people suffering from respiratory ailments. Our decision to move forward with stringent new emission standards for diesel trucks and buses and the reduction of the sulfur content in diesel fuel will save as many as 8,300 lives a year, while preventing more than 360,000 asthma attacks in children. I was pleased the Sierra Club called that decision, "a bold step toward making the air cleaner for all Americans."

The Administration has also taken a number of other steps to make life better for children. These include a targeted public awareness campaign on the dangers of second-hand smoke and the establishment of four new Centers for Children's Environmental Health and Disease Prevention research.

And while I am talking about children's health, I should also mention the \$67 million grants the Administration awarded last year to fund lead removal activities, as well as the action we took to ensure that families will know about lead in their communities. We are also tripling the number of inspections to verify compliance with lead paint disclosure laws. Both through vigorous enforcement and proactive outreach, this Administration has made fighting childhood lead poisoning a top priority.

Every one of these actions is making America a better place to live.

Next, purer water. I believe that water quality and supply issues will likely pose the major environmental challenges of the 21<sup>st</sup> century. Despite significant progress over the past 30 years, we still have much to do. Because nonpoint source pollution is now the major contributor to water pollution nationwide, we are redirecting our attention away from simply looking at water quality at the end of a particular discharge pipe to looking at practices in entire watersheds and how they affect the quality of all the water in that watershed.

The President's proposed budget includes funding for a watershed initiative that will

build partnerships for cleaner water in 20 of America's most threatened watersheds. Our proposal, modeled on the "Clean Charles 2005 Initiative" up in the Boston area, will help us craft solutions for each watershed based on its unique needs and challenges.

Our focus on watersheds will also help transform the way Americans think about how they can make a difference for cleaner water. As people learn more about the ways even small, individual actions can add up to big environmental consequences, they will become an active partner in our effort to leave America's waters purer than they were when we arrived.

In addition to our innovative targeted watershed proposal, this Administration also recognizes the importance of helping state and local governments improve both their drinking and wastewater infrastructure. The President's budget proposal for the state drinking water and clean water revolving funds is the largest combined request in history – \$2.1 billion. And that's on top of the \$1 billion requested for other EPA water quality programs.

We have also moved quickly to help secure America's drinking and waste water systems against disruptions from terrorist attacks. Working with Sandia Labs, we greatly accelerated work underway to develop vulnerability assessment tools for water utilities, finishing the work months ahead of schedule. In addition, we are beginning to distribute to the states the nearly \$90 million already appropriated we will be spending to help water utilities perform their vulnerability assessments.

I would also like to mention briefly action we took last year regarding the acceptable levels of arsenic in America's drinking water. As some will remember – and as some others will never let me forget – last spring I decided to take some additional time to evaluate both the science and the cost benefit analysis behind a final-hour proposal by the previous Administration to lower the arsenic limit.

After additional study, we found that the new limit was scientifically justified. That is why it is going forward, on the schedule outlined in the initial proposal. But the study also showed us that approving the new standard meant that many small water systems would have trouble meeting it – unless they had some help. So I've committed to providing \$20 million over 2 years to help those systems meet the 10 parts per billion standard.

The review strengthened the consensus that a new protective standard was needed and helped build support for the resources needed to allow smaller water companies to meet the new standard.

I should also point out that we had some other important victories for clean water over the past year. We issued a rule to protect consumers from microbial pathogens like cryptosporidium. We affirmed the Tulloch Wetland Rule which will ensure that these important ecosystems will be better protected from inadvertent damage from nearby construction activity. And we are moving forward with a final cleanup plan that will rid the Hudson River of more than 150,000 pounds of PCBs, greatly reducing a health threat to both aquatic and human life.

These initiatives will help us meet our goal of purer water for all Americans in the years

ahead.

Finally, let me touch on the land – how we have worked to better protect it.

The most significant accomplishment in this area of the last year – indeed in several years – is the passage of historic brownfields legislation I mentioned earlier. This new law, which will help cleanup thousands of the most difficult brownfields that remain in America, is a fine example of how much we can accomplish when we work together in a bipartisan fashion. The Senate passed the brownfields bill 99 to 0. The House acted with similar enthusiasm.

This new law will truly be seen as one of the landmark pieces of legislation of the 107<sup>th</sup> Congress. It's an accomplishment of which every member of this committee – and of the Senate – can take genuine pride. And I'm pleased that in our budget request for FY 2003, the President asked for \$200 million to help state and local governments tackle brownfields projects. That's more than double from last year.

We have also continued to ask for steady funding for the Superfund program. In fact, our request for \$1.3 billion in next year's budget represents an increase over the current year's appropriation. That's because our request for brownfields funding is in addition to the Superfund funding, not part of it, as it has been in years past.

So, Mr. Chairman and members of the Committee, as I look at the record over the past year, I'm proud of what we have accomplished at the EPA. Because of what we have done, America's air will be cleaner, its water purer, and its land better protected. And that's important, not just because it means a cleaner environment, but because it also means a healthier America.

I said at the outset, Mr. Chairman, that I believe we share the same goals for protecting the environment in America, and I do. I thought your quote from Genesis was appropriate, "God took the man, Adam, and placed him in the Garden of Eden to work it and to guard it." I hope you would agree, though, that we women are given the same responsibility – and as for me, I intend to meet it. Each of us has the obligation to be a good steward of the Earth.

Mr. Chairman, I'm an optimist. I do not believe the opportunity for bipartisan cooperation on environmental issues has been lost. But it will be unless we spend more time trying to win environmental victories and less time trying to score political points. So let's move forward from here, determined to find the common ground that will advance our common goals.

Now I would be happy to take your questions.

Statement of Eric Schaeffer  
March 5, 2002

Thank you, Senator Lieberman and members of the Committee, for inviting me to testify today. Last week I wrote to Administrator Whitman upon leaving the Environmental Protection Agency to share some concerns about an assault by the energy lobby on our efforts to enforce the Clean Air Act. I would like to summarize those concerns, and ask that my letter be included in the record.

Until last Thursday, I managed the EPA program responsible for civil enforcement of most environmental laws. Two years ago, we brought lawsuits against plants owned by nine electric power companies for violating the Clean Air Act. Together, these companies release 5 million tons of sulfur dioxide every year – that's one out of every four tons emitted nationwide – and 2 million tons of nitrogen oxide. The acid rain and choking smog from that kind of pollution is a killer, responsible for an estimated 10,600 premature deaths every year, 5,400 cases of chronic bronchitis, childhood asthma, and over 1.5 million lost workdays. These are EPA estimates approved already provided to the Senate, and they document a clear and present danger to the public health.

This outrage should be stopped, and it can be if we are willing to enforce the Clean Air Act. But EPA's efforts to do so are threatened by a political attack on the enforcement process that I have never seen in twelve years at the Agency. The energy lobbyists, working closely with their friends in the White House and the Department of Energy, are working furiously to weaken the laws we are trying to enforce. Not surprisingly, defendants have slipped away from the negotiating table one by one, and our momentum toward settling these cases has effectively stopped.

Many of the plants EPA sued date back to the forties and fifties; all were built before the Clean Air Act New Source Review program became law twenty-four years ago. None meet the modern pollution control standards we have required of new plants built since that time. The laws broken reflect a bargain made with these relics of the smokestack age in 1977. These so-called "grandfathered" plants were allowed to avoid tough new standards for pollution control, as long as they were not modified to increase their emissions above a certain threshold. If you had the money to rebuild or replace a major component, so the law assumed, you could afford modern pollution controls.

Our lawsuits allege that this bargain was not kept. These companies undertook a number of large projects – some costing over ten million dollars – that increased their pollution, and without installing state of the art pollution controls.

Just before the new Administration took office EPA, working with states like New York and Connecticut, were making real progress bringing these cases to a successful conclusion. Cinergy and Vepco publicly agreed to reduce these pollutants by a combined total of 750,000 tons, the Tampa Electric settlement took 190,000 tons out of the year, and we had begun

productive talks with other companies.

But in the spring of 2001, it became obvious that the energy lobby was working inside the Administration to undermine our cases by changing the rules we were trying to enforce. And one by one, the companies we were negotiating with began slipping away from the table. Cinergy and Veeco still have not signed the agreements reached sixteen months ago. We did not receive any calls from the White House asking us to stop working on cases; this is not the movies. But attorneys representing the companies themselves asked why they should comply with a law the White House was trying to change, and we had no answer.

The energy policy announced by the White House last May calls for a review of the cases we filed and the New Source Review law we were trying to enforce. The Department of Justice eventually determined that our enforcement cases were, in fact, reasonable under the law. But the Administration's efforts to weaken the New Source Review laws continue.

The latest drafts in circulation – and defendants' lawyers always seem to have the latest copy – would widen narrow exemptions into gigantic loopholes that would swallow the law whole. One draft proposal would apparently allow the replacement of every part of a utility boiler, down to the concrete pad, without ever triggering the requirement for pollution controls. This kind of perpetual immunity from the law is exactly what courts have said is prohibited by the Clean Air Act. And now the Administration is advancing a new legislative proposal – the so called "Clear Skies" bill – that appears to cut pollution less than our enforcement actions would. Why chase a new bill through a long legislative process if we're not willing to enforce laws already on the books?

At a banquet accepting what amounts to the Academy Award for best lobbyist, the head of the Edison Electric Institute quoted from Machiavelli and summed up what appears to be the energy industry's guiding philosophy: "It is good to be feared." It was a revealing moment, but maybe that's business as usual for the utility industry.

But with more than 10,000 premature deaths a year, the stakes are too high for business as usual. We need a fair fight, in the open, and based on the facts, and then we need to choose. We need to choose between the law, and the lobbyists trying to undermine it. We need to choose between children with asthma, and influence peddlers who don't seem to care. If the Environmental Protection Agency makes the right choice, we'll all breathe easier.



United States Senate  
Committee on Governmental Affairs  
March 7, 2002

**Testimony of E. Donald Elliott<sup>1</sup>**

Mr. Chairman and Distinguished Members of the Committee:

It is a great pleasure to be testifying again before this distinguished Committee, chaired by my neighbor Senator Lieberman from my home state of Connecticut, just as it was equally a pleasure to testify in the past when it was chaired by Senator Thompson.

As an academic working in the field of environmental law as well as a former EPA General Counsel and a practicing environmental lawyer, I must respectfully disagree with the assessment of the environmental record of the Bush Administration offered by my good friends Professor Tom McGarity of the University of Texas and Greg Whetstone of NRDC, who I first got to know during his many years as a staffer for Democratic Congressman Henry Waxman.

When I last testified before the Committee last July, it was to support elevation of EPA to cabinet status. That is a good idea that has not yet been enacted despite bipartisan support and measured debate over substantive issues. As the mid-term Congressional elections approach, however, I regret that the spirit of bipartisanship, and mutual respect for those with whom we have honest disagreements over public policy seems to be getting lost in the hyper-charged rhetoric of an election year.

---

<sup>1</sup> Co-Chair Environmental Practice Group, Paul, Hastings, Janofsky & Walker; Professor (adj) of Law, Yale and Georgetown Law Schools; Former General Counsel, Environmental Protection Agency.

**The Environmental Double-Standard.**

It is ironic that just a little over year into the Bush Administration -- when several key appointments at EPA are still not yet confirmed -- and less than a month after the President announced the most far-reaching and progressive legislative proposals to reform the Clean Air Act in our history -- his Administration is now being denounced ii overheated rhetoric for “rollbacks” and “gutting” protection of the environment. On close examination, those charges turn out to be misleading political rhetoric. The Bush Administration occupies the sensible center on environmental policy. In my judgment, its policies are well-balanced and designed to protect the environment while also promoting economic development.

There is a fascinating double standard that is applied by some to environmental policies, particularly in election years. In many instances, policies that were praised as “reforms” when proposed under the Clinton-Gore Administration are now denounced as “rollbacks” or “gutting protection of the environment” when continued by a Republican President. Take for example the charge by NRDC in “Rewriting The Rules: The Bush Administration’s Unseen Assault on the Environment” that “the most telling indication of this administration’s intentions is the role played by the OMB. The Bush administration has given unprecedented new power to the OMB to gut existing environmental rules and bottle up new ones indefinitely.” It simply isn’t true that OMB’s role in reviewing regulations is “new” or “unprecedented.” It has been in place for the past five

presidential Administrations, including two Democratic ones, as this Committee well knows from its work in the regulatory reform field.

What is really “new” and “unprecedented” about OMB under this Administration is that OMB is sending “prompt” letters to agencies urging them to make regulations tougher in some instances, upgrading its scientific expertise, increasing transparency by putting documents onto the internet and through regular press releases, and aggressive actions to cut the backlog of overdue reviews of regulations to not languish “indefinitely.” But does NRDC mention any of these actual initiatives? Of course not. This is “Environmental Enron” -- charges are made in lurid language and then the mere existence of the charges is claimed to constitute the “issue.”

When Al Gore proposed a less adversarial approach to environmental regulation based on trading, more stakeholder involvement and more use of incentives rather than litigation, it was broadly hailed as “re-inventing government.”<sup>2</sup> When the Bush Administration actually tries to implement these same progressive policies in its proposed “Clear Skies” legislation, it is denounced as a “rollback” and creating “loopholes” in existing law. The basic idea behind the President’s proposal to is substitute modern, efficient cap-and-trade programs that will get massive pollution reductions quickly and reliably for the multiplicity of antiquated, slow and inefficient “command and control” programs that we have failed for the last 30 years. There is a strong, bi-partisan centrist consensus that we need a “Next Generation” of environmental

---

<sup>2</sup> Al Gore, *Improving Regulatory Systems: Accompanying Report of the National Performance Review* (Washington, D.C., September 1993).

policies.<sup>3</sup> It is not a radical “rollback” or creating a “loophole” to reform existing law to get better results. Many academics and professional reports have endorsed these kinds of changes. Indeed, the basic idea of substituting trading systems for a multiplicity of antiquated command-and-control programs under the Clean Air Act was actually proposed by EPA itself under Clinton-Gore as the “Clean Air Power Initiative” (CAPI). In the eyes of some, apparently the same centrist reform policies are “progressive” when proposed by Democrats, but “rollbacks” when proposed by Republicans.

#### The NSR Cases.

This brings me to the core of my disagreement with my friend Eric Schaeffer, with whom I served at EPA. I understand that Eric is resigning from EPA to assume a fine new job funded by the Rockefeller Foundation as a professional critic of EPA enforcement policies, and I wish him well in his new role. In his interview with ABC News’ “This Week” on Sunday, Eric stated: “compare the actual emission reductions we would get out of our [NSR] cases with this new bill ... We can do better under current law than what they’re putting on the table.”

Eric’s position reminds me of the old expression “when you’re a hammer, everything looks like a nail.” Eric is a hammer. He believes in controlling pollution the old-fashioned way by suing polluters one by one to get court orders requiring each individual plant to install air pollution controls based on best available control

---

<sup>3</sup> See, e.g. E. Donald Elliott, *Toward Ecological Law and Policy*, in *THINKING ECOLOGICALLY: THE NEXT GENERATION OF ENVIRONMENTAL POLICY* 170 (ed. M. Chertow & D. Esty, Yale Univ. Press, 1997).

technology. We have been doing this for the last 30 years, and as Eric himself points out, many plants remain uncontrolled or under-controlled.

In my opinion, if we follow the course that Eric advocates, they'll still be largely uncontrolled 30 years from now after years and years of litigation. Eric's position is based on the assumption that EPA is going to win all of the NSR cases brought under his supervision quickly and there won't be any appeals or setbacks along the way. That's not how litigation really works in my experience. Congressional hearings are not the appropriate place to try lawsuits, but not in my view, the NSR issue is a little more complicated than Eric acknowledges. Despite all the sanctimonious rhetoric about utilities "violating the law," no court has yet ruled in EPA's favor in any of EPA's NSR enforcement cases against the utilities. EPA has staked out a bold new theory in these cases. The statute itself requires emissions "increases" for a modification and past EPA interpretations required showing a causal relationship between the physical changes and the emissions increases. EPA is now asserting creative new interpretations of these concepts. In my opinion, EPA is not likely to prevail on every point in every case. With commendable honesty, Eric's own resignation letter even states "*Most* of the projects our cases targeted involved big expansion projects that pushed emission increases many times over the limits allowed by law." "Most," but not all. Some companies are being sued even though they did not violate the law as it had traditionally been interpreted. EPA may well lose some of those weaker cases, while winning others, and after another 10-15 years of litigation and a few appeals to the Supreme Court, we may all finally

understand what the very complex and convoluted NSR rules really mean. But is it worth going down that road? I don't think so.

Of course we need to maintain strong environmental enforcement as one tool, but if the last 30 years have taught us anything, it is that slogging thru case-by-case litigation is not the best way to get pollution reductions. Over the last decade, one small program involving less than ½ of one percent of EPA employees produced more pollution reductions than all the rest of EPA's air pollution control program combined (including all of Eric's enforcement cases), and with virtually 100% compliance; that was the Acid Rain Trading program that forms the model for the President's "Clear Skies" proposal.<sup>4</sup> We should build on what works well rather than investing more resources in what doesn't. The NSR program is broken and it should be replaced. The Clinton-Gore Administration proposed reforms to NSR in the Federal Register in 1996 and again in 1998, and there were no howls from environmentalists about creating loopholes. Only now when a Republican Administration is nearing completion of the NSR reform process that was begun under Clinton-Gore are these partisan charges now being heard.

NSR is an antiquated regulatory technology that just doesn't work very well. It makes no policy sense to discourage modernization of plant and equipment, or to

---

<sup>4</sup> The White House, Executive Summary – The Clear Skies Initiative February 14, 2002 ("The acid rain cap and trade program created by Congress in 1990 reduced more pollution in the last decade than all other Clean Air Act command-and-control programs combined, and achieved significant reductions at two-thirds of the cost to accomplish those reductions using a "command-and-control" system. ... The Acid Rain program enjoys nearly 100 percent compliance and only takes 75 EPA employees to run – a track record no command-and-control program can meet.")

regulate plant-by-plant, or to require installation of expensive technology for technology's sake regardless of whether there are air quality problem in the area. NSR is slow, costly and ineffective -- and those are the kindest things that one can say about it! It is the least successful of all the programs under the Clean Air Act. NSR represents the past of the Clean Air Act, not its future.

There is a strong progressive, centrist coalition to update antiquated parts of our environmental laws with newer programs that work better. The Bush Administration's environmental policies are part of that centrist coalition for sensible reforms that get real results, not symbolic victories. This is the road to real environmental progress, not a "rollback."

THOMAS O. MCGARITY  
W. James Kronzer Chair  
University of Texas School of Law

**Introduction.**

My name is Tom McGarity. I hold the W. James Kronzer Chair in Law at the University of Texas School of Law, where I have for the last 21 years taught courses on Administrative Law and Environmental Law. As my attached Curriculum Vitae indicates, I have published many articles and two books in the area of Administrative Law and Regulatory Reform, and I have co-authored a casebook on Environmental Law. I am, therefore, pleased to testify today on the current implementation of the environmental laws in the United States, and I will attempt briefly to place the Bush Administration's implementation activities in historical perspective.

**Summary of Major Themes.**

The transition between the Clinton Administration and the George W. Bush Administration was not an easy one from an environmental perspective. Immediately upon assuming office, the White House Chief of Staff ordered Executive Branch Agencies to withdraw all unpublished proposed rules and postpone the effective date of all final rules to provide the new Administration an opportunity to modify those proposals and rules in accordance with the new Administration's less protective environmental policies. Although most of the final rules were ultimately allowed to go into effect, some have still not become effective, and many of those that did go into effect are currently under active reconsideration.

Although perhaps not as overtly aggressive as the Reagan Administration's attempts to allow private use of public resources, it seems clear that the George W. Bush Administration assigns a higher value to private development and a lower value to preservation than the previous two administrations. In the end, the Bush Administration's less abrasive approach may ultimately bring about a greater reduction in dwindling commonly held resources than any presidential administration since the late nineteenth century.

The George W. Bush Administration has by no means been a proactive protector of human health and the environment from private polluting activities. The new Administration has undertaken virtually no initiatives of its own to achieve environmental improvement, and it has taken affirmative steps to reverse or modify existing protective programs. Such new initiatives as have been undertaken during the first year of the Bush Administration have generally been required by statute, and older rulemaking actions that have gone forward have been only half-heartedly pursued. It appears that OIRA is beginning to assume a much more aggressive role reminiscent of the "regulatory relief" role that it played during the Reagan Administration. The Bush Administration does, however, appear willing to forge new ground in the dubious areas of "voluntary" pollution reduction programs and taxpayer-financed private cleanups. The Bush Administration's attitude toward environmental regulation might best be characterized as "quietly hostile."



At this juncture, it appears that the Administration is strongly committed to opening up public lands for private development and to reducing environmental restrictions on the private sector. The Administration does not appear strongly committed to protecting public resources from unnecessary exploitation or to protecting public health and the environment from private polluting activities. As a result, protections for public lands have grown less restrictive and the flow of environmentally protective regulations has slowed to a trickle. If the Administration does not act decisively very soon to reverse these trends, irreparable harm to human health and the environment is the predictable consequence.

**Skeptical Reassessment of Late-Arriving Clinton Administration Environmental Initiatives.**

As is typically the case during the transition between one Administration and the following Administration, the volume of proposed and final regulations issued by many Executive Branch agencies increased during the last few weeks of the Clinton Administration. Although many of those regulations were garden variety rules of the sort that agencies issue on a routine basis throughout the year, some were significant and controversial rules over which the relevant agencies had been deliberating for many years. It is, of course, not at all unusual for a decisionmaking institution to increase its output substantially at the end of its appointed term. The same thing happened at the end of the Carter and George H.W. Bush Administrations when a president from a different political party was elected.

The transition between the Clinton Administration and the George W. Bush Administration was not an easy one from an environmental perspective. Immediately upon assuming office, the White House Chief of Staff ordered Executive Branch Agencies to withdraw all unpublished proposed rules and postpone the effective date of all final rules to provide the new Administration an opportunity to modify those proposals and rules in accordance with the new Administration's less protective environmental policies. Although most of the final rules were ultimately allowed to go into effect, some have still not become effective, and many of those that did go into effect are currently under active reconsideration.

*Postponement of Final Rules.*

On January 20, 2001, White House Chief of Staff, Andrew Card, wrote a memorandum to the heads and acting heads of all Executive Branch agencies to communicate to them President George W. Bush's "plan for managing the Federal regulatory process at the outset of his Administration."<sup>1</sup> Subject to some limited exceptions for emergencies and urgent situations relating to public health and safety, the

<sup>1</sup> Memorandum for the Heads and Acting Heads of Executive Departments and Agencies from Andrew H. Card, Jr., dated January 20, 2001, 66 Fed. Reg. 7702 (2001) [hereinafter cited as Card memo].

memorandum asked the agency heads to "withdraw" any regulation that had been sent to the Office of the Federal Register, but had not been published in the *Federal Register*. The regulation was not to be published in the *Federal Register* "unless and until a department or agency head appointed by the President after noon on January 20, 2001, reviews and approves the regulatory action."<sup>2</sup> With respect to final regulations that had been published in the *Federal Register* but had not taken effect, the agency heads were asked to "temporarily postpone the effective date of the regulations for 60 days."<sup>3</sup> Many executive branch agencies complied with the Card Memorandum by publishing Notices in the *Federal Register* delaying for 60 days the effective date of previously published regulations "in accordance with" the Card memorandum.<sup>4</sup>

The Bush Administration allowed many environmental regulations for which notices of final rulemaking had been sent to the Federal Register prior to January 20, 2001 to become effective with only a delay in the effective date.<sup>5</sup> For example, EPA allowed the final rule to lower the threshold for reporting of industrial use of lead to go into effect without further ado.<sup>6</sup> The Administration also released a Clean Water Act regulation designed to narrow a loophole in previous regulations that allowed for greater than necessary loss of wetlands.<sup>7</sup> And the Administration allowed three sets of final regulations setting out EPA's approach to regulating pest-killing genetically modified plants to go forward.<sup>8</sup> These results were probably compelled by the Administrative Procedure Act, under which the withdrawal of a final rule and the suspension of the

---

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> See, e.g., Department of Health and Human Services, Health Care Financing Administration, Medicare Program; Use of Restraint and Seclusion in Residential Treatment Facilities Providing Inpatient Psychiatric Services to Individuals Under Age 21: Delay of Effective Date, 66 Fed. Reg. 15800 (2001).

<sup>5</sup> See, e.g., EPA, Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting: Delay of Effective Date, 66 Fed. Reg. 10585 (2001), [Title for Wetlands protection rule promulgated at 66 Fed. Reg. 4550 (Jan. 17, 2001); 66 Fed. Reg. 10367 (Feb. 15, 2001).

<sup>6</sup> See U.S. Environmental Protection Agency, *The First Hundred Days*, April 27, 2001, at 1.

<sup>7</sup> Id.

<sup>8</sup> U.S. Environmental Protection Agency, *Plant-Incorporated Protectant Rules Affirmed by Administration; Comments Invited on Supplemental Notice and Report*, July 19, 2001.

effective date of a final rule are both actions constituting rulemaking and therefore subject to notice and comment informal rulemaking procedures.<sup>9</sup>

The Administration allowed some of the final regulations to go into effect only very reluctantly after being subjected to a great deal of public pressure. For example, the Bush Administration in March, 2001, proposed to "withdraw" the Clinton Administration's drinking water standard for arsenic on the ground that it may have been the result of "a rushed decision."<sup>10</sup> After receiving a great deal of public criticism and an updated report from a committee of the National Research Council of the National Academy of Sciences, EPA ultimately allowed the Clinton Administration version of the arsenic rule to remain in effect.<sup>11</sup> The standard does, however, remain on a so-called "hit-list" recently assembled by the Office of Information and Regulatory Affairs in the Office of Management and Budget of "high priority regulatory review issues" that warrant further attention.<sup>12</sup>

The Bush Administration did not allow all of the final rules promulgated at the end of the Clinton Administration to go into effect. For example, on April 20, 2001, the Department of Energy indefinitely postponed the effective date of the final rule imposing new efficiency standards for central air conditioners and heat pumps.<sup>13</sup> That action has been challenged by environmental groups.<sup>14</sup>

Some of the suspended rules that the Bush Administration allowed to go into effect may never become effective because of legal challenges. A federal district court in

<sup>9</sup> See Testimony of Thomas O. McGarity on Congressional Review Act and Recent Federal Regulations, before the Subcommittee on Energy, Policy, Natural Resources and Regulatory Affairs of the House Committee on Government Reform, March 27, 2001.

<sup>10</sup> U.S. Environmental Protection Agency, EPA to Propose Withdrawal of Arsenic in Drinking Water Standards: Seeks Independent Reviews, March 20, 2001.

<sup>11</sup> U.S. Environmental Protection Agency, EPA Announces Arsenic Standard for Drinking Water of 10 Parts Per Billion, October 31, 2001. The standard has, however, been challenged by environmental groups who contend that it should be even more stringent. See Newly Adopted Standard for Arsenic Challenged as Not Protective Enough, 33 BNA Environment Reporter (Current Developments) 1402 (2002).

<sup>12</sup> See discussion of OIRA's hit list below.

<sup>13</sup> U.S. Department of Energy, Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards: Final rule; Postponement Of Effective Date and Reconsideration, 66 Fed. Reg. 20191 (2001). The Administration allowed similar efficiency standards for clothes washers and water heaters to go into effect.

<sup>14</sup> Natural Resources Defense Council, Inc. v. Abraham, No. 10-4102 (2d Cir.); Natural Resources Defense Council, Inc. v. Abraham, No. 01-CV-5500 (S.D.N.Y.).

Idaho enjoined the Forest Service from implementing the Clinton Administration regulations protecting roadless areas in national forests, and the Justice Department under the Bush Administration has declined to defend the rules in court.<sup>15</sup> In the case of the Department of Interior's regulations governing the use of snowmobiles in national parks, the rules were allowed to go into effect, but the Justice Department entered into a settlement in which it agreed to stay the rule pending the preparation of a new environmental impact statement.<sup>16</sup>

Still other final rules that were allowed to go into effect are under active consideration by the Bush Administration for possible amendments to reduce their stringency. For example, EPA allowed clean air standards for diesel engines to become effective in February, 2001.<sup>17</sup> The regulations require steep reductions in diesel emissions from new diesel powered vehicles and large reductions in the sulfur content of diesel fuel. The agency announced in August, however, that it would convene a panel of stakeholders to review the restrictions on sulfur in diesel fuel with an eye toward re-evaluating the stringency of the requirements and the tightness of the implementation schedule.<sup>18</sup>

*Postponement and Withdrawal of Proposed Rules.*

The Bush Administration was free under the Administrative Procedure Act to withdraw any proposed regulations that had not been published in the *Federal Register* and to reconsider any proposals that were published in the *Federal Register* prior to promulgating final rules. In fact, EPA published very few notices of proposed rulemaking for significant regulations during the last two months of the Clinton Administration.

The Bush Administration EPA's proposed regulation to prevent regional haze in national parks through the installation of "best available retrofit technology" (BART) does not vary in any serious way from the Clinton Administration proposal that was sent to OMB, but never published in the *Federal Register*.<sup>19</sup> Yet EPA Administrator Whitman

<sup>15</sup> See Bush is No Defender, Attorneys Charge, Environmental News Network, January 11, 2002, at 2.

<sup>16</sup> Int'l Snowmobile Manuf. Ass'n v. Babbitt, 00-CV-2296B (D. Wy.).

<sup>17</sup> See U.S. Environmental Protection Agency, EPA Gives the Green Light on Diesel-Sulfur Rule, February 28, 2001.

<sup>18</sup> Chris Baltimore, US EPA Panel to Review New Diesel Sulfur Rules, Reuters, August 10, 2001.

<sup>19</sup> U.S. Environmental Protection Agency, Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations, 66 Fed. Reg. 38108 (2001). See also Utilities Question Legality of Guidelines; Environmental Coalition Calls Them 'Crucial,' 32 BNA Environment Reporter (Current Developments) 1950 (2001).

a month later told Congress that the emissions trading program for power plants that the agency was considering in connection with its response to Vice-President Cheney's "National Energy Policy" could very well replace the regional haze and other programs aimed at preventing significant deterioration of air quality in national parks.<sup>20</sup> Thus, if the Administration's "Clear Skies" initiative (discussed below) goes into effect, the concrete technological requirements for pollution reduction near national parks of the proposed regional haze rule will be replaced with a trading regime that may or may not reach proposed national emissions caps by 2012.

The fate of the other Clinton Administration environmental proposals remains to be seen. For example, EPA extended the comment period for its controversial proposals to establish effluent limitations under the Clean Water Act for concentrated animal feeding operations.<sup>21</sup> Administrator Whitman explained that the extension of the comment period was part of the Administration's efforts to "work on our outreach on imposed and impending regulatory matters."<sup>22</sup> The agency reported in November, 2001 that it was actively considering "[m]ore flexible approaches to water pollution from livestock operations" as a result of refinements to its cost and economics model.<sup>23</sup> The agency also extended the comment period for its proposed standards for metal products and machinery.<sup>24</sup> The agency wanted to ensure that the proposed limitations were achievable, given the economic downturn at the end of 2001.<sup>25</sup> The agency has yet to issue final rules for either of the two categories.

---

<sup>20</sup> Steve Cook, *Level of Power Plant Emission Cuts Will Determine Shape of New EPA Program*, 32 BNA Environment Reporter (Current Developments) 1576 (2001).

<sup>21</sup> U.S. Environmental Protection Agency, *Extension of Comment Period on the Proposed National Pollutant Discharge Elimination System Permit Regulations and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations*, 66 Fed. Reg. 19747 (2001).

<sup>22</sup> Susan Bruninga, *Whitman Urges Partnerships to Boost Environmentally Friendly Farm Economy*, 32 BNA Environment Reporter (Current Developments) 2317 (2001).

<sup>23</sup> *New Data, Information Being Reviewed as EPA Considers Changes to CAFO Proposal*, 32 BNA Environment Reporter (Current Developments) 2256 (2001).

<sup>24</sup> U.S. Environmental Protection Agency, *Extension of Comment Period on the Proposed Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category*, 66 Fed. Reg. 21111 (2001).

<sup>25</sup> Susan Bruninga, *Limitations Being Developed by Agency Costly, Not Needed, Municipal Officials Say*, 32 BNA Environment Reporter (Current Developments) 2204 (2001).

Ambivalent Stewardship of Common Resources.

During the Nixon/Ford and Carter Administrations, the President and Congress worked together to expand greatly the protections afforded to commonly held resources like the national forests, national parks and national monuments. The National Environmental Policy Act (NEPA) and the Endangered Species Act were enacted during the Nixon Administration. The Ford Administration witnessed the enactment of the Federal Land Policy and Management Act and a great expansion of the public lands devoted to the national park system. The Carter Administration launched a major initiative to protect Alaska's wilderness areas, and President Carter's Council on Environmental Quality drafted strong NEPA implementing regulations.

That all came to an abrupt end during the Reagan Administration when James Watt's Department of Interior launched an aggressive campaign to allow agricultural and industrial development of public lands. The Park Service immediately suspended purchases of land for inclusion in the National Park System, and it opened up national park lands to expanded coal mining activities. The Bureau of Land Management assigned a high priority to opening up wilderness areas to oil and gas leasing and to constrict the designation of additional lands for wilderness protection. Additional public lands were opened to private grazing rights, and the Forest Service dramatically increased timber sales, sometimes at fire sale prices.<sup>26</sup>

President George H.W. Bush signed the Rio Principles that ultimately resulted in the Kyoto Treaty on Global Warming, and he slowed down somewhat the rapid development of public lands. The Clinton Administration launched a major initiative to protect the remaining roadless areas on public lands from excessive development, and toward the very end of the Administration, President Clinton designated many new national monuments and banned noisy and polluting snowmobiles from Yellowstone and Grand Teton National Parks.

During its first year in office the George W. Bush administration has adopted a much less protective approach toward public lands and other commonly held resources than the previous two administrations. Examples of retreats from the positions of previous administrations abound.

As noted above, the Bush Administration ultimately allowed the Clinton Administration's Roadless Area Conservation Rule to go into effect, but it made no effort to defend those regulations in court, a fact that was noted by all three judges on the Ninth Circuit panel that heard the appeal of the district court's order enjoining the Administration from implementing the rules.<sup>27</sup> By the end of 2001, the Bush Administration was already weakening the implementation of those rules by eliminating mandatory environmental reviews, abandoning the requirement that a "compelling need"

<sup>26</sup> See Jonathan Iash, Katherine Gillman & David Sheridan, *A Season of Spoils* ch. 3-4 (1984).

<sup>27</sup> See *Bush is No Defender, Attorneys Charge*, Environmental News Network, January 11, 2002, at 2.

be shown before building new roads, broadening "categorical exclusions," and eliminating special protections for remote roadless areas.<sup>28</sup>

On November 21, 2000, the Bureau of Land Management (BLM) of the Clinton Administration's Department of Interior revised the regulations governing hard rock mining on public lands (the "3809 rules") to replace poorly aging rules that had been promulgated prior to the advent of many environmentally destructive mining technologies.<sup>29</sup> The rules established environmental performance standards to protect rivers and groundwater, required mining companies to post bonds to ensure that any spills or other environmental contamination would be remediated, and empowered BLM to deny permits for mines that would pose too high a risk of causing environmental damage. On March 23, 2001, BLM proposed to replace the recently promulgated rules, and on October, 25, 2001, BLM promulgated final hard rock mining regulations that greatly reduced environmental protections of the previous regulations.<sup>30</sup> In particular, the Bush Administration's regulations replaced the Clinton Administration's environmental performance standards with the pre-existing 1980 standards, and they abrogated BLM's power to deny permits in order to avoid "substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be mitigated."<sup>31</sup>

In addition to reducing the stringency of its regulations, the BLM has taken several affirmative steps during the Bush Administration to allow greater private use of commonly held resources that may have significant adverse environmental impacts. Last fall, BLM approved 12 leases for oil and gas exploration and development in the Redrock Canyonlands of southern Utah, and it proposed to grant additional oil and gas leases in the Vermillion Basin of northwestern Colorado.<sup>32</sup> In addition to the direct adverse environmental effects of such actions, the development of these fragile lands could

<sup>28</sup> See Eric Brazil, Forest Service Directives OK Building More roads, San Francisco Chronicle December 21, 2001, at A4.

<sup>29</sup> Bureau of Land Management, Mining Claims under the General Mining Laws; Surface Management, 65 Fed. Reg. 69998 (2000).

<sup>30</sup> Bureau of Land Management, Mining Claims under the General Mining Laws; Surface Management, 66 Fed. Reg. 54834 (2001).

<sup>31</sup> 66 Fed. Reg. at 54837. See New mining Regs, New Discontent, 110 Environmental Health Perspectives A74 (2002).

<sup>32</sup> Elizabeth Shogren, Some See Nature as a War Victim, Los Angeles Times, December 26, 2001. An environmental group has sued to halt the Utah leases alleging that BLM violated the National Environmental Policy Act and the National Historic Preservation Act. Natural Resources Defense Council, Environmentalists Launch First Legal Challenge To Bush Administration's National Energy Plan, December 6, 2001, available at <<http://www.nrdc.org/media/pressreleases/011206.asp>>, visited March 1, 2002.

render them ineligible for further protection under the wilderness preservation laws. In October, the Department of Interior reversed a decision by the Clinton Administration to disapprove the construction of a huge open-pit gold mine in southern California, despite the conclusions of an environmental impact statement that the project would cause "significant damage to air quality and visual, cultural, religious and archeological resources."<sup>33</sup>

The Bush Administration told a congressional subcommittee in May, 2001 that it wanted to impose a two year moratorium on studies of additional public lands for inclusion in the National Park system,<sup>34</sup> and the Park Service testified in December that it opposed any additions to the National Park system for the foreseeable future.<sup>35</sup> At the same time, the Bush Administration, in response to a lawsuit filed by the Snowmobile Manufacturers Association, has issued a Draft Supplemental Environmental Impact Statement indicating that the Park Service is likely to replace the Clinton Administration's total ban on snowmobiles in Yellowstone and Grand Teton National Parks with a partial ban that allows restricted use of quieter and somewhat less polluting snowmobiles.<sup>36</sup>

On January 9, 2002, President Bush signed a congressionally mandated agreement with Florida to prevent diversion of water from the recently enacted Everglades restoration project.<sup>37</sup> It is not at all clear, however, that the actual restoration plan proposed by the Administration complies with the statutory requirements. Among other things, the plan does not specify the actual amount of water that is to be dedicated to Everglades restoration.<sup>38</sup>

<sup>33</sup> Elizabeth Shogren, *Some See Nature as a War Victim*, Los Angeles Times, December 26, 2001; Dan Morgan, *New Mining Regulations Overturn Late Clinton Rules*, Washington Post, October 26, 2001, at A33.

<sup>34</sup> Eric Pianin, *New U.S. Park Expansions Shelved*, Washington Post, May 10, 2001, at A3.

<sup>35</sup> Testimony of David Mihalic, Superintendent, Yosemite national Park, on H.R. 2109 before the Subcommittee on National Parks, Recreation, and Public Lands, of the House Committee on Resources, December 13, 2001.

<sup>36</sup> National Park Service, *Draft Supplemental Environmental Impact Statement, Winter Use Plans: Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway* (2002). See Dennis McAuliffe, Jr., *Snowmobilers could Shift Into park Again*, Washington Post, February 15, 2002.

<sup>37</sup> See William E. Gibson and Neil Santaniello, *Accord Protects Everglades*, Orlando Sentinel, January 10, 2002, at D3; Michael Grunwald, *Bushes Ink Everglades Restoration Agreement*, Washington Post, January 10, 2002, at A17.

<sup>38</sup> See *Bush is No Defender, Attorneys Charge*, Environmental News Network, January 11, 2002 (quoting David Guest of Earthjustice, Florida); *Draft Programmatic Rules to Implement Restoration Effort Generate Controversy*, 33 BNA Environment



Although perhaps not as overtly aggressive as the Reagan Administration's attempts to allow private use of public resources, it seems clear that the George W. Bush Administration assigns a higher value to private development and a lower value to preservation than the previous two administrations. In the end, the Bush Administration's less abrasive approach may ultimately bring about a greater reduction in dwindling commonly held resources than any presidential administration since the late nineteenth century.

#### **Reluctant Regulation of Private Polluting Activities.**

The Nixon and Ford Administrations witnessed an extraordinary outpouring of landmark legislation aimed at protecting public health and the environment from private polluting activities. The modern Clean Air Act, Clean Water Act, Safe Drinking Water Act, Toxic Substances Control Act, Ocean Dumping Act, and Resources Conservation and Recovery Act were all enacted during an extraordinary six-year period during which Congress and the Administration basically agreed that the federal government had a critical role to play in protecting the environment.

The Carter Administration faced the daunting challenge of implementing those newly enacted statutes and of suggesting "mid-course corrections" to some of them in light of actual experience in the real world. At the very end of the Carter Administration, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act that created a large "superfund" to clean up abandoned hazardous waste sites and made responsible parties liable for the expenses incurred in public and private response actions. Since the end of the Carter Administrations, no administration has so aggressively promoted a pro-environmental regulatory agenda to protect citizens from private activities that threaten health, safety and the environment.

The Reagan Administration, in sharp contrast, launched major initiatives to reduce the stringency of EPA regulations while at the same time bring enforcement activities to a virtual standstill. Of more lasting significance, the Reagan Administration, through various executive orders, imposed burdensome (and often extra-statutory) analytical requirements on agencies writing health, safety and environmental regulations. In addition, the Reagan Administration witnessed a more aggressive use of an already existing centralized White House review process for major regulations in which the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) became a "black hole" from which many protective regulations never reemerged. Congress reined in the Reagan Administration's radical deregulatory initiatives with a series of widely publicized hearings and ultimately with highly prescriptive legislation like the 1984 amendments to the Resource Conservation and Recovery Act. The analytical requirements and centralized review requirements, however, remained in place and retained their very great potential to "ossify" the rulemaking process.<sup>39</sup> In the final analysis, little direct damage was done to the overall

Reporter (Current Developments) 31 (2002).

<sup>39</sup> See Thomas O. McGarity, Some Thoughts on "Deossifying" the Regulatory Process, 41 Duke L. J. 1385 (1992).

regulatory structure during the Reagan Administration, but the flow of new protective regulations slowed to a trickle as the agencies struggled to meet a much higher burden of justification.

The George H.W. Bush Administration took steps to avoid the stigma associated with the early years of the Reagan Administration, and it broke the log jam that stood in the way of enacting necessary new amendments to the Clean Air Act with innovative proposals that Congress for the most part adopted. President Bush also signed the Oil Pollution Act of 1990, a statute enacted in the wake of the Exxon Valdez disaster. For a time the flow of protective regulations picked up, especially in response to the mandatory rulemaking requirements of the new Clean Air Act amendments. Toward the end of that Administration, however, the President imposed a "moratorium" on new regulations, and the Council on Competitiveness, chaired by Vice-President Dan Quayle, launched a major deregulatory initiative.

The Clinton Administration undertook many proactive environmental initiatives, especially toward the end of that Administration, but it also went to great lengths to "reinvent" existing environmental programs to provide greater "flexibility" for regulatees. The Clinton Administration also undertook a major effort to re-examine existing regulations and eliminate those that were obsolete or ineffective. At the same time, the centralized review process in OIRA became more efficient and ceased to function as a major roadblock hindering the progress of major regulations. One very positive development during the Clinton Administration was the institutionalization of previously vague and unimplemented concerns about "environmental justice." The permanent environmental legacy of the Clinton Administration, however, is its successful defense of the statutory underpinnings of modern pollution control law against very serious attempts during the 104th Congress to replace existing statutory protections with much less protective environmental laws.

The George W. Bush Administration has by no means been a proactive protector of human health and the environment from private polluting activities. The new Administration has undertaken virtually no initiatives of its own to achieve environmental improvement, and it has taken affirmative steps to reverse or modify existing protective programs. Such new initiatives as have been undertaken during the first year of the Bush Administration have generally been required by statute, and older rulemaking actions that have gone forward have been only half-heartedly pursued. It appears that OIRA is beginning to assume a much more aggressive role reminiscent of the "regulatory relief" role that it played during the Reagan Administration. The Bush Administration does, however, appear willing to forge new ground in the dubious areas of "voluntary" pollution reduction programs and taxpayer-financed private cleanups.

*The Clear Skies Initiative.*

---

<sup>40</sup> See Thomas O. McGarity, *Deflecting the Assault: How EPA Survived a "Disorganized Revolution" by "Reinventing" Itself a Bit*, 31 *Env. L. Rep.* 11249 (2001).

Perhaps the clearest example of the Bush Administration's approach to pollution control is its recently unveiled "Clear Skies" proposal. In 1999, the Clinton Administration launched a major enforcement initiative to force old polluting facilities that had increased emissions through projects requiring large capital expenditures to undergo "new source review" (NSR) as required by the Clean Air Act. The NSR process requires new and modified plants to comply with new source performance standards that are generally more stringent than the applicable requirements in state implementation plans. Although many companies resisted this initiative, others agreed to install better technology. When the Bush Administration came into office several major consent decrees were in the works, but not yet signed by the power plant operators. Although the Bush Administration has thus far not abandoned the new source review initiative, it is considering far-reaching changes to the new source review process, and it has proposed to do away with the new source review process altogether for power plants.

On February 14, 2002, President Bush presented the Administration's "Clear Skies Initiative" to address emissions of sulfur dioxide, oxides of nitrogen (NOx) and mercury from new and existing power plants.<sup>41</sup> Although it is clear that the initiative will require amendments to the Clean Air Act (in the words of the Administration "a new Clean Air Act for the 21st century"), the Administration has not yet drafted specific legislative proposals.<sup>42</sup> The exact means for accomplishing the promised emissions reductions remains vague and therefore difficult to evaluate.

The heart of the initiative is a "cap-and-trade" regime for power plants that could reduce the current cap for East Coast sulfur dioxide emissions from 11 million tons per year (tpy) to 4.5 million tpy in 2010 and 3 million tpy in 2018. A new trading regime will be established for NOx and mercury emissions with similar reductions targets by the same deadlines. Different caps would apply elsewhere in the country.<sup>43</sup> Only the emissions caps for the 2010 targets would be established at the outset by Congress. EPA would establish the 2018 caps after reviewing "new scientific, technology and cost information and, if necessary, adjust[ing] the phase two targets."<sup>44</sup> Since the initiative would apply to new and existing power plants alike, it would apparently replace the existing new source review process for power plants.<sup>45</sup>

<sup>41</sup> White House, President Bush Announces Clear Skies & Global climate Change Initiatives, February 14, 2002.

<sup>42</sup> The White House, Briefing Book on the Clean Skies Initiative, February 14, 2002.

<sup>43</sup> *Id.*, at 1.

<sup>44</sup> *Id.*, at 4.

<sup>45</sup> See Whitman Says Multi-Pollutant Bill Would Eliminate NSR Controls, Inside EPA, Weekly Report, February 22, 2002, at 13 (reporting that EPA Administrator Whitman and EPA's Assistant Administrator for Air "reiterated the agency's commitment to freeing utilities from the Clean Air Act's new source review program . . . , once facilities achieve the Bush administration's proposed cap on a series of key pollutants").

The background documents for the "Clear Skies" initiative do not suggest how power plants will go about achieving the emissions reductions that will be required to meet the ambitious caps that the plan proposes. Power plants achieved the less ambitious sulfur dioxide caps established in the acid rain cap-and-trade program required by the 1990 Clean Air Act amendments largely by switching from high sulfur coal to lower sulfur coal and natural gas, rather than by retrofitting expensive pollution reduction technologies. The NOx and mercury reductions needed to meet the caps set out in the "Clear Skies" initiative will not be nearly so easily achieved. Companies will have to install new equipment at great capital expense and maintain that equipment over the years. The background documents do not attempt to predict how a company that has not installed pollution reduction technologies will acquire the necessary credits if most other companies likewise forego pollution controls on the assumption that credits will be available for purchase. According to one report, an EPA analysis prepared for the Vice-President's task force concluded that the existing Clean Air Act programs would reduce power plant emissions nearly twice as fast as the "Clear Skies" initiative.<sup>46</sup>

Whether or not Congress enacts power plant legislation along the lines of the proposed "Clear Skies" initiative, the Administration is apparently planning to proceed ahead with administrative changes to the new source review program that would severely limit its scope.<sup>47</sup> Vice-President Cheney's National Energy Policy Development Group recommended that EPA, in consultation with DOE and other federal agencies, examine the New Source Review regulations and report to the President on their impact on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection.<sup>48</sup> As a first step in that review, EPA prepared a background paper in June, 2001 that simply summarized existing studies and other available information (most of which came from the regulated industries) without drawing any strong conclusions.<sup>49</sup> Thus far, negotiations over how to change the new source review program among EPA, DOE and other agencies have been carried out behind closed doors

---

<sup>46</sup> Andrew Goldstein, For Bush, It's Not Easy Being Green, *Time*, February 25, 2002.

<sup>47</sup> See Letter to Christine Todd Whitman from Lloyd L. Eagen and Arthur L. Williams, dated January 23, 2002 (detailing objections of the State and Territorial Air Pollution program Administrators and the Association of Local Air Pollution control Officials to changes in the new source review program being considered by the Administration).

<sup>48</sup> U.S. Environmental Protection Agency, NSR 90-Day Review Background Paper, Docket A-2001-19, Document II-A-01, June 22, 2001, at 1.

<sup>49</sup> *Id.*

with substantial input from industry lobbyists, but no opportunity has been provided for environmental groups or state and local officials to participate in the deliberations.<sup>50</sup>

Both the Clear Skies initiative and the strong likelihood that the Administration will modify the new source review program to reduce its scope and stringency have had a powerful adverse effect on the agency's efforts to take effective enforcement action against companies that have unlawfully avoided new source review in the past. In his letter resigning from EPA, the Director of the agency's Office of Regulatory Enforcement complained that the agency was about to "snatch defeat from the jaws of victory" in its ongoing enforcement efforts as reports of the agency's largely unsuccessful battles with "a White House that seems determined to weaken the rules we are trying to enforce" caused defendants in existing enforcement actions to walk away from settlement negotiations.<sup>51</sup> According to one report, a major oil company may avoid a multi-million dollar fine for violations of the new source review requirements by its refineries in Baytown and Beaumont, Texas if the changes that the Administration is considering go into effect.<sup>52</sup>

In drafting its comprehensive "Clear Skies" proposal for power plants, the Bush Administration specifically declined to include within the proposed reforms specific requirements to ensure the reduction of carbon dioxide, an important contributor to global warming. This failure to act follows the Administration's announcement on March 13, 2001 that it would not attempt to achieve reductions in carbon dioxide emissions from power plants, thus effectively repudiating repeated assurances by EPA Administrator Whitman that the Administration would keep candidate George W. Bush's campaign promise that his administration would regulate carbon dioxide emissions from power plants.<sup>53</sup> The dubious rationale for the policy reversal was that the country faced an "energy crisis" that had apparently come about during the previous six months.<sup>54</sup>

Instead of proposing mandatory emissions reductions or a cap-and-trade regime, the Administration has proposed a plan for achieving "voluntary" reductions in

<sup>50</sup> Eric Pianin, White House Warned on Easing Clean Air Rules, Washington Post, January 9, 2002.

<sup>51</sup> Letter to Christine Whitman from Eric V. Schaeffer, dated February 28, 2002.

<sup>52</sup> Bill Dawson, ExxonMobil Seeks to Get Out of Penalty, Houston Chronicle, June 18, 2001.

<sup>53</sup> Eric Pianin & Amy Goldstein, bush Drops a Call For Emissions Cuts, Washington Post, March 14, 2001, at A1.

<sup>54</sup> Amy Goldstein & Eric Pianin, Hill Pressure Fueled Bush's Emissions Shift, Washington Post, March 15, 2001, at A1. Soon thereafter, the White House asked the State Department for advice on how the U.S. could withdraw its signature from the 1997 Kyoto Protocol on global warming, and EPA Administrator Whitman declared the Kyoto Protocol "dead." Eric Pianin, U.S. Aims to pull Out of Warming Treaty, Washington Post, March 28, 2001, at A1.

greenhouse gas emissions sufficient to achieve a goal of an 18 percent reduction in "greenhouse gas intensity" by 2012.<sup>55</sup> Voluntary emissions reductions would be accomplished through unspecified improvements in the existing voluntary emission reduction registration program.<sup>56</sup> The Administration was unwilling to impose mandatory regulatory requirements because "scientific uncertainties" limited our knowledge of global warming and because "sustained economic growth is an essential part of the solution."<sup>57</sup> But it was willing to commit a future Administration to review progress toward the 18 percent goal in 2012 and propose "additional measures" if "sound science" justified "further policy action."

By tying emissions reductions to the novel concept of "greenhouse gas intensity" (the ratio of emissions to gross domestic product) the Administration's goal could be met without any reductions in the actual emissions of greenhouse gasses, and such emissions could actually increase substantially if the economy does not improve at a steady rate.<sup>58</sup> In fact, greenhouse intensity has fallen in the U.S. over the last two decades, even though actual greenhouse gas emissions have increased substantially.<sup>59</sup> The voluntary aspect of the program is, however, its most troubling aspect from an environmental perspective, because it leaves improvement up to the companies that have no direct incentive to reduce emissions.<sup>60</sup> The primary incentives in the plan stem from tax credits for various energy conservation and alternative energy measures that companies can undertake. A similarly optimistic Voluntary Emissions Reduction Permit program for "grandfathered" facilities enacted in Texas when George W. Bush was governor has thus far induced only 10 plants to acquire voluntary permits and has achieved reductions in total emissions of

<sup>55</sup> White House, Global Climate change Policy Book, February 28, 2002, at 1.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> See Pew Center on Global Climate Change, Pew Center Analysis of President Bush's February 14th Climate Change Plan, available at <[http://www.pewclimate.org/policy/response\\_bushpolicy.cfm](http://www.pewclimate.org/policy/response_bushpolicy.cfm)>, visited March 2, 2002 (concluding that the "Administration's target . . . allows a substantial increase in net emissions").

<sup>59</sup> Id.

<sup>60</sup> See Resources for the Future, President Bush Puts Off the hard Decisions for 10 Years, Media Advisory, February 14, 2002 (senior fellows of Resources for the Future conclude that a "mandatory - not voluntary - market based approach must be put in place if the U.S. is serious about reducing greenhouse gas emissions").

about 0.01 percent from those grandfathered facilities.<sup>61</sup> This is not a history from which one may draw optimistic conclusions about the efficacy of voluntary programs.

*Reversing or Abandoning Clinton Administration Initiatives.*

The Bush Administration has either repealed or proposed significant changes to several ongoing initiatives of the Clinton Administration to protect the environment from private polluting activities. The Department of Energy's indefinite postponement of the effective date of the final rule imposing new efficiency standards for central air conditioners and heat pumps was discussed above.<sup>62</sup> In formal comments on DOE's action, EPA accused DOE of using "misinformation" to justify its retreat from the Clinton Administration standard.<sup>63</sup>

On December 20, 2000, the Clinton Administration published a final rule that prohibited federal agencies from awarding large government contracts to companies that perpetually violated federal laws.<sup>64</sup> The Bush Administration "stayed" the final rule on April 3, 2001, and it revoked the rule entirely on December 27, 2001.<sup>65</sup> Although the extent to which the repealed rule actually deterred perennial environmental lawbreakers remains uncertain, the Bush Administration is apparently not opposed to rewarding such scofflaws with lucrative governmental contracts.

In July, 2001, EPA proposed to postpone further a congressionally delayed rule implementing the Clean Water Act's "total maximum daily load" (TMDL) program for segments of rivers that do not meet state water quality standards.<sup>66</sup> The agency issued a

<sup>61</sup> Texas Natural Resource Conservation Commission, Grandfathered Facilities Report, Executive Summary at 2-3 (2001).

<sup>62</sup> U.S. Department of Energy, Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards: Final rule; Postponement Of Effective Date and Reconsideration, 66 Fed. Reg. 20191 (2001).

<sup>63</sup> Steve Cook, DOE Uses 'Misinformation' in Relaxation Of Air Conditioner Energy Rules, EPA Says, 32 BNA Environment Reporter (Current Developments) 2127 (2001).

<sup>64</sup> General Services Administration, Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, Final Rule, 65 Fed. Reg. 80255 (2000).

<sup>65</sup> General Services Administration, Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, Final Rule, 66 Fed. Reg. 66984 (2001).

<sup>66</sup> U.S. Environmental Protection Agency, Delay of Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water

final rule postponing the implementation date until April 30, 2003. At the same time, the agency announced that it would use the moratorium "to re-consider some of the choices made in the July 2000 rule" in light of a recent report by the National Research Council of the National Academy of Sciences.<sup>67</sup>

*New Initiatives to Roll Back Environmental Protections.*

The Bush Administration has undertaken a number of new initiatives aimed at easing regulatory restrictions or otherwise reducing health and environmental protections. For example, on December 21, 2001, EPA published a proposed "Burden Reduction Initiative" rule aimed at reducing hazardous waste information collection and reporting requirements.<sup>68</sup> Similarly, in October, 2001, the agency transmitted to President Bush a report in which it promised to take several actions to give refineries greater flexibility in transitioning from winter gasoline to the "boutique fuels" that EPA and many states require to be used in the summertime.<sup>69</sup>

On January 14, 2002, the Bush Administration approved a plan to expedite wetlands destruction under the Corps of Engineers' "nationwide" permit program.<sup>70</sup> The staff of the Department of Interior's Fish and Wildlife Service drafted comments on the change predicting that it would result in "tremendous destruction of aquatic and terrestrial habitat," but upper level decisionmakers in the Department prevented the

---

Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters, 66 Fed. Reg. 41817 (2001).

<sup>67</sup> U.S. Environmental Protection Agency, Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters, 66 Fed. Reg. 53044 (2001).

<sup>68</sup> U.S. Environmental Protection Agency, Resource Conservation and Recovery Act Burden Reduction Initiative; Proposed Rule, 67 Fed. Reg. 2518 (2002).

<sup>69</sup> U.S. Environmental Protection Agency, Agency Proposes Fuel Program Reforms to Benefit Consumers, Improve Air Quality, October 24, 2001.

<sup>70</sup> U.S. Army Corps of Engineers, Issuance of Nationwide Permits; Notice, 67 Fed. Reg. 2020 (2002). See Michael Grunwald, *Compromise, or Selling Out?* Washington Post Weekly Edition, January 28, 2002, at 30; Reissued Nationwide Permits Seek to Reinforce No-Loss Policy, Corps Says, 33 BNA Environment Reporter (Current Developments) 126 (2002).



Service from delivering the critical comments.<sup>71</sup> After a committee appointed by the National Research Council of the National Academy of Sciences concluded that the mitigation measures called for in dredge and fill permits issued by the Corps of Engineers were not meeting the "no net loss" of wetlands policy that the Corps had attempted to follow since the first Bush Administration, the Corps on October 31, 2001, issued guidelines that, in the view of many observers will weaken, rather than enhance wetlands mitigation standards and ensure that the "no net loss" goal will not be achieved.<sup>72</sup>

In the area of pesticides regulation, the Bush Administration hesitantly declined to undo a settlement with environmental groups under which EPA agreed to reexamine pesticide tolerances under the more stringent requirements of the 1996 Food Quality Protection Act. An EPA press release reported that Administrator Whitman issued a directive to the pesticide program to make its procedures "more participatory and transparent" after being advised by the agency's general counsel that "the Agency had limited flexibility to change or withdraw from the consent decree" signed by the Clinton Administration.<sup>73</sup> In November, 2001, however, the press reported that EPA had quietly changed its policies to make it easier for companies to retain existing tolerances during the review process by relying upon human testing to avoid the additional safety factor that the agency employs when it extrapolates from animal studies.<sup>74</sup> The public outcry that resulted from this announcement caused EPA to reconsider its position, and it decided to decline to rely upon data from human studies pending a report that it quickly commissioned from the National Academy of Sciences.<sup>75</sup>

*Missed Opportunities to Take Environmentally Protective Action.*

<sup>71</sup> Michael Grunwald, *Compromise, or Selling Out?* Washington Post Weekly Edition, January 28, 2002, at 30.

<sup>72</sup> See Susan Bruninga, *Tougher Standards for Mitigation Projects Required to Ensure Success, Guidance Says*, 32 BNA Environment Reporter (Current Developments) 2162 (2001) (description of directive); Bill Walsh, *corps changes Wetlands Policy: Plan Draws Fire from Environmentalists*, New Orleans Times-Picayune, November 16, 2001, at 1.

<sup>73</sup> U.S. Environmental Protection Agency, *Amended Pesticide Settlement Agreement Filed*, March 20, 2001.

<sup>74</sup> Shankar Vedantam, *EPA Used Data from Human Pesticide Tests*, Washington Post, November 29, 2001, at A6.

<sup>75</sup> Karen L. Werner, *National Academy of Sciences Study of Human Testing to Begin in Spring*, 26 BNA Chemical Regulation Reporter (Current Developments) 157 (2001).

The Bush Administration has also foregone opportunities to protect the environment. For example, after concluding that existing protections were sufficient, EPA on December 21, 2001, declined to establish numeric standards for dioxins in sewage sludge that is to be incinerated or placed in surface disposal units.<sup>76</sup> EPA officials recently acknowledged that the agency has achieved only about half the number of completed response actions under the federal "superfund" hazardous waste cleanup program during the first year of the Bush Administration as it accomplished during the last year of the Clinton Administration, and they blame a shortage of funding in part for that change. The Administration's FY 2003 budget envisions even fewer completed cleanups in 2002-03.<sup>77</sup>

More importantly, the Bush Administration has elected not to ask Congress to reauthorize the tax on the oil and chemical industries to replenish the "superfund" that EPA draws on in cleaning up abandoned hazardous waste disposal sites.<sup>78</sup> As recently noted by former EPA Administrator Carol Browner, this will result in taxpayers shouldering a larger part of the burden of cleanups or in a reduced number of cleanup actions.<sup>79</sup> Given the Bush Administration's apparent antipathy to taxation, this quiet failure to adhere to the "polluter pays" principle may properly be viewed as a subtle abandonment of the existing hazardous waste cleanup program. In either case, it represents a rather "enormous windfall for the oil and chemical industries."<sup>80</sup>

*Positive Bush Administration Initiatives.*

Most of the positive regulatory actions to protect the environment that EPA has undertaken during the Bush Administration have resulted from the agency's failure to halt actions initiated during the Clinton Administration. For example, EPA was praised by environmental groups for adhering to a plan promulgated during the Clinton Administration to dredge toxic PCBs from the Hudson River.<sup>81</sup> As discussed above, the

<sup>76</sup> U.S. Environmental Protection Agency, Standards for the Use or Disposal of Sewage Sludge, Notice, 66 Fed. Reg. 66028 (2001).

<sup>77</sup> See EPA Acknowledges Funding Pinch Has Slowed Superfund Cleanups, Inside EPA Weekly Report, Feb. 8, 2002, at 1. The same officials also note that cleanup actions have become more complex in recent years. *Id.*

<sup>78</sup> See Katharine Q. Seelye, Bush Proposing Policy Change On Toxic Sites, New York Times, February 24, 2002, at A1, col. 5.

<sup>79</sup> Carol M. Browner, Polluters Should Have to Pay, New York Times, March 1, 2002, at A23 col. 2.

<sup>80</sup> *Id.*

<sup>81</sup> Michael Powell, EPA Orders Record PCB Cleanup, Washington Post, August 2, 2001, at A5; Kirk Johnson, Whitman to Issue Order to Dredge Hudson for PCB's, New

Bush Administration after much soul-searching also allowed the Clinton Administration's drinking water regulations for arsenic go into effect.<sup>42</sup> The Bush Administration also went forward with a proposal to prevent regional haze in national parks.<sup>43</sup>

EPA has issued a few new proposals in response to court orders requiring the agency to take action. For example, in response to court orders, EPA on September 14, 2001, proposed regulations to address the vexing problem of air emissions from "off-road" vehicles, like diesel marine engines and snowmobiles, that would require manufacturers of such vehicles to employ easily available pollution reduction technologies by the 2006 model year.<sup>44</sup> Several environmental and recreational organizations criticized the proposal as falling "far short of the legal requirements in the Clean Air Act."<sup>45</sup>

The Bush Administration has been a strong proponent of "voluntary" initiatives that attempt to inspire individuals and companies to clean up the environment by appealing to their good citizenship. A good example is the "Smoke-Free Home Pledge Initiative," under which EPA is attempting to educate smoking parents to quit out of concern for the health of their children and others who are exposed to environmental tobacco smoke.<sup>46</sup> In October, 2001, EPA announced voluntary cancellations of some agricultural uses of two organophosphate pesticides,<sup>47</sup> and in February, 2002 the agency

---

York Times, August 1, 2001, at A1.

<sup>42</sup>

U.S. Environmental Protection Agency, EPA Announces Arsenic Standard for Drinking Water of 10 Parts Per Billion, October 31, 2001.

<sup>43</sup>

U.S. Environmental Protection Agency, Proposed Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations, 66 Fed. Reg. 38108 (2001). See also Utilities Question Legality of Guidelines; Environmental Coalition Calls Them 'Crucial,' 32 BNA Environment Reporter (Current Developments) 1950 (2001).

<sup>44</sup>

U.S. Environmental Protection Agency, Control of emissions From Nonroad large Spark ignition Engines and recreational Engines (Marine and land-Based), Notice of Proposed Rulemaking, 66 Fed. Reg. 51098, 51100 (2001) (noting that the rule was proposed prior to a September 14 deadline imposed by the courts).

<sup>45</sup>

Letter to Christine Todd Whitman from Scott Kovarovics, dated January 17, 2002 (providing comments of Natural Trails & Waters Coalition on behalf of 47 organizations).

<sup>46</sup>

U.S. Environmental Protection Agency, EPA Administrator Christie Whitman Unveils Campaign to Protect Children from Secondhand Smoke, October 16, 2001.

<sup>47</sup>

U.S. Environmental Protection Agency, New Restrictions on Two Pesticides to Protect Agricultural Workers, October 31, 2001.

announced a voluntary agreement by manufacturers of treated wood to move away from wood treated with arsenic for residential and other consumer uses.<sup>88</sup>

Though not properly characterized as a Bush Administration "initiative," the Administration participated actively in the enactment of long-pending "Brownfields" legislation that will devote additional federal funds for the next four years to help clean up contaminated urban sites and thereby promote redevelopment of inner city areas.<sup>89</sup> The legislation, which was supported by environmental groups, civil rights groups and small business advocates, would also relieve from liability for cleanups so-called "de micromis" contributions of small businesses and residential households to superfund sites.<sup>90</sup>

In the final analysis, I have been unable to identify a single important new rulemaking initiative undertaken by the George W. Bush Administration to protect citizens from private polluting activities that was not already in the works prior to January 20, 2001. It is fair to say that the George W. Bush administration did not hit the ground running with an environmental improvement agenda. Indeed, it does not appear that the Administration is even jogging.

#### **Tighter Oversight of the Environmental Agencies at OMB.**

Soon after the enactment of many of the modern environmental statutes in the early 1970s, regulated entities charged that EPA and other recently created agencies were so enthusiastically implementing their newly granted statutory powers that they had spun "out of control." Reacting to these criticisms, the Nixon Administration inaugurated a "Quality of Life" review process under which EPA and the Occupational Safety and Health Administration were obliged to send proposals for major regulations to OMB for review by other departments and agencies. President Ford left the review process in place but lodged it in the now-defunct Council on Wage and Price Stability, and it required the agencies to prepare an "inflation impact statement" for major regulations.

<sup>88</sup> U.S. Environmental Protection Agency, Whitman Announces Transition from Consumer Use of Treated Wood Containing Arsenic, February 12, 2002. By one estimate, the voluntary canceled uses affected only about 5 percent of wood preservative pesticide market. Beyond Pesticides, Victims of Wood Preservatives Want Them Fully Banned, February 12, 2002, available at <[http://www.beyondpesticides.org/WOOD/MEDIA/phaseout\\_victime\\_PR\\_2\\_12\\_02.htm](http://www.beyondpesticides.org/WOOD/MEDIA/phaseout_victime_PR_2_12_02.htm)>, visited March 2, 2002.

<sup>89</sup> See Congress Approves Superfund Measure To Promote Cleanups, Provide Liability Relief, 33 BNA Environment Reporter (Current Developments) 13 (2002).

<sup>90</sup> Id.

The Carter Administration left the review function in place but later shifted its locus to an interagency Regulatory Analysis Review Group.<sup>91</sup>

President Reagan shifted the regulatory review function back to OMB and lodged it in the newly created Office of Information and Regulatory Affairs (OIRA). Intended by Congress to be the primary implementing agency for the Paperwork Reduction Act, it soon became the institutional home of the most ardent anti-regulators in the Administration. OIRA demanded that agencies prepare detailed and comprehensive cost-benefit analyses for major regulations, and it frequently held up regulations with which it had substantive objections for months and in some cases forever. Since OIRA's objections in many cases went to the substantive policies that Congress had enacted in the agencies' authorizing statutes, disputes between OIRA and congressional oversight committees were not uncommon.<sup>92</sup>

OIRA continued to play an aggressive oversight role during much of the George H.W. Bush Administration, but its oversight role was shifted to Vice-President Quayle's Council on Competitiveness during the last part of that Administration after Congress demanded greater transparency of the OIRA review process. During the Clinton Administration, OIRA was again assigned the primary regulatory oversight function, and the process remained reasonably transparent. Although OIRA frequently found fault with agency regulatory analysis documents, it rarely held up agency initiatives on purely substantive grounds.

Although it is still very early in the process to draw significant conclusions, it appears that OIRA is asserting an aggressive oversight role in the George W. Bush Administration that is reminiscent of the role that it played during the late Reagan Administration and early George H.W. Bush Administration. The process remains transparent, and with the office's commendable expanded use of the internet, it has become more transparent than ever during the first year of the new Administration. OMB's closed-door meetings with industry groups and the agencies are documented and posted, although there is no evidence that people representing the beneficiaries of regulations have been invited to attend such meetings. Finally, since OIRA appears to be acting reasonably promptly on rules that are submitted for review, the "black hole" metaphor is thus far not appropriate.

OIRA has recently announced that it will implement a new regulatory review plan under which it will ask agencies to use cost-per-life-year-saved as the measure of the cost-effectiveness of life-saving rules and quality adjusted life years as the measure of the benefits of regulatory interventions that protect against nonfatal health effects.<sup>93</sup> The goals of this change are to facilitate comparisons across agencies and to foster greater

<sup>91</sup> See Thomas O. McGarity, *Reinventing Rationality* ch.2 (Cambridge 1991).

<sup>92</sup> See *id.*, ch. 18.

<sup>93</sup> See President's Budget for FY 2003, *Analytical Perspectives*, at 419-21 (2002); OMB's New Rule Cost-Benefit Methodology Draws Broad Criticisms, *Inside EPA*, Feb. 8, 2002, at 1.

uniformity in the level of costs imposed by federal regulations.<sup>94</sup> Although this is not the place to debate these measures of the societal value of regulatory interventions, it should be noted that they are quite controversial and by no means command a consensus among legal and policy scholars.<sup>95</sup> At best they belittle the societal value of the infirm and elderly, and at worst they force agencies to compare incommensurables and to dwarf "soft" variables like justice and fairness.

There are indications, moreover, that OIRA may see a substantive role for itself in the review process that goes beyond merely insisting that agencies prepare careful analyses of the costs and benefits of major regulations. For example, OIRA has begun to interject itself into the process of formulating rules much earlier in the process than has been the case in past administrations. Indeed, OIRA is even offering advice on how EPA should carry out its research into the health effects of pollutants. In a recent letter to EPA Administrator Whitman, OIRA Administrator Graham urged EPA to "retarget" its research on the health effects of fine particulate matter to address only those particulates determined to be harmful. A representative of the electric utility industry offered that "[t]his is exactly what we have been asking for."<sup>96</sup>

OIRA's 2001 report to Congress explains that "early involvement can be valuable if OMB's perspective helps agencies frame the problem in constructive ways, suggests creative regulatory alternatives, or offers insights into how particular types of costs and benefits may be quantified or weighed."<sup>97</sup> As the preceding quote suggests, early involvement also provides ample opportunity for OIRA to guide the rulemaking process to particular substantive ends. The choice among regulatory alternatives and weighing costs and benefits of those alternatives is the essence of substantive decisionmaking. To the extent that OIRA is providing input on such issues early in the process, it is providing substantive input. Given the reality of OIRA review of the final product, it should not be surprising to find that agencies are swayed by OIRA's views at these early, largely invisible stages of the decisionmaking process.

<sup>94</sup> Id.

<sup>95</sup> For critiques of cost-per-life-saved tables and quality adjusted life years, see Lisa Heinzerling, *The Rights of Statistical People*, 28 *Harv. Envtl. L. Rev.* 189 (2000); Lisa Heinzerling, *Regulatory Costs of Mythical Proportions*, 107 *YALE L.J.* 1981, 1986-2070 (1998); David M. Driesen, *The Societal Cost of Environmental Regulation: Beyond Administrative Cost-Benefit Analysis*, 24 *Ecology L.Q.* 545, 601-05 (1997); Thomas O. McGarity, *A Cost-Benefit State*, 50 *Ad. L. Rev.* 7, 40-49 (1998); Adam N. Finkel, *A Second Opinion of an Environmental Misdiagnosis: The Risky Prescriptions of Breaking the Vicious Circle*, 3 *N.Y.U. Env. L. J.* 295, 324-27 (1995).

<sup>96</sup> White House Regulatory Chief Urges EPA to 'Retarget' PM Research, Inside EPA, Weekly Report, December 14, 2001, at 13.

<sup>97</sup> Office of Management and Budget, *Making Sense of Regulation: 2001 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities* 43 (2001) [hereinafter cited as OMB 2001 Report to Congress].

Another indication of OIRA's desire to play a much more active role in day-to-day agency affairs is the invitation that it offered in May, 2001 to the public to "nominate specific regulations that we should propose for reform."<sup>98</sup> On the basis of the 71 submissions, OIRA identified a list of 23 "high priority regulatory review issues" that warranted further attention and could potentially result in a "prompt" letter to an agency demanding additional "deliberation and response."<sup>99</sup> Thirteen of the 23 rules on the so-called "hit list" are environmental regulations.<sup>100</sup> Included on the list are such recently completed actions as the Forest Service's roadless area conservation rule and EPA's arsenic in drinking water rule. All of the accepted recommendations came from either industry groups or the industry-supported Mercatus Center of George Mason University.<sup>101</sup>

OMB has issued guidelines to agencies on the quality of information that agencies use when they regulate or otherwise communicate risk-related information to the public.<sup>102</sup> The guidelines, which were drafted pursuant to an obscure rider in the Treasury and General Government Appropriations Act for Fiscal Year 2001,<sup>103</sup> require agencies to develop procedures to ensure the quality of information that the agencies disseminate and to allow companies and other affected entities an opportunity to challenge information that does not come up to the OMB's standards of information quality. The OMB Information Guidelines require agencies to "develop information resource management procedures for reviewing and substantiating . . . the quality (including the objectivity, utility, and integrity) of information before it is disseminated."<sup>104</sup> In addition, the Guidelines require agencies to develop procedures for allowing affected persons to "seek

<sup>98</sup> OMB 2001 Report to Congress, *supra*, at 61.

<sup>99</sup> OMB 2001 Report to Congress, *supra*, at 62.

<sup>100</sup> OMB 2001 Report to Congress, *supra*, at 63-64.

<sup>101</sup> Natural Resources Defense Council, Inc., *Rewriting the Rules: The Bush Administration's Unseen Assault on the Environment 19-20* (2002). See Free Market Group *Wields Strong Influence on Bush Rule Reforms*, Inside EPA, Weekly Report, January 25, 2002, at 11.

<sup>102</sup> Office of Management and Budget, *guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, September 24, 2001 [hereinafter cited as OMB Information Guidelines].

<sup>103</sup> Pub. L. 106-554, 106th Cong., 2d Sess (2000).

<sup>104</sup> OMB Information Guidelines, *supra*, at 5.

and obtain, where appropriate, timely correction of information . . . that does not comply with OMB and agency guidelines."<sup>105</sup>

At this early stage in the implementation of the guidelines the extent to which OIRA plans to screen agency rulemaking documents for consistency with OIRA's interpretation of the OMB guidelines remains unclear. It is, however, quite clear that the advocates of the Guidelines who lobbied for the appropriations rider assume that OMB will be actively involved in reviewing agency background documents for consistency with its guidelines.<sup>106</sup> Thus, the guidelines could serve as a vehicle for increasing the stringency of OIRA scrutiny of rulemaking documents and thereby facilitate greater substantive control. At the very least the opportunity that the guidelines afford regulatees to challenge the quality of the scientific information underlying health and environmental regulations before they are promulgated will serve further to ossify the rulemaking process.<sup>107</sup>

#### **Diminished Accountability for Delegated Programs.**

Most federal environmental laws provide for substantial delegation of federal powers and responsibilities to the states upon a proper demonstration that the state programs are sufficient to meet the requirements of the federal programs. Pursuant to these delegations, state regulatory agencies regulate private polluting activities within broad contours specified by federal statutes and regulations. During the first year of the Bush Administration, EPA has signaled that the states have a great deal of flexibility to administer federally delegated programs, even to the point of violating the specific requirements of environmental statutes. A good example is EPA's approval, on November 14, 2001, of wholly inadequate amendments to the Texas state implementation plan (SIP) for the Houston/Galveston ozone nonattainment area.<sup>108</sup>

EPA was bound by statute and a consent decree either to approve a state-submitted plan demonstrating that the Houston/Galveston area would come into attainment with EPA's one-hour standard for photochemical oxidants by 2007 or to

<sup>105</sup> OMB Information Guidelines, *supra*, at 15.

<sup>106</sup> See OMB Guidelines on Quality of Information Seen as Having Profound Impact on Agencies, 33 BNA Environment Reporter (Current Developments) 146, 148 (2002) (lobbyist Jim Tozzi argues that "through the information-quality guidelines, OMB can control the information disseminated" by regulatory agencies).

<sup>107</sup> See, *id.*, at 147-48 (reporting concerns from environmental group representatives and former OMB officials that the guidelines will be used by regulatees to slow down the rulemaking process).

<sup>108</sup> U.S. Environmental Protection Agency, Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Nonattainment Area; Ozone, 66 Fed. Reg. 57160 (2001).



promulgate such a plan on its own. EPA approved a state-submitted plan that did not demonstrate how the area would come into attainment by the deadline. In fact, the Texas plan came up short by 56 tons per day (tpd) of NO<sub>x</sub> emissions, an amount that represents more than one third of the emissions assigned to all automobile emissions in the attainment year.<sup>109</sup> Instead of making the required demonstration that the plan would attain the one-hour ozone standard by the 2007 deadline, the plan that EPA approved contained several promises for actions that Texas would take in the future.<sup>110</sup> In particular, the Texas plan merely promised to adopt rules sometime in the next two-and-one-half years capable of making up the 56 tpd shortfall "without requiring additional limits on highway construction."<sup>111</sup> The Clean Air Act permits EPA to approve a plan revision "based upon a commitment of the State to adopt specific enforceable measures by a date certain," but in order to prevent just the sort of highly speculative attainment demonstrations that the Houston plan attempts, the measures must be adopted "not later than one year after the date of approval of the plan revision."<sup>112</sup> EPA's action is thus patently unlawful, and it has (not surprisingly) been challenged in court.<sup>113</sup>

One of the reasons that no area that was designated "serious" or "extreme" is likely to come into actual attainment with the 1-hour ozone national primary ambient air quality standard is the failure of EPA to promulgate regulations implementing the requirement of section 181(g) that states retrospectively demonstrate that sources in such nonattainment areas did in fact achieve a 15 percent reduction in volatile organic compounds (VOCs) (or the equivalent in VOC and NO<sub>x</sub> reductions) as of August 15, 1996 and reductions of 3 percent per year thereafter. Although the SIPs for such areas provide for such reductions, no state has ever demonstrated that the reductions were actually achieved, despite a statutory requirement that they do so. The states are waiting for EPA to promulgate regulations prescribing the "form and manner" of such demonstrations. EPA has taken no action during the Bush Administration to write such regulations, even though the 2002 demonstration year is now upon us.

<sup>109</sup> The motor vehicle emissions budget for NO<sub>x</sub> for the attainment year of 2007 in the Houston/Galveston nonattainment area is 156.6 tpd. 66 Fed. Reg. at 57161.

<sup>110</sup> For example, the Texas SIP promised to perform new mobile source modeling for the area, using new EPA models, within 24 months of a model's official release, and to perform a "mid-course review" and submit a "mid-course review SIP revision, with any recommended mid-course corrective actions," to the EPA by May 1, 2004. 66 Fed. Reg. at 57160-61.

<sup>111</sup> 66 Fed. Reg. at 57161.

<sup>112</sup> 42 U.S.C. § 7410(1)(4).

<sup>113</sup> *Environmental Defense v. EPA*, Petition for Review, United States Court of Appeals for the Fifth Circuit, January 11, 2002.

**Less Transparency.**

In the age of the internet, federal agencies have many opportunities to make the decisionmaking process available for public viewing. Agencies can provide important (and even relatively unimportant) documents, announcements of meetings, and minutes of advisory committee meetings to the public on the world-wide web. Indeed, they can even broadcast live meetings online. The Electronic Freedom of Information Act Amendments of 1996 accelerated the overall trend since the enactment of the original Freedom of Information Act in the mid-1970s toward openness in government decisionmaking. The trend during the first year of the Bush Administration, however, appears to be away from this general trend toward increased transparency of the decisionmaking process in Executive Branch agencies.

The refusal by the White House to disclose documents related to the meetings of Vice-President Cheney's Energy Task Force with representatives of energy companies including Enron Corporation, Southern Company, the Exelon Corporation, BP, the TXU Corporation, FirstEnergy and TXU Corporation, is no doubt the most heavily publicized action in this regard, but it is by no means the only sign of a trend away from transparency.<sup>114</sup> A federal district court recently employed unusually harsh language in criticizing the Department of Energy's hesitance to disclose documents relating to that Department's participation in the Energy Task Force. The court found that the agency had been "woefully tardy" in responding to the Natural Resource Defense Council's FOIA request for documents that were of "extraordinary public interest."<sup>115</sup> According to the court, the government had "no legal or practical excuse for its excessive delay in responding" to the request.<sup>116</sup>

In October, 2001, the Justice Department issued a new memorandum describing how agencies in the Bush Administration should respond to requests for information under the Freedom of Information Act (FOIA).<sup>117</sup> Although the Administration was "committed to full compliance with" FOIA, the memorandum stressed that it was "equally committed to protecting other fundamental values that are held by our society." Noting that "certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public," the memorandum warned agencies that they should release voluntarily information that might otherwise be withheld "only after full and deliberate consideration of the institutional, commercial, and personal privacy

<sup>114</sup> See Don Van Natta, Jr. & Neela Banerjee, Top G.O.P. Donors in Energy Industry Met Cheney Panel, New York Times, March 1, 2002.

<sup>115</sup> Natural Resources Defense Council, Inc. v. Dept. of Energy, Civ. No. 01-2545 (GK), Memorandum-Order, Feb. 21, 2002, at 3.

<sup>116</sup> *Id.*, at 5.

<sup>117</sup> Memorandum for Heads of All Federal Departments and Agencies from John Ashcroft re: The Freedom of Information Act, dated October 12, 2001.

interests that could be implicated by disclosure of the information." The Justice Department promised to defend all agency decisions to withhold documents "unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records." The presumption erected by the memorandum is apparently in favor of nondisclosure of information that can be protected, rather than in favor of voluntary disclosure of information that could be protected but would not cause harm if disclosed. This represented a reversal of the presumption in favor of voluntary disclosure that applied during the Clinton Administration.<sup>118</sup>

Other individual actions by individual agencies also suggest a trend away from transparency during the Bush Administration. In October, 2001, EPA hosted a closed door meeting with industry representatives to discuss the possibility of "building a new reinvention and regulatory reform agenda."<sup>119</sup> In that same month, the Forest Service issued a proposal to expand its use of "categorical exclusions" from the otherwise applicable environmental analysis and review process to certain "special use" applications and authorizations.<sup>120</sup> In the absence of these environmental assessments, any adverse environmental effects of such authorizations are effectively invisible to the general public. The Fish and Wildlife Service's harshly negative comments on the Corps of Engineers' changes to the nationwide permit program, discussed above, were quietly premitted by upper level officials in the Department of Interior and would never have seen the light of day but for a leak to a newspaper reporter.<sup>121</sup> In December, 2001, USDA announced a decision to approve a large sale of timber on nearly 41,000 acres in the Bitterroot National Forest and at the same time proclaimed that the sale would be exempt from administrative appeal. A federal judge in January, 2002 enjoined the sale because of the court's concern that the public had been shut out of the decisionmaking process.<sup>122</sup>

One gratifying exception to the general movement away from transparency is the previously discussed effort by the Office of Information and Regulatory Affairs in the Office of Management and Budget to increase the transparency of its interaction with the

---

<sup>118</sup> See Ellen Nakashima, *Bush View of Secrecy is Stirring Frustration*, *Washington Post*, March 3, 2002, at A1; *Critics Say New Rule Limits Access to Records*, *New York Times*, February 27, 2002.

<sup>119</sup> *White House Uses New Popularity to Move Environmental Agenda*, *Inside EPA Weekly Report*, November 9, 2001, at 1, 13.

<sup>120</sup> *Forest Service, National Environmental Policy Act Documentation Needed for Certain Special Use Authorizations*, 66 *Fed. Reg.* 48412 (2001).

<sup>121</sup> See Michael Grunwald, *Compromise, or Selling Out?* *Washington Post Weekly Edition*, January 28, 2002, at 30.

<sup>122</sup> *Bush is No Defender, Attorneys Charge*, *Environmental News Network*, January 11, 2002, at 2.

regulatory agencies by putting the content of such communications on its expanded website.<sup>123</sup>

#### Conclusions.

It does not appear that the George W. Bush Administration came to office with a radical deregulatory agenda of the sort that the White House and the major presidential appointees pursued in the early years of the Reagan Administration and the waning years of the George H. W. Bush Administration. At the same time, it is readily apparent that the White House does not have a progressive environmental protection agenda in mind. Indeed, I have been unable to identify a single important new rulemaking initiative undertaken by the George W. Bush Administration to protect citizens from private polluting activities. The Bush Administration's attitude toward environmental regulation might best be characterized as "quietly hostile."

To use an athletic metaphor, it is fair to say that the George W. Bush administration did not hit the ground running with an agenda for improving the environment. Indeed, it does not appear that the Administration is even jogging in the direction of environmental improvement. Viewed most charitably, the Bush Administration has been running in place on environmental issues while it focuses its attention on other matters. In recent weeks, however, its actions strongly suggest that the Administration is beginning to sprint off in the opposite direction. If so, irreparable harm to human health and the environment is the predictable consequence.

---

<sup>123</sup> The OIRA website is located at  
<<http://www.whitehouse.gov/omb/inforeg/regpol.html>>.



NATURAL RESOURCES DEFENSE COUNCIL

Testimony of

**Gregory S. Wetstone**  
Director of Advocacy Programs  
Natural Resources Defense Council

Hearing on Bush Administration Implementation of  
Environmental Laws

Before the  
Senate Committee on Governmental Affairs  
March 7, 2002

[www.nrdc.org](http://www.nrdc.org)

1200 New York Avenue, NW, Suite 400  
Washington, DC 20005  
TEL 202 289-6868 FAX 202 289-1060

NEW YORK • LOS ANGELES • SAN FRANCISCO

Mr. Chairman, members of the Committee, my name is Gregory Wetstone and I am director of advocacy at the Natural Resources Defense Council (NRDC), a national, non-profit organization of scientists, lawyers, and environmental specialists, dedicated to protecting public health and the environment. On behalf of NRDC, and our more than 550,000 members across the nation, I want to thank you for convening this vitally important hearing, and for providing NRDC with the opportunity to participate.

The topic before the committee today, the status of environmental protection efforts at the federal agencies of the Bush Administration, is an exceptionally urgent one, with great relevance to millions upon millions of Americans. The landmark environmental protection laws passed by Congress since 1970 have, taken together, been among the most popular and successful legislative initiatives ever. These laws, and the regulatory safeguards they spawned, have worked to improve the quality of life in America, reducing unhealthy smog in our cities, stemming the flood of sewage and toxics into our rivers, reducing the level of lead in children's blood, bringing the bald eagle and the gray whale back from the brink of extinction, revolutionizing hazardous waste disposal, helping to clean our coastlines and protect our wetlands, saving public lands for all Americans to enjoy, and preserving some of the last of our country's spectacular wild areas.

Today, however, the bipartisan environmental laws and programs that made this progress possible are very much at risk. The threat is less from an open effort to weaken these popular laws in Congress, than a quiet campaign to subvert the fundamental government structure that is vital to making them work. Sadly, it is increasingly clear that the Bush Administration is employing the full force of the Federal Government in a sweeping campaign to undermine the programs that protect our air, water, lands, and wildlife.

The leading edge of this onslaught is a wide-ranging effort at the federal agencies with environmental responsibilities -- including the Interior Department, the Forest Service, the Environmental Protection Agency, and the Corps of Engineers -- to weaken the formal rules that translate Congress' mandates into specific requirements for industry. The examples span the spectrum of environmental law. NRDC's new report, *Rewriting the Rules: The Bush Administration's Unseen Assault on the Environment* documents an extensive list of more than 60 environmental retreats on issues ranging from clean air, to clean water, to protection of National Parks, wildlife, wetlands, and forests. (I would like to submit this document for inclusion in the hearing record.)

But the changes in formal agency rules, which under the law must involve an open public process, are only the tip of the iceberg. The Administration is relying extensively on other destructive tactics that are comparably damaging, but far less visible.

The failure to aggressively enforce environmental requirements is one important example. Actions undermining the credibility of clean air act enforcement were of course highlighted with the high profile resignation last week of a senior EPA enforcement official. The Administration's proposed 2003 budget would cut EPA enforcement capabilities substantially, eliminating over 200 EPA enforcement personnel.

Similarly, we've seen extensive use of highly technical agency "guidance," rather than changes in formal rules, to avoid an open public process when backing away from high profile environmental programs. A prime example is the Corps of Engineers "regulatory guidance letter" issued last November with absolutely no public input, which effectively eviscerated the cornerstone of U.S. wetlands protection, the national commitment to "no net loss" of wetlands. Along the same procedural lines, the Agriculture Department has issued a series of "interim directives" that fundamentally undermine forest protection policies through changes in the Forest Service manual, a tactic that once again minimizes public attention and involvement.

Another stealth approach is the simple failure to defend environmental requirements in court. Examples include the Forest Service decision last March not to defend the landmark "roadless" forest protection rule from challenge by the timber industry and its allies, and the Fish and Wildlife Service's willingness before a federal court only last month to forgo protection for 500,000 acres of "critical habitat" in California, which had previously been considered essential for the continued survival of endangered species. Along these same lines, last June the Interior Department hastily capitulated to a lawsuit the International Snowmobile Manufacturers Association brought to delay implementation of a rule barring snowmobiles from Yellowstone National Park.

The failure to assure funding for vital environmental programs is yet another stealth approach. The most prominent example is the Administration's failure to seek reauthorization of the Federal Superfund tax on oil and chemical feed stocks. With the clean-up of hazardous waste sites required to be fully subsidized by taxpayers, and the fund running out of money, EPA officials have publicly warned that we now face a major slow-down in the clean-up of our most contaminated hazardous waste sites.

Finally, and in some ways most disturbingly, we come to the effort at the White House Office of Management and Budget to stack the deck in the federal agency rulemaking process, blocking environmental safeguards with new procedural hurdles, biased analytical assumptions, and unwarranted political interference. The controversial new chief of regulatory review at OMB, John D. Graham, has a long history of promoting controversial cost benefit assumptions that devalue environmental protection. Most notable are assumptions suggesting that the life of an elderly person should be considered less valuable on the thesis that quality of life is lower, and there is less long to live, and assumptions that devalue lives lost due to carcinogens in the environment on the theory that death in the future from current toxic exposures should be discounted.

To promote adherence with these views Dr. Graham has employed a new bureaucratic weapon, the "return letter," to send rules back to environmental agencies for additional cost-benefit analysis. This tool can be applied to derail a regulatory safeguard even where Congress has decreed that agencies should act without regard to costs or benefits, for example where the environmental statutes require standards to be based on the best available technology or the level necessary to assure protection of human health. Using this new tool, Mr. Graham has already returned several rules to agencies for "improved

analysis.” While better analysis is a fine objective, no one seriously expects rules to be strengthened as a result of this exercise. To date, this approach has only been used to sidetrack rulemakings like EPA’s proposed rule for reducing emissions from off-road vehicles like snowmobiles.

Lastly there is the effort broadly known as the OMB hit list. OMB has reached out to the regulated industry and others to develop a controversial list of environmental and other safeguards that are to be re-evaluated and, potentially, weakened. Although the process of pulling this list together theoretically encouraged suggestions from all sides, the published list of rulemakings to be reviewed clearly reflects industry’s high priority wish list. All but three of the 13 environmental rules included here were suggested by an industry-funded anti-regulatory think tank, with two of the others stemming from industry trade associations. As a practical matter, the OMB hit list, which I would like to submit for inclusion in the record, is a road map for future regulatory battles over environmental rollbacks. It includes safe drinking water standards, controls on toxics, Clean Air Act requirements, water pollution limits, pollution from factory farms, and forest planning regulations.

I’d like to take a moment to review a few of the most troubling administrative actions in a bit more detail.

- **Clean Air.** There is no more fundamental requirement in the Clean Air Act than the mandate that new pollution sources install state-of-the-art pollution controls. Approved by Congress in the 1972 Clean Air Act Amendments, and affirmed in 1977 and again in 1990, the new source requirements are part of the fundamental compromise in our clean air law, one that allows older power plants and factories more leeway, while imposing tough requirements on new facilities. Older facilities, the authors of the law reasoned, will eventually be replaced with more tightly controlled new facilities, assuring long-term environmental improvement. To prevent power plants and factories from evading these requirements through piece-by-piece rebuilding, the Clean Air Act also subjects major “modifications” of factories and power plants to the new source standards. In recent years, this requirement has been especially important, as EPA has launched enforcement cases against old coal-fired power plants without pollution controls that have tried to escape the Clean Air Act by surreptitiously rebuilding under the guise of normal maintenance.

Sadly, the Bush Administration stands ready to carve up this program with new loopholes that would allow aging power plants and factories to rebuild and increase pollution without meeting the tough new source requirements. EPA is now involved in a major internal battle with the Department of Energy and the White House OMB, over this proposal, and it seems increasingly likely that an extremely damaging environmental proposal will emerge from this process.

Almost as troubling as the substance of this proposal, is the highly unusual, and almost certainly illegal, process EPA plans for this action. The Agency has



indicated that it intends to eliminate the opportunity for the public to participate in the decision through “public notice and comment” by moving directly to a final rulemaking, and skipping the traditional “proposed” phase of the regulatory action.

The result would be more pollution from hundreds of the nation’s oldest and dirtiest power plants and oil refineries, causing more acid rain, more smog and increases in tiny particles of soot called “particulate matter” that are especially hazardous to health. The health consequences of this retreat are staggering. White House signals regarding the intention to weaken this key requirement have, not surprisingly, derailed progress toward securing settlements that would curtail illegal pollution from numerous power plants. The opportunity to cut deeply into the toll of premature deaths from this pollution, estimated at 10,000 lives annually by EPA, has been delayed for a year as the White House review has dragged on.

- **Wetlands.** For more than a decade, the cornerstone of America’s approach to the protection of wetlands has been a national policy calling for “no net loss,” which originated with the first Bush Administration. In 1990, EPA and the Army Corps of Engineers signed a Memorandum of Agreement, outlining standards for mitigating destruction of natural wetlands in order to help achieve the “no net loss” goal. Last Halloween, however, the Corps effectively swept this policy aside, with no public notice or opportunity for comment, through issuance of an obscure policy document called a “regulatory guidance letter” that unilaterally abrogated the 1990 memorandum of agreement with EPA. Under this new policy, it will be considered acceptable to replace lost and destroyed natural wetlands with upland areas, stream buffers, and other areas that simply are not wetlands. Environmental advocates have termed this “new net loss” and anticipate that it will mean the loss of tens of thousands of acres of precious wetlands, which are vital for flood protection, clean water, and wildlife habitat.

The stunning reversal of the “no net loss” policy is only one component of a broader Bush Administration effort to weaken wetlands protection. Another major blow came in January when the U.S. Army Corps of Engineers finalized a major relaxation of its “nationwide” permit program, which regulates smaller development and industrial activities in streams and wetlands. The proposed changes would make it easier for developers and mining companies to destroy wetlands, particularly in flood-prone areas, by allowing the Corps to waive crucial requirements that limit stream destruction to a 300 foot limit, impose restrictions on filling wetlands in floodplains, and secure acre-for-acre replacement of destroyed wetlands.

- **Mining on Public Lands.** Mining activities have despoiled 40 percent of all Western watersheds, according to an Environmental Protection Agency estimate in 2000. A half-million abandoned or closed mines dot the nation’s landscape, with cleanup costs estimated in the tens of billions of dollars. It is therefore especially tragic that Bush Administration rollbacks have been particularly brazen

when it comes to the environmental restrictions that apply to mining on public lands.

In October, Forest Service Chief Bosworth formally asked the Interior Department to lift a two-year moratorium on new mining activities covering 1.15 million acres of federal land in southern Oregon, including a 700,000-acre area under consideration for national monument status. That same month, Interior Secretary Norton issued new final “hard rock” mining regulations that reverse the environmental restrictions that apply to mining for gold, silver, copper and other metals on federal lands. Shockingly, under the new rules, the Interior Department renounced its own authority to deny permits to mine on taxpayer-owned lands on the grounds that a proposed mine could result in “substantial irreparable harm” to the environment or nearby communities. The new rules also limit corporate liability for irresponsible mining practices, in the process undermining cleanup standards that safeguard ground water and surface water. The rules took effect last December 31.

- **Raw Sewage in America’s Waters.** In 2000, EPA issued long-overdue rules minimizing raw sewage discharges into our waterways, and requiring public notification of sewage overflows. This is an extremely important problem nationally. EPA reports that there were 40,000 discharges of untreated sewage into waterways, playgrounds, streets and basements across the country in the year 2000. Sewage containing bacteria, viruses, fecal matter and a host of other wastes is responsible each year for beach closures, fish kills, shellfish bed closures, and human gastrointestinal and respiratory illnesses. Not surprisingly, the health consequences of this contamination are substantial. The Centers for Disease Control estimates that waterborne microbial infections cause up to 940,000 illnesses and 900 deaths each year in the U.S. (*Protecting and Restoring America’s Watersheds*, U.S. EPA, 2001). These exposures pose the greatest risk for children, the elderly and those with weakened immune systems.

Despite a consensus between environmentalists and federal, state and municipal authorities on procedures to prevent sewage spills and the importance of warning citizens about the hazards of sewage exposure, the proposed rules were held up as part of the 60-day regulatory moratorium issued by White House Chief of Staff Andrew Card when the Administration first took office. After nearly a year, the Administration has still not issued the final sewage overflow rules. Technically, the rules remain under “internal review” at EPA, but in practice they remain in an indefensible regulatory purgatory. Meanwhile, Americans are swimming in sewage tainted waters, and being denied even rudimentary public notice of sewage contamination.

- **Forest Protection.** A little over a year ago, the U.S. Forest Service issued the Roadless Area Conservation Rule, perhaps the greatest American conservation measure of all time, protecting 58.5 million acres of inventoried roadless national forest areas from most logging and roadbuilding. This rule resulted from years of

scientific and expert review, more than 600 public hearings across the country, and approximately 1.5 million public comments in favor of the rule or even stronger protections. The rule allows for local input into many kinds of decisions about roadless areas.

In March 2001, Agriculture Secretary Veneman pledged to protect roadless forest areas. However, when the roadless rulemaking was challenged in federal court, the Administration declined to defend the rule against lawsuits brought by the timber industry and its allies.

Meanwhile, the Forest Service issued a series of "interim directives" over the ensuing months, each time further undercutting roadless area protections through changes in the Forest Service manual – an approach for affecting significant changes while minimizing public attention. These changes carve massive new loopholes into the requirements that roadless national forest areas be protected, allowing roadbuilding upon completion of a "roads analysis," or even without such analysis with the approval of the Chief of the Forest Service or his designee. As a practical matter, with these loopholes the agency has almost completely abandoned the special protections designed to prevent clearcutting in roadless areas. This is particularly evident in the Tongass National Forest, where the Forest Service is moving ahead with 33 timber sales in pristine roadless areas -- timber sales that are slotted to cut down over 650 million board feet of timber. This logging, and the irreversible destruction it will cause, is proceeding despite the fact that the Administration's new forest policies are the subject of significant litigation, especially as they apply to the Tongass National Forest.

These are just a few of the most high profile environmental retreats. As documented in the NRDC report, there are dozens of others.

Taken together this assault on the environment is the most serious threat ever to America's landmark environmental protection programs. If allowed to proceed unhindered, it will leave our bipartisan environmental laws technically unchanged, but dramatically undermine their credibility and effectiveness - in essence rendering them mere words on paper, increasingly irrelevant to what polluters, developers, and those who drill, log and mine on public lands, do in the real world.

**TESTIMONY OF  
CONNECTICUT ATTORNEY GENERAL RICHARD BLUMENTHAL  
BEFORE THE  
SENATE GOVERNMENTAL AFFAIRS COMMITTEE  
MARCH 13, 2002**

Mr. Chairman Senator Lieberman and members of this Committee, I commend your review of the Bush Administration's enforcement of federal environmental laws and appreciate the opportunity to provide a state perspective.

Environmental enforcement is a matter of life and death -- for all of us, but most especially our children.

Putting aside the mind numbing statistics and science about global temperatures, wind patterns, and the like, we now know beyond doubt this fact: air and water contamination are killers. They cause death and disease with real financial and human costs. Contaminants such as sulfur dioxide and nitrogen oxide from the Midwestern power plants -- just two of the pollutants emitted by these plants -- cause 300 deaths and 6,000 asthma attacks in Connecticut alone every year.

Facing and fighting these dangers together, the state and federal governments have forged a historic partnership. Under both Republican and Democratic Presidents, we have worked hard -- as a team -- to approve and enforce laws such as the Clean Air Act and the Clean Water Act, reclaiming our air and water from years of disregard and degradation.

This proud partnership has produced real environment progress -- through tough negotiation and tougher legal action. Repeated lawsuits have produced milestone court victories. As partners, we have raised the bar and made polluters meet it, strengthened standards and policed them.

More important than the millions of dollars in penalties are the judicial orders cutting pollution. Our lawsuits are complex, resource intensive and time-consuming -- requiring real joint strategies and shared manpower. Many polluters are multi-billion dollar corporations that plow their huge profits -- gained from disobeying the law -- into court tactics aimed at delaying and defeating law enforcement.

Now, the Administration apparently is abandoning our partnership, undermining the environmental laws and undercutting the states. Not only has federal enforcement been swept aside, but states have been shut out and shot down as partners. In fact, we are no longer partners.

We have neither input nor power. Our seats at the table have been occupied by energy interests, the Enrons and Ohio Edisons of the nation, now behind closed doors.

In your first hearing you heard from EPA Administrator Christine Whitman, whose commitment to state environmental enforcement was unquestionable as Governor of New Jersey. Even now, her emotional and intellectual engagement in environmental causes -- along with her grace and civility -- make her an effective spokesperson.

Quite appropriately, Mr. Chairman, you urged her to continue her advocacy -- to "keep up the battle" -- within the Administration.

But the battle already may be teetering toward defeat in three critical areas -- diesel exhaust regulations, new source review standards, and air conditioner efficiency requirements. In these three areas, the Administration's abandonment and abrogation of environmental principles and partnership endanger our health and life.

Under the theory that one picture is worth a thousand words, I have included a graphic picture of the importance of enforcement or, its corollary, the tragedy that would befall Americans if the Bush Administration fails to re-invigorate its air pollution enforcement efforts.

These graphs compare the pollution reductions that could be achieved through enforcement of the existing Clean Air Act with two other scenarios -- the Bush Administration's Clean Skies initiative and S. 556 introduced by Senator Jeffords, Senator Lieberman and others. They were prepared by the office of my colleague, Eliot Spitzer, the New York Attorney General who has also been a steadfast leader in fighting for clean air. What these graphs show, very clearly, is that enforcement of the existing law will achieve very profoundly substantial reductions in sulfur dioxide, nitrogen oxides and mercury. Enforcement of the current law would dramatically reduce acid rain, asthma, respiratory disease, smog, and eutrophication of our coastal waters.

EPA and others may argue with these predictions. Forecasts are always uncertain, but the numbers in this chart are actually conservative. There is a Department of Energy report that predicts 60-80 percent reductions simply from enforcement of the New Source Review program, which is consistent with the level of reductions we set forth and expect to obtain in our own NSR enforcement cases. EPA predicted similar reductions in a presentation to the Edison Electric Institute, although EPA is now backing off those numbers. I urge you to recall that NSR is only part of existing law. The current Clean Air Act includes the new fine particulate air quality standard, the interstate ozone requirements, the mercury control technology standard. There is no realistic argument that full enforcement of all these programs will not achieve the 60-80 percent reductions portrayed on this graph. Indeed, I believe that more credible analysts indicate an even greater reduction than set forth here.

Again, put aside the cascading statistics and specific numbers. The point is that enforcement works. The point is also that, unfortunately, the Bush Administration is retreating from enforcement and is abandoning its partners -- the states -- in the midst of the battle.

We must restore our historic partnership before it is irretrievably shattered -- sabotaged by an Administration that seeks to weaken those standards and eviscerate enforcement

#### 1. Diesel exhaust regulations

Diesel exhaust fumes are sooty, smelly, and disgusting. They are key ingredients of smog. And, they are deadly.

Medical science now clearly shows that the "fine particulates" in that exhaust cause lung cancer and asthma, among other diseases. Two recent studies, the Abt Associates' Particulate-Related Health Benefits of Reducing Power Plant Emissions, October, 2000 and a 16 year, 500,000 person study printed in the March 6, 2002 issue of the *Journal of the American Medical Association*, conclude that particulate matter increases mortality from lung cancer and asthma. In order to protect our children from this danger, Connecticut's legislature is currently considering a bill to require that new diesel school buses be fitted with particle traps and use low-sulfur fuel.

Because of all the health concerns associated with diesel emissions, the EPA in 2001 established tough new regulations to reduce the pollution from new diesel engines. When the trucking and oil industries challenged these new rules in court, Connecticut and several other states formally intervened to support EPA. It was a classic example of our partnership.

Now we have discovered that our supposed partner has been secretly negotiating with the industries. When we first learned of the ongoing negotiations, we requested that EPA include us. The EPA, our partner, refused. We have petitioned the court to require EPA to admit us. As incredible as the need for that request may be, even more incredible was EPA's response: it filed objections to our request. The court ultimately declined to intervene, so the states are locked out, as EPA discusses compromises of our air quality with industry.

One key issue in the negotiations is how to calculate emissions from diesel engines in the regulations. There are two testing methods for measuring emissions: the FTP (Federal Test Procedure) Standard, which is a laboratory test for emissions, and the NTE Standard, which tests a broad range of normal driving conditions that are otherwise not subject to emission testing. We believe the discussions involve which of these methods to use. The FTP standard is intended to simulate a typical urban trip, but a wide variety of real world driving conditions are not incorporated in the test. The result is that an engine may meet the FTP standard in the laboratory, but not achieve FTP-based emission reductions in real world driving. The states and the environmental advocates should have some say on this important aspect of the diesel regulations.

We are committed to keep up the battle -- as you told the EPA to do -- even if our federal partner capitulates.

## 2. New source review standards

A higher profile example of the Administration's betraying our partnership while backpedalling on environmental protection involves New Source Review. To state the law in plain language, New Source Review is a requirement in the Clean Air Act that any power plant that makes significant changes to upgrade or expand, thereby increasing emissions, must also install state of the art pollution controls.

Midwest power plants send the Northeast all their pollution, and none of their power. Their air contamination is a killer. In Connecticut alone, sulfur dioxide from Midwestern power plants contributes significantly to deaths of approximately 300 people, and causes 6,040 asthma attacks every year. My state has the highest death rate from power plant pollution in New England. Connecticut air is so polluted by these power plants hundred of miles away that on some summer days, even if every car and power plant in our state stopped running, our air would still violate federal health quality standards for ozone. A 75% reduction in power plant pollution would save 200 lives in Connecticut every year.

In a series of lawsuits beginning two years ago, the EPA, Connecticut, New York and several other states sued several huge Midwestern power plants under the New Source Review sections of the Clean Air Act. We claimed that the plants spent millions of dollars to upgrade and expand their facilities without installing more air pollution controls, as the Clean Air Act requires. The EPA, the states and environmental advocates successfully negotiated with one of the major power plant owners, Dominion, to reach a settlement in principle that will dramatically cut emissions from its power plants in Virginia and West Virginia without raising electric rates or reducing electricity supply. We achieved a similar settlement principle with Cinergy.

Then, early in 2001, the Bush Administration ordered the EPA and the Department of Justice to review whether New Source Review was impeding the development of energy sources and power plants. The Administration did not consult or inform its supposed partners, the states. Upon this order, all progress stalled on the pending New Source Review cases, including negotiations with Dominion and Cinergy. Astoundingly, just last week, EPA Administrator Whitman testified before this committee that she thought that it would be unwise for utilities -- the same utilities that she is suing over violations of the Clean Air Act -- to settle with the government before a federal appeals court rules on a case involving the Tennessee Valley Authority and alleged violations of the NSR. Thus, the announcement to review NSR, made without any input from the states or environmental advocates, has succeeded in virtually halting the pending Clean Air Act lawsuits.

In the ongoing policy review itself, the Administration once again has effectively shut out the states. It has barely paid lip service to our views or those of environmental advocates. Energy industry leaders, including former Enron executives, have enjoyed easy access to the Oval Office and the Vice President to discuss weakening environmental laws and encouraging energy production. But the states and environmental groups were relegated to testimony at

formal public hearings last August without any information about specific proposals, and a few staff level meetings.

On December 18, 2001, we wrote to Vice President Cheney "to express our deep concern with the secret process by which the Administration is formulating changes to the Clean Air Act New Source Review program." We subsequently asked for a meeting with the Vice President but never received a response. Almost a month later, we received an invitation to meet with EPA Administrator Whitman. Our meeting with her on January 23 was cordial, but she could not provide us with any specific information about the Administration's plans or proposals for NSR. Such specifics, we understand, have been shared with industry -- in fact very likely with the companies that we, along with the federal government, are suing. Thus, polluters are coaching the Administration on how to weaken the NSR, while states and environmental advocates are pursuing enforcement against their ongoing flagrant, blatant violations of existing law.

The benefits of vigorous enforcement of existing standards, shown in the graphs attached, are irrefutable. If we continue our aggressive, joint enforcement of the Clean Air Act and, in particular, the New Source Review provisions, the amount of nitrogen oxides pollution from power plants would be cut 75% from 5 million tons to 1.25 tons by 2010, and sulfur dioxide would be reduced by 82% from 11 tons to 2 tons by 2012.

Connecticut and other Northeastern states are committed to keep up the battle -- ongoing and new legal action against those power plants, and even against the federal government to uphold the Clean Air Act. We are actively preparing to block any federal regulations eviscerating Congress' intent in this landmark law. But a clear signal from Congress itself may be the most effective step.

### 3. Air conditioner efficiency requirements

The Department of Energy, with input from various state agencies, promulgated in January, 2001, a final regulation requiring improved energy efficiency in new residential central air conditioning units. This measure offered major advantages for consumers and for the environment. The Department estimated that the new standards would avoid the construction of five 400 megawatt coal burning plants and thirty-four 400 megawatt gas-fired plants. By reducing future demand for electricity, it would eliminate the need to build new power plants, reduce our need for more fossil fuel to run those plants, and save money on electrical bills for the purchasers of the new air conditioners. In turn, power plant air pollution would be cut everywhere from Ohio to the Atlantic Ocean. Nitrogen oxides emissions would be diminished by 94,000 metric tons in 14 years. Our dependence on foreign energy supplies would be reduced.

While Connecticut residents would pay slightly higher prices for central air conditioning units, we would save electricity costs and enjoy cleaner air. The higher initial cost would be repaid many times, not counting the public health benefits.

Inexplicably, despite these benefits, some segments of industry opposed it.



Again, the industry provided input to the Department of Energy, and the states and the environmental advocates were virtually shut out. Without consultation with the states that provided critical information during development of the original final regulation, the Department of Energy unilaterally imposed two successive delays in implementing the regulation and ultimately proposed reducing the efficiency requirements by nearly 1/3. The states and environmental advocates have sued to stop the federal government from weakening this significant environmental rule, after the states were critical partners in its development. Here again, the states are now pleading with our supposed partner to protect consumers and the environment.

Is there a pattern in this picture? Again and again, states and environmental organizations are disregarded and dismissed -- publicly dispatched rather than treated as partners. Industry leaders are invited privately to the table as new partners. In these rooms, filled with industry smoke and mirrors, deals are struck to weaken and even eviscerate our environmental standards.

Senator Lieberman, you recently and accurately observed that America is at an environmental crossroads. Congress must put a stop to this continuing pattern of abuse of public trust. I urge this Committee to act decisively -- to protect our environmental laws and ensure that they are once again vigorously enforced.

As partners, we must match words with actions to truly keep up the battle.

**Testimony of Richard J. Dove, Waterkeeper Alliance**  
**SENATE COMMITTEE ON GOVERNMENT AFFAIRS**  
**MARCH 13, 2002**

TABLE OF CONTENTS.....1

OPENING STATEMENT AND SPEAKER’S BACKGROUND.....2

INTRODUCTION TO THE AMERICAN MEAT FACTORY.....3

I. INDUSTRIAL PORK FACTORIES: A THREAT TO THE ECONOMY, THE ENVIRONMENT, AND OUR DEMOCRACY

    A. Industrial Pork Factories, Invented in North Carolina, Now Threaten to Extinguish Family Farming in Thirty-Four States.....4

    B. Tradition of Land Stewardship and Animal Husbandry is Disappearing with the American Family Farmer.....5

    C. Industrial Animal Production Subjects Millions of Animals to Conditions that are Unspeakably and Unnecessarily Cruel.....5

    D. Pollution-based profits.....6

    E. Antibiotic Use Promotes Resistant Bacteria.....7

    F. Alternatives.....8

    G. Hog Barons Proliferate Through A Pattern of Law Breaking.....8

II. WATERKEEPER ALLIANCE CAMPAIGN AGAINST INDUSTRIALIZED HOG FACTORIES

    A. Waterkeeper Alliance.....10

    B. Waterkeeper’s Hog Campaign.....10

    C. Waterkeeper’s Legal Campaign.....10

III. THE FEDERAL GOVERNMENT STEPS IN, THEN BUSH ADMINISTRATION BACKS OFF.....11

IV. CONCLUSION.....16

Appendix A: Short Biographical Outline and Description of Neuse Riverkeeper Program.....18

Appendix B: The Waterkeeper Alliance.....21

Appendix C: Factory Farms, a Pattern of Lawbreaking.....22

Appendix D: CAFO Comments to EPA, July 30, 2001, January 15, 2002, February 4, 2002.....44

Appendix E: Environment: Bush Policies have Hurt the Environment in Texas.....96

**OPENING STATEMENT**

I want to thank Senator Lieberman and the other members of the Senate Committee on Government Affairs for scheduling these hearings and inviting me to testify before you. My testimony is presented on behalf of the Waterkeeper Alliance, a non-profit umbrella organization licensing and supporting more than 80 Waterkeepers protecting rivers, bays and other watersheds throughout the country. My testimony will address concerns about the negative impact of concentrated animal feeding operations (CAFOs) and EPA's failure to regulate such operations.

**BACKGROUND**

I am Rick Dove, and I have lived on the shores of the Neuse River near New Bern, North Carolina for over twenty-five years. In 1987, after retiring as a Colonel in the United States Marine Corps, I pursued a childhood dream and became a commercial fisherman. With three boats and a local seafood outlet store, my son Todd and I worked over 600 crab pots and more than 2,000 feet of gill nets. Things went well for the first two years. Then the fish began to die, many with open bleeding sores. At first it was only a few but, as time passed, the numbers grew larger and larger. Soon my son and I began to develop the same kind of sores on our legs, arms and hands. It took months for these sores to heal. I also experienced memory loss. At the time I did not connect my son's and my health problems to my work on the water—that connection was established later.

By 1990, the situation became much worse. More and more of the fish in the Neuse River were developing bleeding lesions. Regrettably, my son Todd and I had no choice but to stop fishing. Frustrated and disappointed, I grudgingly returned to practicing law. In 1991, the Neuse suffered the largest fish kill ever recorded in the state's history. Over one billion fish died over a period of six weeks during September and October. There were so many dead fish that some had to be bulldozed into the ground. Others were left to rot on the shore and river bottom. The stench produced by this kill was overwhelming and will never be forgotten.

In 1993, I became the Neuse Riverkeeper. In that capacity, I was a full-time, paid citizen representative of the non-profit Neuse River Foundation whose duty it was to restore, protect and enhance the waters of the 6,100 square mile Neuse River watershed. Due to ill health attributed in large measure from my exposure to the toxins in the river, my work as Neuse Riverkeeper ended in July 2000. A short biographical outline together with a detailed description of the Neuse Riverkeeper Program is attached as APPENDIX A

As the Neuse Riverkeeper, I was in a position, personally, to study the river, to work with scientists and state officials, and to closely monitor the various sources of pollution. I patrolled the river by boat, aircraft, vehicle and waders along with a corps of approximately 300 volunteers. All sources of pollution were exhaustively documented in thousands of photographs and hundreds of hours of video. By the time the next major fish kill occurred in 1995, I was in the best position to observe, report and document the cause and effect of one of the river's most serious problems, nutrient pollution.

In the 1995 fish kill, for over 100 days, fish were once again dying in large numbers. Nearly all of them were covered with open bleeding lesions. In just 10 of those 100 days, volunteers working with the Neuse River Foundation documented more than 10,000,000 dead fish. At that time, many citizens who were exposed to this fish kill complained about a number of neurological and respiratory problems. North Carolina health authorities documented these problems and wrongly dismissed them. Later, researchers working similar fish kills on Maryland's Pokomoke River would link these same symptoms to the cause of the fish kills, *Pfiesteria piscicida*.

By 1995, we knew what was killing the fish. It was *Pfiesteria piscicida*, a one-cell animal, so tiny 100,000 of them would fit on the head of a pin. This creature, often referred to as the "cell from hell" produces an extremely powerful neurotoxin that paralyzes the fish, sloughs their skin and eats their blood cells. It is capable of doing the same thing to humans. This neurotoxin is volatilized to the air and is known to cause serious health problems, including memory loss, in humans who breathe it. Its proliferation has been directly linked to nutrient pollution from CAFOs, as well as other sources. One of the most exhaustive websites related to *Pfiesteria piscicida* can be found at [www.pfiesteria.com](http://www.pfiesteria.com)

The fish kills continue today. Depending upon weather conditions, some years are worse than others. Many smaller kills are not even counted. Fishermen continue to report neurological and respiratory symptoms, and a dark cloud still hangs over the state's environmental reputation and economy.

From an office located in North Carolina, I now serve as the Southeastern Representative of Waterkeeper Alliance. The Alliance's headquarters is located in White Plains, New York. A major part of my duties involves assisting other Waterkeepers and investigating and documenting the environmental degradation resulting from CAFO operations, especially those involving hogs. The background on the Waterkeeper Alliance is set forth at APPENDIX B.

#### **INTRODUCTION TO THE AMERICAN MEAT FACTORY**

American meat production is currently undergoing the most dramatic consolidation in our history. Family farmers are disappearing and ceding control of the American landscapes and food production to industrial meat factories owned by a handful of giant corporations with little or no interest in or capacity for socially responsible agriculture.

Meat factories do not produce meat more efficiently than traditional family farmers. The industry's willingness to treat the animals with unspeakable cruelty and to dump thousands of tons of toxic pollutants into our nation's waterways, and their ability to get away with it, however, has given it a dramatic market advantage over the traditional family farm. Indeed, the industry's business plan is based upon its ability to use its political clout to paralyze the regulatory agencies, thereby escaping the true costs of producing their product.

For a decade, the Neuse Foundation and its Riverkeeper Program have been the leading voice against industrial hog production in North Carolina and one of the nation's leading repositories for information on industrial meat production. In December of 2000, Waterkeeper Alliance launched a national campaign designed to reform this industry and to restore healthy wholesome landscapes and waterways and bring back humanity, prosperity and democracy to America's rural communities. The Alliance is partnering with animal welfare advocates, family farm

advocates, other environmental groups and others concerned about rural life in America to fight hog factories in the courts, at all levels of legislative decision-making and before the public. The Alliance has also created an elite legal team of attorneys from fifteen prominent class action law firms who will use the courts to challenge the industry's control of America's rural landscapes and waterways. In February 2001, Waterkeeper staff attorneys and the legal team simultaneously filed a series of lawsuits against the industry in federal and state courts across the nation.

**I. INDUSTRIAL PORK FACTORIES: A THREAT TO THE ECONOMY, THE ENVIRONMENT, AND OUR DEMOCRACY**

**A. Industrial Animal Factories, Invented in North Carolina, Now Threaten to Extinguish Family Farming in Thirty-Four States.**

In the late 1980s, a North Carolina state senator, Wendell Murphy and his partners, Smithfield slaughterhouses, helped invent a new way to produce pork. Thousands of genetically enhanced hogs would be shoehorned into pens and tiny cages in giant metal warehouses, dosed with subtherapeutic antibiotics and force-fed growth enhancers in their imported feeds. Their prodigious waste would be dumped, sprayed, spilled and discharged onto adjacent landscapes and waterways. Within a few years, traditional North Carolina style hog farming gave way to the state's infamous pork factories mostly owned by a single corporation.<sup>1</sup> In 1983, there were approximately 24,000 hog farms in North Carolina. Today, traditional family hog farmers are virtually extinct in North Carolina, replaced by 2,200 hog factories, 1,600 owned and/or controlled by Smithfield. Pork factories owned by Smithfield and a tiny handful of other large corporations, known as integrators,<sup>2</sup> have now moved into thirty-four states and are effecting the most dramatic consolidation in United States agricultural history.

By gaining control of every aspect of pork production from feed for baby pigs, to slaughterhouse packaging plants, to rendering facilities and transportation, Smithfield and other industrial producers were able to drive down the price of pork - through overproduction - and drive independent family farmers out of business while making up their own losses through greater profits at their slaughterhouses and packing plants.<sup>3</sup> By late 1998, pork prices to farmers dropped as low as 10 cents per pound at a time when the feed cost of raising a pig was 30 cents per pound. Adjusted for inflation, farmers were getting less for their hogs than during the Great Depression. The American consumer never saw the benefits of this extraordinary price reduction. Pork prices in the grocery stores remained stable. The industrial producers, most notably, Smithfield, pocketed the profits at the slaughterhouses and thousands more family farmers went out of business.

The same process of vertical integration has bankrupted five out of six of America's hog farmers over the past 15 years and hammered a strong nail into the coffin of Thomas Jefferson's

<sup>1</sup> North Carolina is America's second largest hog producing state.

<sup>2</sup> The nation's largest 50 pork producers now control the vast majority of U.S. pork production. The largest producer, Smithfield Foods, controls over 24 percent, followed by Premium Standard Farms (7%), Seaboard Farms (6%), Prestage Farms (4%), The Pork Group / Tyson (4%), Cargill (4%), Iowa Select Farms (3%), Christensen Farms (3%) and Purina Mills (2%).

<sup>3</sup> Proliferating pork factories have caused the number of hogs in North Carolina to soar from a few million in the mid-eighties to more than ten million today with most of this growth concentrated in North Carolina's sensitive coastal plain. During the same period, nearly seventy-five percent of North Carolina's family farmers were replaced by low paying jobs in Smithfield's pork factories.

vision of a democracy rooted in family-owned freeholds. Approximately 70% of the swine raised in North Carolina are under Smithfield's ownership with an even higher percentage among the hog factories in North Carolina's fragile coastal flood plain, including the Cape Fear, Neuse and New River basins.

While hog barons often argue that industrial farming brings economic benefits to rural communities, the reality is the opposite. A mounting body of evidence proves that hog factories are bad for local economies and property values. Pork factories also cause a net loss of jobs. By machine-feeding hogs and keeping them continually confined, the pork barons have eliminated the need for animal husbandry. As few as two workers may tend a factory of 8,800 hogs. Each hog factory displaces three times as many jobs as it creates, replacing quality jobs with low wage itinerant workers.

What has happened to traditional hog farming is also happening to other areas of meat production. North Carolina also produces over 700,000,000 chickens and 40,000,000 turkeys in much the same way as it produces hogs—factory style. This shift from traditional family farming to industrial production (CAFOs) is now taking place across America.

**B. A Tradition of Land Stewardship and Animal Husbandry is Disappearing with the American Family Farmer.**

In the 1980's, the majority of pork production was still in the hands of efficient independent farmers who kept herds small enough that they could provide husbandry to the animals and manure production did not exceed fertilizer demand. The independent family farmer generally spreads the manure of a few hundred hogs as fertilizer on the same cropland from which he derives produce to feed his herd. Traditional farmers thus achieve a rough balance; growing crops that assimilate the nutrients in hog waste keeps these nutrients from flowing into adjacent waterways and leaching into groundwater.<sup>4</sup>

By contrast, industrial hog producers confine thousands of animals in warehouses, that produce tons of animal waste, liquefies that waste into open pits adjacent to the hog confinement areas, and sprays massive quantities of the liquefied manure onto fields too small to absorb the nutrients. Poison runoff from these fields destroys the public waters that drain them. Smithfield hog factories quickly triumphed over family farmers in the marketplace, not due to their greater efficiency, but because the company adopted the dual strategies of vertical integration and of circumventing environmental and anti-cruelty laws. Hog producers reap enormous benefits by escaping the costs of waste disposal and proper animal husbandry, and, in effect, transferring these costs onto society.

**C. Industrial Pork Production Subjects Millions of Animals to Conditions that are Unspeakably and Unnecessarily Cruel**

Factory meat production is an industrial rather than an agricultural enterprise. Animal husbandry is nonexistent. Industrial pork barons produce pork chops and bacon and the animals

<sup>4</sup> Recognizing that these practices benefit the public, Congress exempted the relatively small amounts of agricultural fertilizer that washed off farm fields into waterbodies from the Clean Water Act, RCRA and other environmental statutes.

themselves are treated only as industrial production units. Genetic manipulation for meat production has produced hog breeds that are high strung and nervous. They live short miserable lives characterized by extreme cruelty and extreme terror.

By nature, pigs are active, inquisitive and intelligent, and they spend much of their time exploring ground cover and rooting for food. They are communal animals with a highly developed system of vocalization that they use in courtship, self defense and raising their young. The female pig, the sow, has a strong instinct to build a nest before giving birth. She will wean her young for several months and take care of them even longer.

In industrialized hog factories, pigs are raised in intensive confinement for their entire lives in huge windowless structures choked by their own foul stench. Subject to disease from overcrowding and entirely deprived of exercise, sunlight, straw bedding, rooting opportunities and social interactions that are fundamental to their health, factory hogs are kept healthy only by constant doses of subtherapeutic antibiotics. Their growth rates are unnaturally sped-up by feed additives including antibiotics, hormones and toxic metals. Sows endure in tiny crates that are too small for them to turn around, giving birth on bare metal grate floors, their babies taken away after only three weeks of weaning. Driven by frustration and depression, sows continually gnaw on the metal bars of their crates. Severe restrictions on the pigs' movement over a lifetime impede bone development frequently resulting in broken legs. Injured pigs are "culled" sometimes by being dumped alive into waste lagoons. There are many accounts of brutal treatment of these animals, including teeth pulling, castration without anesthesia, and beating disabled sows unable or too terror stricken to walk to slaughter. According to the U.S. Humane Society, *one in five of all factory-raised pigs die prematurely*, before reaching the slaughterhouse.

In 1999, Smithfield made a major foray into Poland. At the invitation of the Animal Welfare Institute, Andrzej Lepper, the President of Poland's largest farmers' union, came to the United States and toured Smithfield hog factories. Mr. Lepper later recounted that he was shocked by what he saw in the American hog factories which he referred to as "animal concentration camps." He added that, "industrial husbandry methods of raising hogs are not in harmony with nature."

The Catholic Church Catechism holds that it is legitimate for humans to raise animals for food but also says that it is, "contrary to human dignity to cause animals to suffer or die needlessly." In December 2000, a Vatican official wrote that factory livestock operations, with their cramped and cruel methods, may cross the line of morally acceptable treatment of animals.

#### **D. Pollution-based Profits**

Industrial hog factories cram thousands of hogs into pens and cages for a lifetime over slatted concrete and metal grate floors.<sup>5</sup> Their waste falls through the floor to a cellar below the buildings that the operators periodically flush into an open air earthen pit, euphemistically referred to as a "lagoon." Flushing liquid comes from the lagoons themselves. These manure pits are really putrid cesspools one to twenty acres in size and up to fifteen feet deep, brimming

<sup>5</sup> Whereas traditional independent farmers raised their hogs on pasture or straw bedding which captured the manure, controlled odors and was spread regularly onto crops as fertilizer, factory pork producers completely deprive their hogs of straw bedding so that they can liquefy the waste, which increases odors and leads to runoff.

with tens of millions of gallons of untreated feces, urine and toxic waste generally destined to ooze its way onto soils and into subsurface waters and rivers.

Using a variety of water cannons, hog factories spray this *raw urine and fecal marinade* from their waste pits onto adjacent land, ostensibly as fertilizer. Industrial hog factories illegally deposit hundreds of millions of pounds of untreated hog feces and urine and other contaminants into the sprayfields each year. However, the frightening tonnage of liquid and solid hog excreta generated by swine cities vastly exceeds the absorption capacity of the crops on sprayfields for nitrogen, phosphorous and metals. Most sprayfield are heavily ditched to carry subsurface and surface runoff directly to public waters.

These discharges overload public waterways with nutrients, injuring aquatic life and endangering human health. According to the federal Environmental Protection Agency, sixty percent of river miles, fifty percent of lake access, and thirty four percent of estuary acres are degraded by agricultural pollution, mostly from factory farms. In addition to nutrients, swine waste lagoons contain a witch's brew of nearly 400 volatile organic compounds and toxic poisons including pathogenic microbes (protozoas, bacteria, viruses), biocides, pesticides, disinfectants, food additives, salts, heavy metals (especially zinc and copper), antibiotics, hormones, and other materials.

Industrial pork producers' primary economic advantage has been their ability to have the public subsidize their waste disposal. A single hog can produce ten times the fecal waste and four and a half times the nitrogen produced by a human being. A hog factory with 100,000 hogs can produce fecal waste loads equivalent to a city of one million people.<sup>6</sup> According to a formula developed by Professor Mark Sobsey, University of North Carolina, School of Public Health (Chapel Hill), in *North Carolina's environmentally sensitive coastal plain (area between the coast and I-95) hogs produce more fecal waste on daily basis than that produced by all the people combined in the states of North Carolina, California, New York, Pennsylvania, New Hampshire, North Dakota and Texas*. While human waste must be treated at sewer plants or in septic systems, industrial pork producers simply dump thousands of tons of equally virulent and far more concentrated hog waste onto lands and into waters.

If hog factories were to construct sewer plants for each of their pork factories, as cities are required to do for human waste, it would raise production costs by upwards of \$170 per hog. This is the equivalent of over sixty cents per pound at kill weight, a price that would destroy the industry's market dominance. Alternative treatment technologies, all of them less effective than conventional sewer treatment, would still raise production costs high above market levels.

#### **E. Antibiotic Use Promotes Resistant Bacteria**

Industrial meat producers routinely dose their animals with sub-therapeutic antibiotics for non-medical purposes, primarily to stimulate unnaturally rapid growth in hogs. The excessive use of antibiotics is an integral part of the production system both to bring them to market faster and to keep them alive in otherwise unlivable conditions. Many of the antibiotics given to livestock, such as tetracycline, penicillin, and erythromycin, are important human medicines. Up to 80% of antibiotics administered to hogs pass unchanged through the animal to bacteria rich waste

<sup>6</sup> One facility planned for the Rosebud Sioux Reservation in South Dakota will house 860,000 hogs and produce more waste than New York City!



lagoons. This soup is then spread on sprayfields, allowing the antibiotics to enter groundwater and run off into surface waters.

Routine administration of sub-therapeutic antibiotics endangers public health by contributing to drug-resistant pathogens with which humans and animals may come in contact through ground water, surface water, soil, air, or food products. Once antibiotics have entered hog factory effluents, they can enter waterways and spread through the environment in low concentrations – killing susceptible bacteria and leaving resistant survivors to multiply. Resistant bacteria can then infect people who swim in lakes and rivers or drink well water.

In January 2001, the Union of Concerned Scientists issued a report that included the following shocking statistic: *84% of all antibiotics consumed are used in livestock, the vast majority for nontherapeutic purposes!* The hog industry uses eleven million pounds of antibiotics annually while a comparatively modest three million pounds are used in human medicine.

Many public health officials have warned that the use of subtherapeutic antibiotics in hogs is extremely dangerous. The World Health Organization, the U.S. Centers for Disease Control and Prevention, and the American Public Health Association have all urged that using the antibiotics of human medicine in hogs should be prohibited. The European Union has banned nontherapeutic agricultural use of antibiotics that are important in human medicine. In some European countries, such as Sweden, using any antibiotics in raising hogs is illegal.

#### **F. Alternatives**

There are myriad alternatives to the lagoon and sprayfield system, but the industrial hog barons refuse to adopt innovations that might cut profit margins. For example, in Sweden, where factory farming is banned, hogs are raised in a deep-bedded straw system, where ample straw bedding is provided to pigs and they are allowed to move freely, interact socially with other pigs, and engage in other natural behaviors such as rooting and nest building. There are no farrowing crates. There is no liquefied manure, no waste pits, and none of the stench that envelops the American hog factories. Under the Swedish system, there is little risk of environmental injury because the manure is not liquefied and is naturally composted in the straw. Pigs raised under these conditions are also unstressed and healthier. The animals in Swedish farms and the people who raise them exist in a much healthier environment because they emit substantially less pollution to the air. In America, there are still a number of family farmers who used improved traditional methods to produce vegetables, meat and milk. Organic Valley and Niman Ranch are two successful leaders in this field. Their products are wholesome and tasty and they are produced through sustainable farming methods. Where animals are involved, they are treated humanely. These farmers do not use growth hormones or subtherapeutic antibiotics, and their farming practices are environmentally sound. These farmers could easily out compete their industrial competitors if the industrialist were required to bear the full cost of protecting the environment.

#### **G. Hog Barons Proliferate Through A Pattern of Law Breaking**

By illegally polluting, industrial hog producers gained a critical advantage over their competitors – the American family farmer – in the marketplace. These are not businessmen making a “honest buck”. Instead, they are lawbreakers and bullies who can only make money by polluting our air and water and violating the laws with which other Americans must comply.

Environmental lawbreaking is an integral component of factory pork production. Records of state environmental agencies in over a dozen states demonstrate that factory hog producers are chronic violators of state and federal law. For example, North Carolina's Department of Environment and Natural Resources ("NCDENR") records show thousands of violations by Smithfield's facilities<sup>7</sup> of state environmental laws. This is notable considering North Carolina's lack of inspectors and extremely poor enforcement record. The number of violations is believed to be considerably greater since, prior to 1995, the environmental agency was not even allowed to know the locations of the hog factories, or to inspect them unless 'invited' to do so by the operators or owners. Needless to say, such 'invitations' were exceedingly rare. The massive and persistent drumbeat of violations recorded in these documents prove that hog factories and their facilities are chronic, deliberate and habitual violators of state laws designed to protect the environment and minimize discharges of swine waste.<sup>8</sup>

Indeed, without breaking the law, pork factories cannot make money and produce hogs as efficiently or cheaply as family farmers. Industrial pork producers instead rely on rare inspections and small fines by state regulators. The rare penalties and small dollar amounts occasionally dispensed by state enforcers never provide sufficient incentive for the industrial pork barons to stop their lawbreaking. These fines amount only to a trivial cost of doing business (see APPENDIX C).

The industry locates its facilities in rural states where they can easily dominate the political landscapes. Weak state agencies are the primary consideration in siting the industry's new facilities. A 1998 study found clear evidence that the *level of enforcement* of environmental laws and regulations, even more than their stringency, had a direct influence on the growth of the hog industry.<sup>9</sup> The more lenient a state's enforcement program, the more likely it is to see growth in the hog industry. Hog factories also tend to locate in minority communities where opposition is considered by the industry to be more easily silenced.

<sup>7</sup> Smithfield's corrupt institutional culture and business practices are not restricted to North Carolina.

- In 1985, the Chief Justice of the Fourth U.S. Circuit Court of Appeals upheld the largest civil penalty ever imposed under the "citizen suit" provisions of the federal Clean Water Act, \$1,285,322, against Smithfield for pollution into the Pagan River in Smithfield's home state of Virginia.
- A 1996 twenty-three count Federal indictment from Virginia, charged a Smithfield manager and operator with both falsifying and destroying sampling records and intentional illegal discharges of toxic wastewater into the Pagan River. These actions resulted in an eighteen-month prison sentence and a record \$12.6 million civil penalty assessed by the U.S. District Court in 1997.
- Virginia recently charged Smithfield with more than 22,000 pollution violations from the mid-1980s to the mid-1990s. This case was dismissed by the judge in March 2001 who said that the federal action preempted the state's claims (based on *res judicata*).

<sup>8</sup> The State of North Carolina requires that hog facilities adhere to a Certified Animal Waste Management Plan designed to keep animal wastes and other pollutants confined to the facility so they will not be released into public waterways. Records kept by the NCDENR Division of Water Quality ("DWQ") and assembled by North Carolina Sierra Club show that Smithfield's pork factories regularly, habitually, persistently and dependably violate their certified waste plans or operate illegally without the required NPDES Permits.

<sup>9</sup> Mo and Abdalla, "Analysis Finds Swine Expansion Driven Most by Economic Factors, Local Decisions," *FEEDSTUFFS*, June 7, 1998.

## II Waterkeeper Alliance Campaign Against Industrialized Hog Factories

### A. Waterkeeper's Hog Factory Campaign

The consolidation of pork production by large industries and the proliferation of pork factories with lagoons and sprayfields have caused a dramatic public reaction in farm states particularly among factory neighbors. Many citizen organizations mobilized in the late 1980s to oppose the proliferation of meat factories. These groups began attending meetings of local boards of health, county commissions and drain commissions, and voicing their concerns to state and federal legislative bodies and agencies. Farmers, fishermen, and property owners warned the industry that its public claims that these factories could operate without polluting air and waterways would be exposed as false. Corporate pork production has harmed so many people in different ways that many groups have identified it as a threat to their constituencies. By the early 1990s watchdog organizations such as the Waterkeeper Alliance (through its local Riverkeeper programs) have been raising concerns and exposing chronic and severe violations of environmental laws.

### B. Waterkeeper's Legal Campaign

The Waterkeeper organizations have a strong track record of bringing legal actions against polluters to enforce environmental laws. Waterkeeper Alliance President, Robert F. Kennedy, Jr., founded the Alliance and co-directs the Environmental Litigation Clinic at Pace University School of Law, which is known for its groundbreaking work in environmental enforcement. Waterkeeper has also assembled an elite team of nationally recognized class action law firms to address pollution and health problems caused by the hog industry. Waterkeeper is coordinating a national legal attack designed to civilize the factory pork industry through a series of lawsuits and administrative actions under federal environmental laws, state "nuisance" and health laws and the federal racketeering law (RICO).

In December 2000, Waterkeeper Alliance issued Letters of Intent to Sue to six industrial hog facilities impacting the Neuse, New and Cape Fear rivers in North Carolina for violations of the Clean Water Act, Resource Conservation and Recovery Act ("RCRA") and Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Waterkeeper subsequently filed lawsuits under environmental statutes against two Smithfield-owned hog factories in North Carolina and is engaged in settlement discussions with others. Waterkeeper Alliance is working with environmental and farm organizations and activists in Michigan, Minnesota, Iowa and South Dakota to develop other lawsuits to reform the hog industry in each of those states.

In June of 2000, the Alliance and the North Carolina Riverkeeper organizations filed a 36 count lawsuit in North Carolina Superior Court against all of Smithfield's North Carolina operations. Invoking the state's nuisance laws and the public trust doctrine, the suit seeks an order requiring that the hog factories stop polluting local waterways and the air and redress the damage they have caused to North Carolina's rivers and river communities.

Finally, Waterkeeper is assisting grass root activists in defending themselves against industry lawsuits to intimidate them from exercising their constitutional rights to petition and to free expression. For example, Waterkeeper's attorneys are currently fighting a so-called SLAPP (Strategic Lawsuit Against Public Participation) suit against a group of Nebraska farmers by Sands, Nebraska's largest industrial hog producer. Sands filed the suit in an attempt to harass farmers who had filed comments with the Nebraska Department of Environmental Quality regarding an application by Sands to significantly expand one of its facilities without appropriate environmental safeguards. Sands is suing for defamation and emotional distress. The outcome of this case could be crucial to the future of public participation in industrial meat factory issues. Waterkeeper attorneys have filed a counterclaim against Sands claiming that the industry lawsuit violates Nebraska's anti-SLAPP statute and are lawsuits intended to silence the community's right to freely express its opposition to this industry.

### **III. THE FEDERAL GOVERNMENT STEPS IN, THEN BUSH ADMINISTRATION BACKS OFF**

Although the Clean Water Act, adopted thirty years ago, explicitly recognizes Concentrated Animal Feeding Operations (CAFOs) as a major threat to water quality by enumerating them as a regulated point source, neither the federal EPA nor the state agencies have fully implemented a Clean Water Act permitting program for CAFOs. In fact, some states, such as North Carolina and Michigan, vehemently denied for years that they were required to establish a Clean Water Act CAFO permitting program.

The failure of the states and the federal government to implement the Clean Water Act and enforce existing laws and regulations against CAFOs has resulted in the widespread violation of the statute and its regulations by the livestock and poultry industry. *This widespread violation of the Clean Water Act is acknowledged by EPA itself and the livestock industry (See CAFO NODA, p. 58571), which is now ironically using its failure to comply with existing regulations as an excuse for its inability to bear the cost of proposed, more stringent regulations. They represent a violation of the statutory mandate of EPA to develop regulations for this industry that use the best available technology, a standard that does not permit EPA to disregard an existing technology because it is more expensive for industry.* This universal failure to implement the nation's most important water protection legislation is a national scandal and has resulted in a substantial degradation of our nation's waters from agricultural pollution.

In recognition of the environmental destruction that large livestock and poultry operations have been wreaking on the environment and because it was sued by NRDC, EPA published proposed new regulations for CAFOs and NPDES permitting guidelines on January 12, 2001. In March 2001, representatives of the major livestock and poultry producers petitioned the Bush administration for an extension of the comment deadline, so the Administration pushed the comment deadline back to July 30, 2001.

Following submission of public comments on the proposed regulations, EPA published a Notice of Date Availability; National Pollutant discharge Elimination System Permit Regulations and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (referred to herein as "the November 12 regulations" or "the NODA", Federal Register Vol.66, No.225, 58556 (Nov 21, 2001). The NODA states that the January 12 regulations generated a significant number of comments from livestock and poultry industry representatives or land grant university

professors who argued that EPA had failed to adequately calculate the costs and/or economic impact. Section V, pages 58566-58591, is devoted entirely to financial and economic analysis.

Reading through the November 12 regulations, one might have guessed that “EPA” stands for “*Economic* Protection Agency.” The NODA seeks input on approximately eighty-eight different issues, the majority of which request comments related to cost and economic or financial impact. Virtually every revision proposes a weaker regulation than the earlier version. In fact, in no case does the November 12 version propose a stricter environmental standard.

While the January 12 CAFO regulations moved EPA in the direction of solving some of the ills caused by CAFOs, the November 12 regulations suggest substantially scaling back these efforts and demonstrate a deterioration of the federal government’s only serious attempt to address the crescendo of citizen and scientific voices in this country calling for major CAFO reform.

The November 12 regulations are an alarming retreat by the federal Environmental Protection Agency (EPA) from the January 12, 2001 version of the regulations. It is troubling that at the moment in history when the public outcry over CAFO pollution is the loudest, EPA signals its withdrawal from its earlier commitment to address it and finally to require this industry to comply with the Clean Water Act. The January 12 version, the result of years of EPA, citizen, and industry review and dialogue, was crafted to make necessary improvements in the regulation of CAFOs. A copy of Waterkeeper Alliance’s submissions to the EPA on July 30, 2001, January 15, 2002 and February 4, 2002 are attached as APPENDIX D.

#### **1. November 12 regulations fail to consider cost to environment.**

There is no discussion in the NODA of the economic analysis of CAFO pollution. Where is the dollar value assigned to loss of fisheries, loss of swimable waters and drinkable groundwaters, injury to human health, and loss of quality of life? And how is this taken into EPA’s economic equations? It appears that it is not.

#### **2. November 12 regulations fail to consider whether an operation is a family farm.**

At the same time, however, EPA’s economic analysis should take greater account of the impact its actions will have on family-owned farms. There are sound environmental policy reasons for this. Farmers reside on their farms, live in the communities, drink from the groundwater under their farms, breathe the air from their operations, worship and shop with the people near their farms, and fish and swim in the surface waters affected by their farms. Simply put, family farmers are the best stewards of the land. Yet, EPA’s analysis fails to consider whether the operation is a family farm in its economic analysis.

#### **3. November 12 regulations would allow states to avoid implementing the Clean Water Act.**

The November 12 CAFO regulations also propose giving the states greater flexibility to implement the Clean Water Act. Waterkeeper Alliance has had meetings with high level officials of several farm states to discuss CAFO pollution. Without exception, the state officials acknowledge that they have issued few or no CAFO NPDES permits. In most cases, they have attributed this at least partially to a lack of funding. They say that the state environmental

agencies barely have funding for their existing programs. The same explanation is given for their failure to prosecute the thousands of known violations by CAFOs of environmental laws, regulations and standards. Given a proven lack of will, and the lack of resources at the state level, granting states continued “flexibility” would ensure that CAFO pollution will go unaddressed.

#### **4. November 12 regulations move toward fewer NPDES permits.**

The Clean Water Act contains the requirement that point source dischargers get NPDES permits, 33 U.S.C. §1311, and defines CAFOs as point source dischargers, 33 U.S.C. §1362 (14). *Thus the Clean Water Act unambiguously mandates that CAFOs get NPDES permits.* EPA is attempting to circumvent this requirement by seeking “equivalents” of the NPDES permit. Equivalents are whatever an implementing state wants them to be. In North Carolina they are called “General Permits”, *ie.*, they apply to all CAFOs in the State without regard to the water quality of the waterbody to which they are adjacent. The non-discharge provisions of these permits are industry friendly. Most provisions of these permits do provide for citizen suits. The issuance of these non-NPDES Permits is counter to the plain wording and the intent of the Clean Water Act. EPA is bound by the law. The EPA must be required to follow the law. There are no exceptions.

#### **5. November 12 regulations reduce critical groundwater protection.**

CAFOs are major contributors to groundwater contamination. Thus, it is important that EPA’s CAFO regulations require that risks to groundwater be minimized and that CAFOs monitor groundwater quality. In the November 12 regulations, EPA says that it is considering “adopting a performance standard based on ...[the] permeability [of synthetic / clay double liners]” rather than a zero discharge that would be verified by groundwater monitoring, which was proposed in the January 12 version. This is another example of EPA looking first at the economic issues to CAFO profits rather than the environmental or public health issues and failing to consider the cost of degraded natural resources. It is irresponsible for EPA to recognize that a waste storage technology is poisoning groundwater and conclude from that that it must change its performance standard rather than change the required, and readily available, technology. This is not the formation of good environmental science and policy, and, moreover, it violates EPA’s clear statutory mandate.

EPA must retain the groundwater controls and the zero discharge performance standard it had earlier proposed, which are scientifically possible and technologically available to protect the nation’s groundwater supplies.

#### **6. November 12 regulations propose inappropriate Phosphorous “banking.”**

EPA’s November 12 regulations propose to allow the “banking” of phosphorous. The proposal is nonsensical since the NODA itself states that “EPA is concerned some levels of phosphorous banking would no more prevent discharges to the waters than would unrestricted application rates or application of manure on a nitrogen basis.” As noted in EPA’s NODA, many CAFO land application areas are vastly over-saturated with phosphorous. It is poor environmental policy for EPA to propose that “banking,” a practice that it doubts will protect the environment, be used to address the serious problem of phosphorous pollution from CAFOs. Instead, EPA

must follow the law and require CAFOs to limit their phosphorous application rates to agronomic rates.

**7. November 12 regulations propose less frequent manure sampling.**

EPA's November 12 regulations propose to allow less frequent manure sampling. Recent research has confirmed that there is great variability in the components of lagoon wastes, depending on when and how the samples are taken. The EPA must require improved and increased frequency of waste sampling prior to land application, not diminish it.

**8. November 12 regulations allow inappropriate exception for a "chronic storm event."**

EPA's January 12 version proposed to eliminate the exception for permitted operations in the event of a "chronic or catastrophic" rain event. EPA's November 12 regulations indicate that it is reconsidering eliminating this language based on CAFO operations' inability to meet it. For example, EPA seeks information on the storage capacity of existing lagoons. EPA is attempting to address the problem backwards. Rather than looking at the environmental problem and coming up with the solution, EPA is looking at existing operations and asking what regulation the industry can afford. This is an illegal analysis. EPA also fails to consider obvious solutions to lagoons that are being over-filled over, such as requiring reduction of herd sizes during the rainy months. EPA's approach ensures the continuation of systems that are destroying the environment by polluting when it rains.

EPA's suggestion that it eliminate the performance standard is particularly ironic because the CAFO industry constantly insists that it operates "zero discharge" systems. We urge EPA to require that CAFOs operate without discharging and that EPA eliminate the "chronic and catastrophic" exception, as it had previously proposed. Again, the best available technology standard required under the law requires the EPA to impose technologically available solutions to these pollution sources, regardless of decreased profits that the CAFO industry might experience.

**9. November 12 regulations allow non-compliance to be a boon to violators.**

EPA notes that numerous commenters acknowledge that "many CAFOs do not have the necessary waste management components in place to comply with the existing CAFO regulations promulgated in the early 1970s." EPA goes on to say that these commenters argue that EPA has wrongly underestimated the cost of financial impacts of the proposed regulations because it has failed to acknowledge this widespread noncompliance. In other words, the industry is arguing that many CAFOs are violating existing laws, and they should benefit from it. It essentially argues that violators should be rewarded for failing to comply with the law. Such an argument deserves no response. EPA must reject this backward logic and base its regulations on the law and sound environmental policy rather than trying to figure out ways to perpetuate the status quo. We urge EPA to calculate costs as it had in the January regulations.

**10. November 12 regulations would allow the inappropriate substitution of Environmental Management Systems (EMS) for compliance with Clean Water Act and CAFO regulations.**

EPA asks for input on the use of Environmental Management Systems (EMS). As examples, EPA states that EMS may deal with odor, noise, or energy conservation. These are matters that a responsible business should address to be a good corporate citizen, for its own protection against nuisance suits, and to save money. These matters have no connection to whether the CAFO is complying with a permit or whether it meets the definition of a CAFO. While we do not object to EMS, we strongly object to the suggestion that an EMS can serve as a substitute for an NPDES permit or show compliance with any environmental regulations.

As specific examples of EMS, the NODA points to the ISO 14001, including that obtained by Smithfield Foods' operations in North Carolina. Smithfield Foods' North Carolina operations are a perfect example of why the EMS is virtually meaningless for environmental protection. Even a cursory review of state records reveals that Smithfield's North Carolina operations continue to violate hundreds of environmental regulations and standards. Neighbors see no tangible improvement in the operations, in spite of the ISO designations. EMS fail to provide necessary environmental protections. Therefore, EPA should reject the idea that it use EMS instead of permits or that it use EMS in its determination of which operations meet the definition of CAFO.

**11. November 12 regulations contain a faulty definition of "Proper Agricultural Practice."**

EPA proposes to define "proper agricultural practice" as follows:

One of any number of conservation practices, production measures, or management techniques that the CAFO operator or manure recipient can use to improve the efficiency, economy, *or* environmental condition of the site and surrounding land areas and waterbodies. (emphasis added)

This definition is inappropriate because it would classify anything that made the operation cheaper or more efficient a proper agricultural practice, even if it had no legitimate agricultural purpose and even if it damaged the environment. For example, applying more manure to land so that crops were killed from over application and groundwater and surface water were threatened might meet this definition.

If EPA wishes to define the term "proper agricultural practice," a reasonable definition must contain some reference to a benefit to the agriculture practiced at the site. Merely lowering the cost of one's production cannot be the standard. Otherwise, virtually any conduct would fall within the definition, including blatantly illegal and environmentally destructive practices.

**12. November 12 regulations propose an inappropriate substitution of co-permitting by Environmental Management Systems (EMS).**

EPA proposes that the permit authority could "waive the requirement for co-permitting entities that exercise substantial operational control over a CAFO if the entity adopts and implements an EMS for its contract producers." This makes no sense. As set forth in our July 30 comments, it is the processor that controls the environmental systems of contract operations. That is precisely the logic for the co-permitting – the contract grower has no real control over the terms of the



contract and is forced to accept the terms of the contract as dictated by the processor. Because the processor controls the terms of the contract, it determines both the nature and the quantity of the waste. It is also the processor that has the resources that make it best able to be responsible for the disposal of the waste but who is least likely to make responsible decisions because profits drive their decisions, not sound environmental science and policy. Therefore, using the processor's level of control over the operation as a reason not to waive co-permitting is counter-productive.

### **13. November 12 regulations attempt to circumvent the plain language or intent of the Clean Water Act.**

Finally, several of EPA's suggested new approaches, such as the consideration of "state flexibility," NPDES "equivalents," and EMS are offered in the November 12 regulations to make it easier for CAFOs to comply with the new regulations. However, EPA does not have the discretion to implement regulations that are counter to the language of the Clean Water Act. As the NODA acknowledges, EPA has historically failed to require states to follow the law. It is now moving to weaken even more the regulations it has proposed, a move which perpetuates EPA's acceptance of this industry's non-compliance with the CWA – the very statute it is mandated to enforce.

The Clean Water Act's mandate is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251. Not even EPA has the authority to ignore this mandate nor to fail to implement the provisions of the Act. EPA's January 12 version of the CAFO regulations was clearly intended to get more operations, not fewer, to be covered by NPDES permits. However, the November 12 regulations reverse this direction. Many of the EPA's new proposals are designed to reduce the number of Animal Feeding Operations that would need to apply for an NPDES permit, or to allow things that are less than an NPDES permit to serve as a substitute. This is contrary to the Clean Water Act. EPA must operate within its statutory mandate to implement the purposes and the provisions of this Act in the formulation of these regulations.

### **Conclusion**

Over the past thirty years we have seen some of the most popular and effective environmental laws ever enacted in our country's history. The creation of the Environmental Protection Agency and the Clean Water, Clean Air, and Resource Conservation and Recovery Acts improved our rivers, streams, and groundwater as well as the air we breathe. These laws and regulations, while not yet fully implemented, have helped protect our forests, parks and wildlife. As a direct result, the quality of life in America has substantially improved. Clearly, this period has been one of the most progressive and prosperous in our nation's history.

There have been periods of darkness as well. A serious threat to our environment and its dependant economy were under heavy assault during the 104<sup>th</sup> Congress. Fortunately, under the strong leadership of President Clinton and his administration, America weathered that storm.

Now our environment and economy are once again being placed in serious jeopardy. The environmental laws and regulations that promoted the strong economy of the 1990s are being attacked once again, this time not by a wayward Congress but by a President out of touch with

the importance of a healthy environment—a President and an administration blinded by corporate interests.

President Bush's disregard of the nexus between good environmental policies and a healthy economy is not surprising. His record in Texas predicted it (see APPENDIX D). While anti-environmental statements did not flow from his lips during the presidential campaign, actions immediately following his oath of office gave clear warning of what was in store.

Through his Chief-of-Staff, President Bush issued a directive that prevents a series of Clinton environmental actions from taking place. The directive imposed a moratorium that effectively prevented any new rules from being printed in the Federal Register until they were specifically approved by the administration. That blocked most of Clinton's executive orders. These directives specifically targeted environmental restrictions on runoff from animal feeding operations. President Bush also proclaimed that many older regulations would be actively reviewed and possibly rescinded.

While America's attention has been focused on the war against terrorism, President Bush has been quietly unraveling federal rules established to implement the environmental laws of our country and to safeguard our natural resources. We once again risk corporations who profit from pollution gaining the upper hand. The progress we made and from which we economically benefited over the past thirty years is fading fast.

Specifically, after the terrorist attacks on September 11<sup>th</sup>, the Bush administration began to intensify its effort to turn back the environmental clock by gutting old and new environmental rules and regulations. With the nation focused on the war, the Bush administration weakened Clean Air and Water initiatives and enforcement, weakened wetland protections, gave a green light to pollution based mining activities, blocked rules that would minimize raw sewage discharges into waterways and gave new power to the Office of Management and Budget (OMB) to weaken and tie up existing environmental rules.

The citizens of this country need and deserve protection from the environmental and health dangers posed by CAFOs and the industry giants who control them. EPA must focus on the protection of the environment, not protection of the livestock industry.

Although they failed to do everything necessary to solve the environmental and health problems from CAFOs, EPA's January 12 regulations were a step in the right direction. Unfortunately, EPA's November 12 CAFO regulations propose to diminish even these improvements.

The EPA must refocus its efforts on promulgating CAFO regulations that will fully protect the environment. It is the house in which we live. The Congress should see to it that the President lives up to his responsibilities to protect our environment, which in turn protects our national heritage and national security.

Respectfully submitted,

Rick Dove

**APPENDIX A**

**Richard (Rick) J. Dove**

Present Position

Southeastern Representative for the Waterkeeper Alliance, 427 Boros Road, New Bern, North Carolina 28560. Telephone 252 447-8999; Fax 252 447-6464; Mobile 252 636-9238; E-mail: RiverLaw@ec.rr.com

Education

Graduate and undergraduate studies at University of Baltimore  
LL.B, (JD) University of Baltimore School of Law, 1962  
Graduate, National War College, 1980

Professional Experience

1963-1987 Served as a member of the United States Marine Corps. Primary duties in the Corps were as Judge Advocate, Staff Judge Advocate and Military Courts-Martial Judge. Also served in Congressional Liaison while stationed in at Headquarters Marine Corps, Washington, D.C. and as Assistant Provost-Marshall and Provost-Marshall at Marine Barracks, Yokosuka, Japan. Served two tours in Vietnam. Retired in officer grade 0-6 (Colonel).

1987-1991 Commercially fished the Neuse River. Owned and operated a retail/wholesale seafood store in Havelock, North Carolina.

1991-1993 Practiced civilian law (R.J. Dove and Associates) with law offices in Havelock and Jacksonville, North Carolina.

1993-2000 Served as the Neuse Riverkeeper

July 5, 2000

Present Southeastern representative for Waterkeeper Alliance

Special Appointments

Governor's appointee to Neuse River Basin Advisory Council (1996 to 1998)

Member, Sedimentation Control Commission Advisory Committee (Commission appointment, 1997)

Member, Marine Fisheries Commission, Water Quality Advisory Committee  
(Commission appointment, 1995-1996)

Testified before the US Congress, Committee on Resources, Fisheries Conservation, Wildlife and Oceans Subcommittee, October 9, 1997 on the subject of *Pfiesteria piscicida* including its effect on the Neuse River, its wildlife and people.

Professional Memberships

Maryland State Bar Association  
Waterkeeper Alliance

National/International Television, Newspaper Magazine and Book Features

As spokesperson for the Neuse River between 1993 and 2000, Rick participated in more than 4,000 news stories. Media coverage included CNN, NBC, CBS, ABC, CBN, NPR, BBC, and many local TV and Radio stations in North Carolina, Virginia, Iowa, Kentucky, Florida, Georgia, Maryland and others. Some of the national publications include: The New York Times, Newsweek, Sports Illustrated, Health (Magazine), Natural History, George Magazine and the Washington Post. One chapter of the book, *And the Waters Turned to Blood*, Simon and Schuster, published 1997 details Rick's work on the Neuse River related to the microorganism, *pfiesteria*.

Awards

Daughters of the American Revolution, National Conservation Medal for Preservation of Natural Resources 1996.

Named one of Time Magazine/Time for Kids [Heroes of the Planet] October 1998

Honorary induction as member of Epsilon Nu Eta, National Environmental Health Society for Health Professionals 1998

1998 Citizens Award presented by Independent Weekly Newspaper, Raleigh, North Carolina

Honored by Charlotte Observer as Guardian of the Environment, November 30, 1996

Named by Raleigh News and Observer as 1 of 100 people who have shaped North Carolina in the past Century (N&O August 22, 1999)

Received North Carolina Leadership Award from North Carolina Watershed Coalition, Inc for Year 2000

Received Alliance for a Responsible Swine Industry Appreciation Award June 25, 2000

Receive the EPA Region IV Merit Award on October 19, 2000.

Received 2001 Nancy Susan Reynolds Award for Advocacy (November 17,2001). The award is accompanied by a \$25,000.00 prize.

Rick has been married to the former Joanne Tezak of Baltimore, Maryland since October 10, 1964. They have one daughter, Holly Marie Trombley who lives in New Bern. Their son, Todd, is deceased.

---

**NEUSE RIVERKEEPERS®**

The Neuse RIVERKEEPER® Program was established on April 1, 1993. Riverkeepers patrol the Neuse River, tributaries and shorelines by boat, aircraft, and truck in order to locate and eliminate pollution sources. In September 2001, NRF added a second keeper to the watershed; **Dean Naujoks** became the Upper Neuse Riverkeeper, based in Raleigh, NC. In New Bern, NC, **John Riley** became the Lower Neuse Riverkeeper in November 2001.

[riverkeeper@neuseriver.org](mailto:riverkeeper@neuseriver.org).  
Visit the [RIVERKEEPER®](http://RIVERKEEPER.org) website for more information.

**What the RIVERKEEPERS® do...**

The duties and responsibilities of the Neuse Riverkeepers are to:

- Patrol the Neuse River by boat, plane and vehicle
- Coordinate the Neuse River Protection plan
- Locate, investigate, publicize and eliminate sources of pollution
- Work with government agencies in monitoring water quality, fish kills, and pollution sources
- Work with members of the scientific community on water quality research
- Maintain an active education plan for children and adults
- Disseminate information
- When necessary actively litigate to eliminate sources of pollution

**Creek Keepers Help the Riverkeepers**

The RIVERKEEPERS® are assisted by a volunteer force of Creek Keepers. Serving under the direction of the RIVERKEEPERS®, Creek Keepers patrol tributaries of the Neuse in privately owned boats and vehicles. It is the responsibility of these Creek Keepers to be the voice, eyes, ears, and noses for their assigned areas. An appointed Creek Master and eleven Chief Creek Keepers also aid the RIVERKEEPERS® in daily monitoring duties.

**The RIVERKEEPERS'® Eyes in the Sky**

The RIVERKEEPERS® are also assisted by The Neuse River Air Force, a group of pilots and observers who fly the skies in search of pollution, wildlife problems, and damage assessment. These volunteers often coordinate their efforts with the Creek Keepers through air-to-ground radio communication.

Additional information about the Neuse River Protection Program can be obtained by contacting: [Neuse River Foundation](http://Neuse River Foundation), P.O. Box 15451, New Bern, NC 28561 (252) 637-7972

**APPENDIX B (From Waterkeeper website [www.waterkeeper.org](http://www.waterkeeper.org))**

The Waterkeeper Alliance is the umbrella organization for the more than 80 Waterkeeper programs located throughout North and Central America. The Waterkeeper movement is among the fastest growing grass-roots environmental movements and quickly is becoming a unique force for environmental change. It is an environmental "neighborhood watch" program, a citizen's patrol to protect communities and the waters they depend on. The Keeper philosophy is based on the notion that the protection and enjoyment of a community's natural resources requires the daily vigilance of its citizens.

**THE WATERKEEPER CONCEPT**

The Waterkeeper concept started on New York's Hudson River where a coalition of commercial and recreational fishermen mobilized in 1966 to reclaim the Hudson from its polluters. They constructed a boat to patrol the River, hired the first full-time Riverkeeper in 1983 and began filing lawsuits against municipal and industrial polluters. They modeled the program after the riverkeepers of the British Isles who looked after private trout and salmon streams, usually for estates and manors and private fishing clubs. By 1998, they had filed over 150 successful legal actions against Hudson River polluters. Largely as a result of their work, the river that was once dead for large stretches in 1966 is now one of the richest water bodies in the North Atlantic. The Hudson's miraculous recovery has helped make the Waterkeeper program an international model for ecosystem protection.

**THE WATERKEEPERS**

A Waterkeeper is a full-time, privately funded, non-governmental ombudsperson whose special responsibility is to be the public advocate for a water body. A Waterkeeper's clients are all the users of the represented watershed. Waterkeeper programs employ a variety of strategies to enforce environmental laws including conducting water quality monitoring, participating in coastal planning, attending board meetings, educating the public and devising solutions to water quality problems, and if necessary pursuing litigation as a final step to enforcement.

**WHAT WE DO**

At minimum, it is the Waterkeeper's job to advocate compliance with environmental laws, respond to citizen complaints, identify problems which affect his or her body of water and devise appropriate remedies, serve as a living witness to the condition of the ecosystem, and be an advocate for the public's right to protect and defend the environment. Waterkeepers are part investigator, scientist, lawyer, lobbyist and PR agent. The objective is to have a diverse bag of tools that allows the Waterkeeper to get the job done.

**HOW WE DO IT**

All Waterkeepers have some kind of boat ranging in size from canoes to research vessels. But sometimes a pair of hip boots is more important than a boat - sometime a legal brief is more important than either. Again, the rule of thumb is that each water body has its own unique set of challenges requiring its own unique strategy.

**HOW WE HAVE DONE IT**

Since 1983, the Waterkeeper movement has spread quickly. With the assistance of the Alliance and other Waterkeepers, new programs were started on water bodies across North and Central America modeled after the Hudson's program. In 1992, the existing Waterkeepers founded the National Alliance of River, Sound and Bay Keepers which was renamed the Waterkeeper Alliance in 1999. The Alliance oversees the formation of new Waterkeeper programs, licenses the use of the Waterkeeper names, works on national issues that individual Waterkeeper programs hold in common and serves as a meeting place for all the Waterkeepers to exchange information, strategy and know-how. The Alliance and its member Waterkeepers meet several times a year, alternating between the home waters of individual members. In addition to working with existing Waterkeepers, the Alliance is also currently working with local advocates to establish Waterkeeper programs in Belize, the Czech Republic, Italy, Mexico, Poland, and the Philippines.

**CONTACT US**

**Waterkeeper Alliance** 78 North Broadway E Building, White Plains, NY 10603, Tel. 914-422-4410

## APPENDIX C

### **The Verdict is in: Smithfield's Use of Intimidation, Violence and False Arrests Violates Federal Civil Rights Laws**

PR Newswire - USA; Mar 5, 2002

Federal District Court Case is Second Time Smithfield Found in Violation Of Federal Laws Protecting Human Rights

RALEIGH, N.C., March 5 /PRNewswire/ -- The following is being issued by the United Food and Commercial Workers Union:

In a throw back to an era of hooded night-riders, brutal beatings and false arrests, a jury in federal district court in Raleigh, North Carolina last Friday found Smithfield Packing in violation of the federal civil rights law originally known as the Ku Klux Klan Act of 1871. The jury verdict directed Smithfield and the company's former security chief, Danny Priest, to pay \$755,000 in compensation and punitive damages as the result of the beating and arrests of two union supporters at the company's Tar Heel, North Carolina facility in 1997.

The two union supporters, Rayshawn Ward and John Rene Rodriguez, were beaten, arrested and jailed by the company's security force during the 1997 workers' campaign to organize for a voice on the job with the United Food and Commercial Workers Union (UFCW). Smithfield had waged a vicious anti-worker campaign and created an atmosphere of racial hostility that included racial epithets being sprayed painted on the union's Tar Heel office.

Under federal law, workers have an absolute right to support and vote for a union in a secret ballot election without fear, intimidation or coercion. At the Smithfield plant, shotgun-wielding deputy sheriffs were ever present during the two days of balloting in a union representation election. Following the vote count on the final day of balloting, company personnel stormed the counting area and, in the resulting confrontation, the two union supporters were subject to physical violence and arrest at the direction of Danny Priest, who was acting on behalf of the company.

At the trial, jurors heard testimony on the company's actions and the role of Danny Priest. Many were stunned to learn that in today's world, workers could be subject to such abuse and violence. The jury ordered Smithfield and Danny Priest, the Chief of Security to pay a total of \$755,000 in damages to the two UFCW activists -- \$75,000 to Ward and \$25,000 to Rodriguez in compensatory damages for the injuries both suffered at the hands of the company security force. Both received punitive damages as well. Smithfield must pay Ward, who was knocked unconscious during his assault and arrest, \$500,000 and Priest must pay Ward \$25,000. The jury ordered Smithfield to pay Rodriguez \$125,000 and Priest to pay \$5,000. U.S. District Court Judge Earl Britt rejected the company's request to set aside the verdict and validated the jury by entering the judgment into the public record.

During the campaign, Danny Priest used the company's security force to instill fear in the 4,500 Smithfield employees. Deputies -- in riot gear and heavily armed -- stationed themselves at the entrance to the plant on days that civil rights leader Reverend Jesse Jackson and other religious leaders handed out literature with workers.

On August 21, 1997, the final day of the election, the company used the power delegated to it by the Bladen County Sheriff's Department to handcuff, mace, and jail Mr. Ward, a Smithfield meatpacking worker whose only crime was that he supported the union. Mr. Rodriguez, a union organizer, tried to help Mr. Ward as the Company's Chief of Security was assaulting him. For that, he found himself in handcuffs, jailed and facing criminal charges. Their arrests occurred in the context of a Company-initiated "riot" following the vote count.

During the union drive, the company held forced meetings to intimidate and threaten workers for supporting the union. Smithfield held separate meetings for black and Latino workers to pit worker against worker based on race. On the day of the election, deputy sheriffs, dressed in battle gear, lined the long driveway leading to the Bladen County plant. The sheriff's menacing presence created a violent mood for the workers who were merely trying to exercise their right to vote for a voice on the job. As workers passed the lines of police in riot gear, they saw company management standing with the head of the Bladen County Sheriff's department near the entrance to the plant.

The company's message was clear to workers: if you vote for a union, the law and law enforcement will not be on your side.

This is the second independent verdict against Smithfield's actions during the union campaign at the Tar Heel plant. In December, 2000, an Administrative Law Judge of the National Labor Relations Board issued a monumental 400-plus page ruling against Smithfield for massive violations of federal law. The NLRB judge found that Smithfield conspired with law enforcement to instigate the violence at the vote count.

The NLRB Judge's decision contains some of the strongest language in recent labor history against a company's flagrant disregard for the law. The Judge found that Smithfield attorneys suborned perjury during the NLRB trial. The Judge also ruled that company witnesses "lied under oath" throughout the decision and that Smithfield managers conspired with the local Sheriff Department to physically intimidate and assault union supporters.

In the recent civil rights lawsuit, U.S. District Court Judge Britt did not allow testimony from any part of the NLRB trial. Independent of one another, Smithfield has been ruled against in two legal cases for its shameful and illegal assault on its workers in Tar Heel.

John Rene Rodriguez, a victim of Smithfield's violence against its workers, died unexpectedly in December, 2001. His father, Johnny Rodriguez, testified on behalf of his son's estate. The UFCW is profoundly saddened that John Rene did not live to see justice delivered against the giant packing company.

Smithfield Foods is the world's largest pork processor and hog producer with expected 1999 production of more than 5.3 billion pounds. Its Bladen County plant is the largest hog processing plant in the world.

The UFCW is the largest organization of meat packing workers in North America, with 1.4 million members. UFCW represents a sizeable number of Smithfield Packing employees, including workers at its subsidiaries John Morrell, Patrick Cudahy, Smithfield Packing-Landover, Lykes Meat Group and Northside Foods. Workers at other meat packing companies like IBP, Excel, Swift, Monfort, and Hormel are members of the UFCW.

United Food and Commercial Workers Union (UFCW): A Voice for Working America --  
<http://www.ufcw.org/>

-----

Court Fines Smithfield \$12.6 Million; Va. Firm Is Assessed Largest Such  
 Pollution Penalty in U.S. History

Copyright 1997 The Washington Post  
 The Washington Post  
 August 09, 1997, Saturday, Final Edition  
 SECTION: A SECTION; Pg. A01



BYLINE: Ellen Nakashima, Washington Post Staff Writer  
DATELINE: RICHMOND, Aug. 8

A federal judge in Norfolk today fined Smithfield Foods Inc. \$ 12.6 million for dumping excessive levels of hog waste into a Chesapeake Bay tributary in violation of the Clean Water Act -- the largest such penalty ever assessed in the United States.

The decision by U.S. District Judge Rebecca Beach Smith was a victory for federal officials and environmental activists who have complained that Virginia long has been lax in its oversight of Smithfield, the East Coast's largest meatpacker. Smithfield attorneys said they will appeal.

The ruling followed a week-long trial in Norfolk that put a spotlight on the environmental policies of Republican Gov. George Allen's administration, which the U.S. Environmental Protection Agency has accused of coddling corporate polluters such as Smithfield.

Federal regulators rarely step into such state cases so aggressively, but in December they sued Smithfield for \$ 20 million, alleging nearly 7,000 violations of the Clean Water Act since 1991. The U.S. government accused the company of dumping illegal levels of waste into the Pagan River and falsifying and destroying records to hide it.

"This decision sends a strong message that there can be no profit in pollution," said W. Michael McCabe, the EPA's regional administrator.

Roy Hoagland, staff attorney for the Chesapeake Bay Foundation, said of the penalty: "It's great for the bay. I'm pleased to know the federal government held Smithfield accountable."

Throughout their dispute with the EPA, Smithfield officials have maintained that a dumping agreement they signed with Gov. L. Douglas Wilder's administration in 1991 allowed the company to discharge pollutants at levels above the legal limits as long as it hooked up its slaughterhouses to a public wastewater system extension as soon as possible.

Today, they said the fine was outlandish because the company was merely abiding by the agreement.

"Twelve point six million for doing what we were told to do?" Smithfield attorney Anthony F. Troy said. "Thank God we weren't doing things that we weren't supposed to do."

Smithfield's attorneys said the ruling sends a chilling message to companies that pollution agreements negotiated with the state are worthless. "Smithfield Foods . . . earnestly hopes that the many other Virginia industries . . . which now operate under [agreements with the

state] . . . will not have to suffer through the same ordeal that the company has experienced."

Environmentalists and Democratic critics said the fine is significant not only in itself but also because it underscores what they call Allen's laissez-faire approach to environmental regulation that places business interests above all others. They note that Smithfield's chairman, Joseph W. Luter III, gave \$ 125,000 to Allen's political action committee while the firm was negotiating a pollution settlement with the state.

The EPA has threatened to take over the state's water pollution program, saying it has failed to enforce anti-pollution rules. A federal review of the state's program is underway.

Allen spokesman Julie Overly defended the administration's actions regarding Smithfield, noting that the company was discharging pollutants under the agreement worked out during Wilder's Democratic administration.

"The responsibility of this administration has been to make sure that [Smithfield's promise to hook up to a Hampton Roads treatment plant] comes to fruition," Overly said. "It happened this week."

She also dismissed criticism that the administration has been soft on polluters. Virginia, she said, will "vigorously pursue" its own lawsuit against Smithfield in which it accuses the meatpacker of breaking pollution laws.

Before today, the largest court-imposed fine for violating water pollution laws was \$ 4 million, imposed this year against a Pennsylvania dairy firm. The largest settlement in such a case was for \$ 6 million, which an Ohio steel company agreed to pay in 1991.

Federal officials have seen Smithfield, a \$ 4 billion conglomerate that sells products under the Smithfield, Gwaltney and Cudahay labels, as a particularly flagrant violator of pollution laws. The company discharged waste -- especially phosphorus, which causes algae blooms that rob fish and aquatic plants of oxygen -- for decades into the Pagan River. The 1991 discharge agreement did not include limits on phosphorus.

But the agreement was made with the understanding that Smithfield would comply with phosphorus limits by January 1993, said Elizabeth Haskell, Virginia's natural resources secretary under Wilder.

"I assumed that they were going to do that," Haskell said. "Evidently, after we left office, those consent agreements were extended and continued. [Smithfield has] just been given too many extensions. It was cheaper for them to dump the pollution . . . than to do the [treatment plant] connections."

Smithfield officials said that hooking up their plants to a public wastewater system took longer than expected because a pipeline to Smithfield was delayed.

In any case, Judge Smith ruled in May that the federal government was not bound by the 1991 agreement. She added that the agreement was so lax that it was virtually "toothless."

The agreement's lack of limits on phosphorus highlighted just how weak Virginia's enforcement program has been, the Chesapeake Bay Foundation's Hoagland said.

"There's no question that enforcement is a program that had problems before Governor Allen took office," he said. "But it's a program that got dramatically worse when Governor Allen arrived. There's no question, enforcement in Virginia under this administration has gone from bad to worse."

---

Copyright 1997 The Washington Post  
The Washington Post  
August 13, 1997, Wednesday, Final Edition

SECTION: EDITORIAL; Pg. A20

NEARLY LOST in the politics surrounding the \$ 12.6 million water-pollution fine just levied against Smithfield Foods is the enormity of the deeds for which the Virginia meatpacker is being punished. Fecal and other bodily waste from slaughtered hogs, left untreated in millions of gallons of wastewater, has been dumped since the 1970s directly into the Pagan River, a tributary of the James. Phosphorous in the waste produces an overload of nutrients that depletes oxygen and causes uncontrolled growth of incompatible plant life, creating "dead zones" that threaten Chesapeake Bay aquatic life and local drinking water. That's what's behind the bulk of the 7,000 violations of the federal Clean Water Act cited by the Environmental Protection Agency as it intervened in Virginia's ideologically tainted environmental debates.

The Norfolk-based Smithfield, the East Coast's largest pork processor, is planning an appeal. But this fine -- the largest of its kind in U.S. history -- is a suitable climax to a sorry tale. This major employer in a state ranked last in its region in fining polluters spent years delaying mandatory reporting of violations. It watched as a manager of one of its wastewater treatment plants pleaded guilty and began a 30-month prison term for pollution that he says Smithfield officials told him to disguise. Only last week did the firm deliver on a six-year-old promise to link its Pagan

River wastewater into a sewage treatment line.

And then there was Gov. George Allen, to whose election campaign Smithfield gave generously, who portrayed the prosecution as an intrusive federal "environmental scare" and a jobs-killer when his Department of Environmental Quality -- recently rocked by a staff shake-up -- was moving much more slowly against Smithfield.

Because water and air pollution respect no state boundaries, and because pollution-prone businesses may shop for locations with the weakest environmental protections, the Smithfield case is a good example of the need for more uniform federal enforcement. It's no surprise that the case immediately became an issue in the Virginia governor's race between Democratic Lt. Gov. Don Beyer, who's been blasting George Allen's environmental record, and Republican Jim Gilmore, the former attorney general who was involved in the state's own continuing suit against Smithfield. What is reassuring is that this debate is centering not on Gov. Allen's concern for the supposed harassment of employers but on who will do the most to protect Virginia's environment.

-----  
 Feedstuffs Magazine  
 February 11, 2002 | Issue 6 | Volume 74  
 Hog Industry Insider  
 BY STEVE MARBERY  
 Feedstuffs Correspondent

A special master has reported sealed findings to a judge in Carroll County, Iowa, where arguments were made last month in a hog marketing case pitting Iowa Attorney General Tom Miller against Smithfield Foods Inc. of Virginia. The case was heard by Judge Ronald Schectman in Carroll County. Filed Jan. 24, 2000, in Dakota City (Humboldt County), Iowa, the case was prompted by Smithfield's acquisition of Murphy Family Farms Inc. of Rose Hill, N.C., more than two years ago.

The nation's largest pork packer and producer, Smithfield owns the John Morrell Inc. slaughtering plant in Sioux City, Iowa, and the former Farmland Industries Inc. plant in Dubuque, Iowa, which was converted to processing-only. Business entities stemming from Smithfield's Murphy acquisition did not comply with Iowa's corporate farming law, Miller alleged. Attorney Eric Lam of Cedar Rapids, Iowa, was appointed special master to investigate financial and business dealings between Murphy Farms, Stoecker Farms and Smithfield.

Stoecker Farms of Algona, Iowa, was incorporated in Iowa Jan. 20, 2000. Randall Stoecker, a Murphy Farms executive of Ames, Iowa, was the primary officer. On May 17, 2001, Stoecker Farms changed its name to Prestage-Stoecker Farms Inc. Prestage Farms of Iowa was incorporated Dec. 5,

2001, according to public documents. One of the nation's largest hog companies, Prestage is based in North Carolina.

The attorney general's complaint alleged Smithfield's acquisition was "a sham" designed to bypass the state's packer ownership ban. Stoecker Farms bought Murphy's Iowa assets with a \$79 million loan from Murphy "without financial input of its own," Miller alleged. Remaining non-Iowa assets were transferred to Smithfield, "putting the packer in total control of Stoecker's finances without further infusions of capital or other collateral" and transactions were pursued "for the sole purpose of creating an appearance of compliance," Miller alleged.

Several years ago, Smithfield acquired Pork Plus, a northern Iowa hog operation developed by Carrolls' Foods, but the attorney general did not challenge the transaction. Smithfield sold the hog farm's inventory to a separate corporation. Based in Warsaw, N.C., Carrolls' was acquired by Smithfield more than two years ago.

©2002 Feedstuffs, Miller Publishing Company.

---

Smithfield ranked one of the Top Ten Worst Corporations of 2000  
 Multinational Monitor  
 December 28, 2000  
 by Robert Weissman and Russell Mokhiber

#### **TEN WORST CORPORATIONS OF 2000 NAMED BY MULTINATIONAL MONITOR**

Ford/Firestone, Glaxo Wellcome, Lockheed Martin and Smithfield Foods were among the most irresponsible corporations of 2000, according to the Ten Worst Corporations of the Year list released annually by Multinational Monitor magazine.

Other companies on the list are: Aventis, BAT, BP/Amoco, Phillips Petroleum and Titan International.

"The nation is beset by an epidemic of corporate crime and misconduct," says Russell Mokhiber, editor of the Corporate Crime Reporter and a co-author of Multinational Monitor's "Ten Worst Corporations of the Year."

**\* Smithfield Foods: Consolidating the meat packing business to the detriment of family farms, and spreading factory farms that are polluting rural America**

**At a Slaughterhouse, Some Things Never Die;  
Who Kills, Who Cuts, Who Bosses Can Depend on Race**

SERIES: HOW RACE IS LIVED IN AMERICA -- Sixth article of a series.

BYLINE: By CHARLIE LeDUFF

DATELINE: TAR HEEL, N.C.

BODY:

It must have been 1 o'clock. That's when the white man usually comes out of his glass office and stands on the scaffolding above the factory floor. He stood with his palms on the rails, his elbows out. He looked like a tower guard up there or a border patrol agent. He stood with his head cocked.

One o'clock means it is getting near the end of the workday. Quota has to be met and the workload doubles. The conveyor belt always overflows with meat around 1 o'clock. So the workers double their pace, hacking pork from shoulder bones with a driven single-mindedness. They stare blankly, like mules in wooden blinders, as the butchered slabs pass by.

It is called the picnic line: 18 workers lined up on both sides of a belt, carving meat from bone. Up to 16 million shoulders a year come down that line here at the Smithfield Packing Co., the largest pork production plant in the world. That works out to about 32,000 a shift, 63 a minute, one every 17 seconds for each worker for eight and a half hours a day. The first time you stare down at that belt you know your body is going to give in way before the machine ever will.

On this day the boss saw something he didn't like. He climbed down and approached the picnic line from behind. He leaned into the ear of a broad-shouldered black man. He had been riding him all day, and the day before. The boss bawled him out good this time, but no one heard what was said. The roar of the machinery was too ferocious for that. Still, everyone knew what was expected. They worked harder.

The white man stood and watched for the next two hours as the blacks worked in their groups and the Mexicans in theirs. He stood there with his head cocked.

At shift change the black man walked away, hosed himself down and turned in his knives. Then he let go. He threatened to murder the boss.

He promised to quit. He said he was losing his mind, which made for good comedy since he was standing near a conveyor chain of severed hogs' heads, their mouths yoked open.

"Who that cracker think he is?" the black man wanted to know. There were enough hogs, he said, "not to worry about no fleck of meat being left on the bone. Keep treating me like a Mexican and I'll beat him."

The boss walked by just then and the black man lowered his head.

#### Who Gets the Dirty Jobs

The first thing you learn in the hog plant is the value of a sharp knife. The second thing you learn is that you don't want to work with a knife. Finally you learn that not everyone has to work with a knife. Whites, blacks, American Indians and Mexicans, they all have their separate stations.

The few whites on the payroll tend to be mechanics or supervisors. As for the Indians, a handful are supervisors; others tend to get clean menial jobs like warehouse work. With few exceptions, that leaves the blacks and Mexicans with the dirty jobs at the factory, one of the only places within a 50-mile radius in this muddy corner of North Carolina where a person might make more than \$8 an hour.

While Smithfield's profits nearly doubled in the past year, wages have remained flat. So a lot of Americans here have quit and a lot of Mexicans have been hired to take their places. But more than management, the workers see one another as the problem, and they see the competition in skin tones.

The locker rooms are self-segregated and so is the cafeteria. The enmity spills out into the towns. The races generally keep to themselves. Along Interstate 95 there are four tumbledown bars, one for each color: white, black, red and brown.

Language is also a divider. There are English and Spanish lines at the Social Security office and in the waiting rooms of the county health clinics. This means different groups don't really understand one another and tend to be suspicious of what they do know.

You begin to understand these things the minute you apply for the job.

#### Blood and Burnout

"Treat the meat like you going to eat it yourself," the hiring manager told the 30 applicants, most of them down on their luck and hungry for work. The Smithfield plant will take just about any man or woman with a pulse and a sparkling urine sample, with few questions

asked. This reporter was hired using his own name and acknowledged that he was currently employed, but was not asked where and did not say.

Slaughtering swine is repetitive, brutish work, so grueling that three weeks on the factory floor leave no doubt in your mind about why the turnover is 100 percent. Five thousand quit and five thousand are hired every year. You hear people say, They don't kill pigs in the plant, they kill people. So desperate is the company for workers, its recruiters comb the streets of New York's immigrant communities, personnel staff members say, and word of mouth has reached Mexico and beyond.

The company even procures criminals. Several at the morning orientation were inmates on work release in green uniforms, bused in from the county prison.

The new workers were given a safety speech and tax papers, shown a promotional video and informed that there was enough methane, ammonia and chlorine at the plant to kill every living thing here in Bladen County. Of the 30 new employees, the black women were assigned to the chitterlings room, where they would scrape feces and worms from intestines. The black men were sent to the butchering floor. Two free white men and the Indian were given jobs making boxes. This reporter declined a box job and ended up with most of the Mexicans, doing knife work, cutting sides of pork into smaller and smaller products.

Standing in the hiring hall that morning, two women chatted in Spanish about their pregnancies. A young black man had heard enough. His small town the next county over was crowded with Mexicans. They just started showing up three years ago -- drawn to rural Robeson County by the plant -- and never left. They stood in groups on the street corners, and the young black man never knew what they were saying. They took the jobs and did them for less. Some had houses in Mexico, while he lived in a trailer with his mother.

Now here he was, trying for the only job around, and he had to listen to Spanish, had to compete with peasants. The world was going to hell.

"This is America and I want to start hearing some English, now!" he screamed.

One of the women told him where to stick his head and listen for the echo. "Then you'll hear some English," she said.

An old white man with a face as pinched and lined as a pot roast complained, "The tacos are worse than the niggers," and the Indian leaned against the wall and laughed. In the doorway, the prisoners shifted from foot to foot, watching the spectacle unfold from behind a



cloud of cigarette smoke.

The hiring manager came out of his office and broke it up just before things degenerated into a brawl. Then he handed out the employment stubs. "I don't want no problems," he warned. He told them to report to the plant on Monday morning to collect their carving knives.

#### \$7.70 an Hour, Pain All Day

Monday. The mist rose from the swamps and by 4:45 a.m. thousands of headlamps snaked along the old country roads. Cars carried people from the backwoods, from the single and doublewide trailers, from the cinder-block houses and wooden shacks: whites from Lumberton and Elizabethtown; blacks from Fairmont and Fayetteville; Indians from Pembroke; the Mexicans from Red Springs and St. Pauls.

They converge at the Smithfield plant, a 973,000-square-foot leviathan of pipe and steel near the Cape Fear River. The factory towers over the tobacco and cotton fields, surrounded by pine trees and a few of the old whitewashed plantation houses. Built seven years ago, it is by far the biggest employer in this region, 75 miles west of the Atlantic and 90 miles south of the booming Research Triangle around Chapel Hill.

The workers filed in, their faces stiffened by sleep and the cold, like saucers of milk gone hard. They punched the clock at 5 a.m., waiting for the knives to be handed out, the chlorine freshly applied by the cleaning crew burning their eyes and throats. Nobody spoke.

The hallway was a river of brown-skinned Mexicans. The six prisoners who were starting that day looked confused.

"What the hell's going on?" the only white inmate, Billy Harwood, asked an older black worker named Wade Baker.

"Oh," Mr. Baker said, seeing that the prisoner was talking about the Mexicans. "I see you been away for a while."

Billy Harwood had been away -- nearly seven years, for writing phony payroll checks from the family pizza business to buy crack. He was Rip Van Winkle standing there. Everywhere he looked there were Mexicans. What he didn't know was that one out of three newborns at the nearby Robeson County health clinic was a Latino; that the county's Roman Catholic church had a special Sunday Mass for Mexicans said by a Honduran priest; that the schools needed Spanish speakers to teach English.

With less than a month to go on his sentence, Mr. Harwood took the pork job to save a few dollars. The word in jail was that the job was a

cakewalk for a white man.

But this wasn't looking like any cakewalk. He wasn't going to get a boxing job like a lot of other whites. Apparently inmates were on the bottom rung, just like Mexicans.

Billy Harwood and the other prisoners were put on the picnic line. Knife work pays \$7.70 an hour to start. It is money unimaginable in Mexico, where the average wage is \$4 a day. But the American money comes at a price. The work burns your muscles and dulls your mind. Staring down into the meat for hours strains your neck. After thousands of cuts a day your fingers no longer open freely. Standing in the damp 42-degree air causes your knees to lock, your nose to run, your teeth to throb.

The whistle blows at 3, you get home by 4, pour peroxide on your nicks by 5. You take pills for your pains and stand in a hot shower trying to wash it all away. You hurt. And by 8 o'clock you're in bed, exhausted, thinking of work.

The convict said he felt cheated. He wasn't supposed to be doing Mexican work. After his second day he was already talking of quitting. "Man, this can't be for real," he said, rubbing his wrists as if they'd been in handcuffs. "This job's for an ass. They treat you like an animal."

He just might have quit after the third day had it not been for Mercedes Fernandez, a Mexican. He took a place next to her by the conveyor belt. She smiled at him, showed him how to make incisions. That was the extent of his on-the-job training. He was peep-eyed, missing a tooth and squat from the starchy prison food, but he acted as if this tiny woman had taken a fancy to him. In truth, she was more fascinated than infatuated, she later confided. In her year at the plant, he was the first white person she had ever worked with.

The other workers noticed her helping the white man, so unusual was it for a Mexican and a white to work shoulder to shoulder, to try to talk or even to make eye contact.

As for blacks, she avoided them. She was scared of them. "Blacks don't want to work," Mrs. Fernandez said when the new batch of prisoners came to work on the line. "They're lazy."

Everything about the factory cuts people off from one another. If it's not the language barrier, it's the noise -- the hammering of compressors, the screeching of pulleys, the grinding of the lines. You can hardly make your voice heard. To get another's attention on the cut line, you bang the butt of your knife on the steel railings, or you lob a chunk of meat. Mrs. Fernandez would sometimes throw a piece of

shoulder at a friend across the conveyor and wave good morning.

#### The Kill Floor

The kill floor sets the pace of the work, and for those jobs they pick strong men and pay a top wage, as high as \$12 an hour. If the men fail to make quota, plenty of others are willing to try. It is mostly the blacks who work the kill floor, the stone-hearted jobs that pay more and appear out of bounds for all but a few Mexicans. Plant workers gave various reasons for this: The Mexicans are too small; they don't like blood; they don't like heavy lifting; or just plain "We built this country and we ain't going to hand them everything," as one black man put it.

Kill-floor work is hot, quick and bloody. The hog is herded in from the stockyard, then stunned with an electric gun. It is lifted onto a conveyor belt, dazed but not dead, and passed to a waiting group of men wearing bloodstained smocks and blank faces. They slit the neck, shackle the hind legs and watch a machine lift the carcass into the air, letting its life flow out in a purple gush, into a steaming collection trough.

The carcass is run through a scalding bath, trolleyed over the factory floor and then dumped onto a table with all the force of a quarter-ton water balloon. In the misty-red room, men slit along its hind tendons and skewer the beast with hooks. It is again lifted and shot across the room on a pulley and bar, where it hangs with hundreds of others as if in some kind of horrific dry-cleaning shop. It is then pulled through a wall of flames and met on the other side by more black men who, stripped to the waist beneath their smocks, scrape away any straggling bristles.

The place reeks of sweat and scared animal, steam and blood. Nothing is wasted from these beasts, not the plasma, not the glands, not the bones. Everything is used, and the kill men, repeating slaughterhouse lore, say that even the squeal is sold.

The carcasses sit in the freezer overnight and are then rolled out to the cut floor. The cut floor is opposite to the kill floor in nearly every way. The workers are mostly brown -- Mexicans -- not black; the lighting yellow, not red. The vapor comes from cold breath, not hot water. It is here that the hog is quartered. The pieces are parceled out and sent along the disassembly lines to be cut into ribs, hams, bellies, loins and chops.

People on the cut lines work with a mindless fury. There is tremendous pressure to keep the conveyor belts moving, to pack orders, to put bacon and ham and sausage on the public's breakfast table. There is no clock, no window, no fragment of the world outside. Everything is pork. If the line fails to keep pace, the kill men must slow down,

backing up the slaughter. The boxing line will have little to do, costing the company payroll hours. The blacks who kill will become angry with the Mexicans who cut, who in turn will become angry with the white superintendents who push them.

#### 10,000 Unwelcome Mexicans

The Mexicans never push back. They cannot. Some have legitimate work papers, but more, like Mercedes Fernandez, do not.

Even worse, Mrs. Fernandez was several thousand dollars in debt to the smugglers who had sneaked her and her family into the United States and owed a thousand more for the authentic-looking birth certificate and Social Security card that are needed to get hired. She and her husband, Armando, expected to be in debt for years. They had mouths to feed back home.

The Mexicans are so frightened about being singled out that they do not even tell one another their real names. They have their given names, their work-paper names and "Hey you," as their American supervisors call them. In the telling of their stories, Mercedes and Armando Fernandez insisted that their real names be used, to protect their identities. It was their work names they did not want used, names bought in a back alley in Barstow, Tex.

Rarely are the newcomers welcomed with open arms. Long before the Mexicans arrived, Robeson County, one of the poorest in North Carolina, was an uneasy racial mix. In the 1990 census, of the 100,000 people living in Robeson, nearly 40 percent were Lumbee Indian, 35 percent white and 25 percent black. Until a dozen years ago the county schools were de facto segregated, and no person of color held any meaningful county job from sheriff to court clerk to judge.

At one point in 1988, two armed Indian men occupied the local newspaper office, taking hostages and demanding that the sheriff's department be investigated for corruption and its treatment of minorities. A prominent Indian lawyer, Julian Pierce, was killed that same year, and the suspect turned up dead in a broom closet before he could be charged. The hierarchy of power was summed up on a plaque that hangs in the courthouse commemorating the dead of World War I. It lists the veterans by color: "white" on top, "Indian" in the middle and "colored" on the bottom.

That hierarchy mirrors the pecking order at the hog plant. The Lumbees -- who have fought their way up in the county apparatus and have built their own construction businesses -- are fond of saying they are too smart to work in the factory. And the few who do work there seem to end up with the cleaner jobs.

But as reds and blacks began to make progress in the 1990's -- for the first time an Indian sheriff was elected, and a black man is now the public defender -- the Latinos began arriving. The United States Census Bureau estimated that 1,000 Latinos were living in Robeson County last year. People only laugh at that number.

"A thousand? Hell, there's more than that in the Wal-Mart on a Saturday afternoon," said Bill Smith, director of county health services. He and other officials guess that there are at least 10,000 Latinos in Robeson, most having arrived in the past three years.

"When they built that factory in Bladen, they promised a trickle-down effect," Mr. Smith said. "But the money ain't trickling down this way. Bladen got the money and Robeson got the social problems."

In Robeson there is the strain on public resources. There is the substandard housing. There is the violence. Last year 27 killings were committed in Robeson, mostly in the countryside, giving it a higher murder rate than Detroit or Newark. Three Mexicans were robbed and killed last fall. Latinos have also been the victims of highway stickups.

In the yellow-walled break room at the plant, Mexicans talked among themselves about their three slain men, about the midnight visitors with obscured faces and guns, men who knew that the illegal workers used mattresses rather than banks. Mercedes Fernandez, like many Mexicans, would not venture out at night. "Blacks have a problem," she said. "They live in the past. They are angry about slavery, so instead of working, they steal from us."

She and her husband never lingered in the parking lot at shift change. That is when the anger of a long day comes seeping out. Cars get kicked and faces slapped over parking spots or fender benders. The traffic is a serpent. Cars jockey for a spot in line to make the quarter-mile crawl along the plant's one-lane exit road to the highway. Usually no one will let you in. A lot of the scuffling is between black and Mexican.

#### Black and Bleak

The meat was backing up on the conveyor and spilling onto the floor. The supervisor climbed down off the scaffolding and chewed out a group of black women. Something about skin being left on the meat. There was a new skinner on the job, and the cutting line was expected to take up his slack. The whole line groaned. First looks flew, then people began hurling slurs at one another in Spanish and English, words they could hardly hear over the factory's roar. The black women started waving their knives at the Mexicans. The Mexicans waved theirs back. The blades got close. One Mexican spit at the blacks and was fired.

After watching the knife scene, Wade Baker went home and sagged in his recliner. CNN played. Good news on Wall Street, the television said. Wages remained stable. "Since when is the fact that a man doesn't get paid good news?" he asked the TV. The TV told him that money was everywhere -- everywhere but here.

Still lean at 51, Mr. Baker has seen life improve since his youth in the Jim Crow South. You can say things. You can ride in a car with a white woman. You can stay in the motels, eat in the restaurants. The black man got off the white man's field.

"Socially, things are much better," Mr. Baker said wearily over the droning television. "But we're going backwards as black people economically. For every one of us doing better, there's two of us doing worse."

His town, Chad Bourne, is a dreary strip of peeling paint and warped porches and houses as run-down as rotting teeth. Young men drift from the cinder-block pool hall to the empty streets and back. In the center of town is a bank, a gas station, a chicken shack and a motel. As you drive out, the lights get dimmer and the homes older until eventually you're in a flat void of tobacco fields.

Mr. Baker was standing on the main street with his grandson Monte watching the Christmas parade march by when a scruffy man approached. It was Mr. Baker's cousin, and he smelled of kerosene and had dust in his hair as if he lived in a vacant building and warmed himself with a portable heater. He asked for \$2.

"It's ironic isn't it?" Mr. Baker said as his cousin walked away only eight bits richer. "He was asking me the same thing 10 years ago."

A group of Mexicans stood across the street hanging around the gas station watching them.

"People around here always want to blame the system," he said. "And it is true that the system is antiblack and antipoor. It's true that things are run by the whites. But being angry only means you failed in life. Instead of complaining, you got to work twice as hard and make do."

He stood quietly with his hands in his pockets watching the parade go by. He watched the Mexicans across the street, laughing in their new clothes. Then he said, almost as an afterthought, "There's a day coming soon where the Mexicans are going to catch hell from the blacks, the way the blacks caught it from the whites."

Wade Baker used to work in the post office, until he lost his job over drugs. When he came out of his haze a few years ago, there wasn't much else for him but the plant. He took the job, he said, "because I don't have a 401K." He took it because he had learned from his mother that you don't stand around with your head down and your hand out waiting for another man to drop you a dime.

Evelyn Baker, bent and gray now, grew up a sharecropper, the granddaughter of slaves. She was raised up in a tar-paper shack, picked cotton and hoed tobacco for a white family. She supported her three boys alone by cleaning white people's homes.

In the late 60's something good started happening. There was a labor shortage, just as there is now. The managers at the textile plants started giving machine jobs to black people.

Mrs. Baker was 40 then. "I started at a dollar and 60 cents an hour, and honey, that was a lot of money then," she said.

The work was plentiful through the 70's and 80's, and she was able to save money and add on to her home. By the early 90's the textile factories started moving away, to Mexico. Robeson County has lost about a quarter of its jobs since that time.

Unemployment in Robeson hovers around 8 percent, twice the national average. In neighboring Columbus County it is 10.8 percent. In Bladen County it is 5 percent, and Bladen has the pork factory.

Still, Mr. Baker believes that people who want to work can find work. As far as he's concerned, there are too many shiftless young men who ought to be working, even if it's in the pork plant. His son-in-law once worked there, quit and now hangs around the gas station where other young men sell dope.

The son-in-law came over one day last fall and threatened to cause trouble if the Bakers didn't let him borrow the car. This could have turned messy; the 71-year-old Mrs. Baker keeps a .38 tucked in her bosom.

When Wade Baker got home from the plant and heard from his mother what had happened, he took up his pistol and went down to the corner, looking for his son-in-law. He chased a couple of the young men around the dark dusty lot, waving the gun. "Hold still so I can shoot one of you!" he recalled having bellowed. "That would make the world a better place!"

He scattered the men without firing. Later, sitting in his car with his pistol on the seat and his hands between his knees, he said, staring

into the night: "There's got to be more than this. White people drive by and look at this and laugh."

#### Living It, Hating It

Billy Harwood had been working at the plant 10 days when he was released from the Robeson County Correctional Facility. He stood at the prison gates in his work clothes with his belongings in a plastic bag, waiting. A friend dropped him at the Salvation Army shelter, but he decided it was too much like prison. Full of black people. No leaving after 10 p.m. No smoking indoors. "What you doing here, white boy?" they asked him.

He fumbled with a cigarette outside the shelter. He wanted to quit the plant. The work stinks, he said, "but at least I ain't a nigger. I'll find other work soon. I'm a white man." He had hopes of landing a roofing job through a friend. The way he saw it, white society looks out for itself.

On the cut line he worked slowly and allowed Mercedes Fernandez and the others to pick up his slack. He would cut only the left shoulders; it was easier on his hands. Sometimes it would be three minutes before a left shoulder came down the line. When he did cut, he didn't clean the bone; he left chunks of meat on it.

Mrs. Fernandez was disappointed by her first experience with a white person. After a week she tried to avoid standing by Billy Harwood. She decided it wasn't just the blacks who were lazy, she said.

Even so, the supervisor came by one morning, took a look at one of Mr. Harwood's badly cut shoulders and threw it at Mrs. Fernandez, blaming her. He said obscene things about her family. She didn't understand exactly what he said, but it scared her. She couldn't wipe the tears from her eyes because her gloves were covered with greasy shreds of swine. The other cutters kept their heads down, embarrassed.

Her life was falling apart. She and her husband both worked the cut floor. They never saw their daughter. They were 26 but rarely made love anymore. All they wanted was to save enough money to put plumbing in their house in Mexico and start a business there. They come from the town of Tehuacan, in a rural area about 150 miles southeast of Mexico City. His mother owns a bar there and a home but gives nothing to them. Mother must look out for her old age.

"We came here to work so we have a chance to grow old in Mexico," Mrs. Fernandez said one evening while cooking pork and potatoes. Now they were into a smuggler for thousands. Her hands swelled into claws in the evenings and stung while she worked. She felt trapped. But she kept at it for the money, for the \$9.60 an hour. The smuggler still had to be



paid.

They explained their story this way: The coyote drove her and her family from Barstow a year ago and left them in Robeson. They knew no one. They did not even know they were in the state of North Carolina. They found shelter in a trailer park that had once been exclusively black but was rapidly filling with Mexicans. There was a lot of drug dealing there and a lot of tension. One evening, Mr. Fernandez said, he asked a black neighbor to move his business inside and the man pulled a pistol on him.

"I hate the blacks," Mr. Fernandez said in Spanish, sitting in the break room not 10 feet from Mr. Baker and his black friends. Mr. Harwood was sitting two tables away with the whites and Indians.

After the gun incident, Mr. Fernandez packed up his family and moved out into the country, to a prefabricated number sitting on a brick foundation off in the woods alone. Their only contact with people is through the satellite dish. Except for the coyote. The coyote knows where they live and comes for his money every other month.

Their 5-year-old daughter has no playmates in the back country and few at school. That is the way her parents want it. "We don't want her to be American," her mother said.

'We Need a Union'

The steel bars holding a row of hogs gave way as a woman stood below them. Hog after hog fell around her with a sickening thud, knocking her senseless, the connecting bars barely missing her face. As co-workers rushed to help the woman, the supervisor spun his hands in the air, a signal to keep working. Wade Baker saw this and shook his head in disgust. Nothing stops the disassembly lines.

"We need a union," he said later in the break room. It was payday and he stared at his check: \$288. He spoke softly to the black workers sitting near him. Everyone is convinced that talk of a union will get you fired. After two years at the factory, Mr. Baker makes slightly more than \$9 an hour toting meat away from the cut line, slightly less than \$20,000 a year, 45 cents an hour less than Mrs. Fernandez.

"I don't want to get racial about the Mexicans," he whispered to the black workers. "But they're dragging down the pay. It's pure economics. They say Americans don't want to do the job. That ain't exactly true. We don't want to do it for \$8. Pay \$15 and we'll do it."

These men knew that in the late 70's, when the meatpacking industry was centered in northern cities like Chicago and Omaha, people had a union getting them \$18 an hour. But by the mid-80's, to cut costs, many

of the packing houses had moved to small towns where they could pay a lower, nonunion wage.

The black men sitting around the table also felt sure that the Mexicans pay almost nothing in income tax, claiming 8, 9, even 10 exemptions. The men believed that the illegal workers should be rooted out of the factory. "It's all about money," Mr. Baker said.

His co-workers shook their heads. "A plantation with a roof on it," one said.

For their part, many of the Mexicans in Tar Heel fear that a union would place their illegal status under scrutiny and force them out. The United Food and Commercial Workers Union last tried organizing the plant in 1997, but the idea was voted down nearly two to one.

One reason Americans refused to vote for the union was because it refuses to take a stand on illegal laborers. Another reason was the intimidation. When workers arrived at the plant the morning of the vote, they were met by Bladen County deputy sheriffs in riot gear. "Nigger Lover" had been scrawled on the union trailer.

Five years ago the work force at the plant was 50 percent black, 20 percent white and Indian, and 30 percent Latino, according to union statistics. Company officials say those numbers are about the same today. But from inside the plant, the breakdown appears to be more like 60 percent Latino, 30 percent black, 10 percent white and red.

Sherri Buffkin, a white woman and the former director of purchasing who testified before the National Labor Relations Board in an unfair-labor-practice suit brought by the union in 1998, said in an interview that the company assigns workers by race. She also said that management had kept lists of union sympathizers during the '97 election, firing blacks and replacing them with Latinos. "I know because I fired at least 15 of them myself," she said.

The company denies those accusations. Michael H. Cole, a lawyer for Smithfield who would respond to questions about the company's labor practices only in writing, said that jobs at the Tar Heel plant were awarded through a bidding process and not assigned by race. The company also denies ever having kept lists of union sympathizers or singled out blacks to be fired.

The hog business is important to North Carolina. It is a multibillion-dollar-a-year industry in the state, with nearly two pigs for every one of its 7.5 million people. And Smithfield Foods, a publicly traded company based in Smithfield, Va., has become the No. 1 producer and processor of pork in the world. It slaughters more than 20

percent of the nation's swine, more than 19 million animals a year.

The company, which has acquired a network of factory farms and slaughterhouses, worries federal agriculture officials and legislators, who see it siphoning business from smaller farmers. And environmentalists contend that Smithfield's operations contaminate local water supplies. (The Environmental Protection Agency fined the company \$12.6 million in 1996 after its processing plants in Virginia discharged pollutants into the Pagan River.) The chairman and chief executive, Joseph W. Luter III, declined to be interviewed.

Smithfield's employment practices have not been so closely scrutinized. And so every year, more Mexicans get hired. "An illegal alien isn't going to complain all that much," said Ed Tomlinson, acting supervisor of the Immigration and Naturalization Service bureau in Charlotte.

But the company says it does not knowingly hire illegal aliens. Smithfield's lawyer, Mr. Cole, said all new employees must present papers showing that they can legally work in the United States. "If any employee's documentation appears to be genuine and to belong to the person presenting it," he said in his written response, "Smithfield is required by law to take it at face value."

The naturalization service -- which has only 18 agents in North Carolina -- has not investigated Smithfield because no one has filed a complaint, Mr. Tomlinson said. "There are more jobs than people," he said, "and a lot of Americans will do the dirty work for a while and then return to their couches and eat bonbons and watch Oprah."

#### Not Fit for a Convict

When Billy Harwood was in solitary confinement, he liked a book to get him through. A guard would come around with a cartful. But when the prisoner asked for a new book, the guard, before handing it to him, liked to tear out the last 50 pages. The guard was a real funny guy.

"I got good at making up my own endings," Billy Harwood said during a break. "And my book don't end standing here. I ought to be on that roof any day now."

But a few days later, he found out that the white contractor he was counting on already had a full roofing crew. They were Mexicans who were working for less than he was making at the plant.

During his third week cutting hogs, he got a new supervisor -- a black woman. Right away she didn't like his work ethic. He went too slow. He cut out to the bathroom too much.

"Got a bladder infection?" she asked, standing in his spot when he returned. She forbade him to use the toilet.

He boiled. Mercedes Fernandez kept her head down. She was certain of it, she said: he was the laziest man she had ever met. She stood next to a black man now, a prisoner from the north. They called him K. T. and he was nice to her. He tried Spanish, and he worked hard.

When the paychecks were brought around at lunch time on Friday, Billy Harwood got paid for five hours less than everyone else, even though everyone punched out on the same clock. The supervisor had docked him.

The prisoners mocked him. "You might be white," K. T. said, "but you came in wearing prison greens and that makes you good as a nigger."

The ending wasn't turning out the way Billy Harwood had written it: no place to live and a job not fit for a donkey. He quit and took the Greyhound back to his parents' trailer in the hills.

When Mrs. Fernandez came to work the next day, a Mexican guy going by the name of Alfredo was standing in Billy Harwood's spot.

#### About the Series

Two generations after the end of legal discrimination, race still ignites political debates. But the wider public discussion of race relations seems muted. Race relations are being defined less by political action than by daily experience, in schools, in sports arenas, in pop culture and at worship, and especially in the workplace. These encounters -- race relations in the most literal, everyday sense -- make up this series of reports, the outcome of a yearlong examination by Times reporters.

---

## **Pork producer could help land the Hornets**

(Norfolk-AP) -- Smithfield Foods, the nation's largest pork producer, is close to a deal to purchase the naming rights for a proposed downtown Norfolk arena.

Norfolk mayor Paul Fraim on Friday confirmed that Smithfield is seriously considering a \$40 - \$60 million deal and could sign on as early as Monday.

City officials believe a "yes" from Smithfield Foods could be a key step toward rescuing Norfolk's effort to land the Charlotte Hornets.

Up to this point, a naming-rights deal was a key missing element in Norfolk's efforts to lure the Hornets. Smithfield vice president Richard Poulson says the proposed \$228 million, 18-thousand-seat arena would be called the Smithfield Foods Center.

However, New Orleans still appears to be the Hornets' top choice. The city already has an arena so the team could play immediately.

The NBA franchise plans to make an application to move the team by the end of the month.

APPENDIX D

*Waterkeeper Alliance*

*78 North Broadway, White Plains, NY 10603  
phone (914) 422-4410, fax 914-422-4437  
www.waterkeeper.org*

July 30, 2001

Concentrated Animal Feeding Operations Rule  
United States Environmental Protection Agency  
Waterside Mall, West Tower  
Room 611  
401 M Street, S.W.  
Washington, D.C. 20460

Re: Proposed Revisions to Environmental Protection Agency Regulations for Concentrated  
Animal Feeding Operations

To the United States Environmental Protection Agency:

I write you on behalf of Waterkeeper Alliance and the Animal Welfare Institute to comment on the Environmental Protection Agency's (EPA's) proposed Concentrated Animal Feeding Operation (CAFO) regulations. While the revisions generally improve EPA's CAFO regulations, they fail to address the most pressing environmental and health hazards by failing to require the elimination of animal waste lagoons.

Introduction

Waterkeeper Alliance is made up of 70 organizations around the country who advocate for the protection of their local water resources. Waterkeepers work to educate the public about the importance of healthy waterways and watersheds, emphasizing the enforcement of environmental laws to protect and maintain those waters. When government fails to act, Waterkeepers bring legal actions to force compliance of environmental laws.

In December 2000, Waterkeeper Alliance led a coalition of groups in launching a major national campaign to reform the polluting practices of industrial livestock operations, an enormous and growing menace to the health of America's waterways and public health. Initially, the campaign is focusing on industrial hog operations. In the course of this campaign, we have heard from thousands of farmers, fishermen, environmentalists, animal welfare advocates, and rural residents concerned about problems caused by highly concentrated livestock operations. Without exception, these people have told us that government has failed to adequately address

the problems caused by concentrated livestock operations. Many of these people view CAFOs as destroying rural America.

For these reasons, Waterkeeper Alliance has a strong interest in the development and enforcement of effective CAFO regulations and submits the following comments. The Animal Welfare Institute, which belongs to the coalition of groups working to reform the hog industry and has worked on issues related to farm animal health and welfare for many years, joins Waterkeeper Alliance in these comments.

**EPA's CAFO Regulations Should Ban Animal Waste Lagoons.**

**A. Most CAFOs liquefy and store massive quantities of animal manure.**

Traditional American farms raised animals outdoors on pasture or indoors on straw. Farmers used the animal manure to fertilize their crops of corn, soy, and alfalfa, which they fed to their animals. Animal bedding was a by-product of many small grain crops.<sup>10</sup> On traditional farms, manure management was not merely waste disposal but was an integral aspect of the nutrient cycle and contributed to the overall economy of the farming operation.<sup>11</sup> The inputs and outputs of the system were roughly in balance and risks to the environment and human health were minimal and manageable.

However, approximately two decades ago, a handful of corporations began to invest heavily in a method intended to produce pork more cheaply. Under this system, large numbers of animals are continually confined in buildings with metal or concrete floors over which a liquid mixture of urine, manure and water is periodically flushed. The liquid flushes the manure to huge impoundments beneath the floors. This liquefaction of manure enables CAFO operators to employ fewer people than a traditional farm because less labor is required to remove the manure from the animal stalls and pens.<sup>12</sup> CAFO hogs are continually confined in crates and pens and spend their entire lives over these liquid waste impoundments. The liquefied manure from the impoundments is then pumped to massive open-air storage pits, which CAFO owners euphemistically call "lagoons." The waste is periodically dumped onto adjacent fields by pumping and spraying equipment. Today, the majority of swine CAFOs use the liquid manure and lagoon system.<sup>13</sup> In certain areas of the United States, the countryside is littered with these huge manure pits, which can be several stories deep and acres wide.

North Carolina, with an estimated 4,800 hog waste lagoons,<sup>14</sup> may have more than any other state. Flying over Jones or Duplin County, in Eastern North Carolina, one can easily count 100 giant manure pits in a single bird's-eye-view.<sup>15</sup> Periodically, the lagoons breach or are flooded over, causing catastrophic consequences. In June 1995, 25 million gallons of liquid hog manure

<sup>10</sup> Halverson, M., *The Price We Pay for Corporate Hogs*, Institute for Agriculture and Trade Policy, at 56 (July 2000), available at [www.iatp.org/hogreport/index.html](http://www.iatp.org/hogreport/index.html).

<sup>11</sup> Halverson, *Corporate Hogs*, at 56.

<sup>12</sup> Halverson, *Corporate Hogs*, at 47.

<sup>13</sup> Marks, Robbin, *Cesspools of Shame, How Factory Farm Lagoons and Sprayfields Threaten Environmental and Public Health*, Natural Resources Defense Council, at 3 (July 2001).

<sup>14</sup> WILMINGTON STAR-NEWS, February 11, 2000, p. 1B; and RALEIGH NEWS & OBSERVER, January 31, 2000, p. A10.

<sup>15</sup> Personal experience of the author.

spilled into North Carolina's New River, killing a billion fish.<sup>16</sup> This was preceded by a liquid hog manure spill of one million gallons into waterways in Sampson County, North Carolina.<sup>17</sup> In July 1996, a hog CAFO spilled 1.8 million gallons into tributaries of the Neuse River in Craven County.<sup>18</sup> In September 1998, when hurricane Floyd hit, Neuse Riverkeeper Rick Dove personally observed 25 flooded hog waste lagoons. Newspapers reported that 50 lagoons in Eastern North Carolina were flooded.<sup>19</sup> These lagoons probably each contained several million gallons of liquid animal manure.

More insidious but even more dangerous than the hog waste spills are the continual discharges of pollutants to the environment from lagoons and sprayfields. As will be set forth below, research demonstrates that wherever they exist, hog and other animal waste lagoons and sprayfields cause constant contamination of the air, land, and water through volatilization, run off, and leaking. Exacerbating the problem, CAFO operators regularly over-apply and misapply waste to their fields, such as applying liquid waste when the ground is wet or frozen.<sup>20</sup> These practices result in pollution of groundwater and nearby streams and rivers.

**B. Liquefied manure lagoons are inherently dangerous to human health and the environment.**

**-1. CAFOs are Over-Applying Phosphorous.**

Soil in many areas of the country with high concentrations of CAFOs are vastly oversaturated with phosphorous. Several recent studies have established that where animal waste is the primary source of fertilizer, phosphorous is being overapplied.<sup>21</sup> A September 2000 study found that phosphorous was being vastly overapplied by hog operations in the Midwest.<sup>22</sup> The University of Northern Iowa study by biology professor Dr. Laura Jackson looked at ten operations, and concluded that the operations studied would need an additional 24,000 acres, or six times the available land, to avoid overapplying the phosphorous from the waste they were producing.<sup>23</sup>

The lagoon and sprayfield waste handling system of North Carolina's hog operations has caused excessive phosphorous to accumulate in their soils.<sup>24</sup> Excess phosphorous enters groundwater or surface water rather than binding to soil.<sup>25</sup> This is especially likely in areas with well-drained,

<sup>16</sup> Halverson, *Corporate Hogs*, at 51; and personal observations and information gathered by New Riverkeeper Tom Mattison and Neuse Riverkeeper Rick Dove.

<sup>17</sup> Halverson, *Corporate Hogs*, at 51.

<sup>18</sup> Halverson, *Corporate Hogs*, at 52.

<sup>19</sup> *Clear Development from Floodplains*, Editorial, RALEIGH NEWS & OBSERVER, November 5, 1999, p. A3, quoting Dewey Botts, North Carolina's then-Assistant Secretary of Environment and Natural Resources.

<sup>20</sup> At a Smithfield Foods, Inc. operation in Jones County, North Carolina, Brown's 5/6, North Carolina's Department of Environment and Natural Resources has documented dozens of violations of the facility's waste management plan. Some of these are set forth in Waterkeeper Alliance's Notice of Intent to Sue Letter found at <http://www.keeper.org/hogfight/letters/intent.htm>. Waterkeeper Alliance's review of dozens of case files of hog operations indicate that the violations at Brown's 5/6 are typical of hog CAFO operations with waste lagoons.

<sup>21</sup> Fretz, T., et al., *Agriculture and its Relationship to Toxic Dinoflagellates in the Chesapeake Bay*, publication of the University of Maryland School of Agriculture and Natural Resources, at 5 (1997).

<sup>22</sup> Marberry, S., FEEDSTUFFS MAGAZINE, September 18, 2000.

<sup>23</sup> Id.

<sup>24</sup> Mallin at 35.

<sup>25</sup> Id.

sandy soils such as those found in Eastern North Carolina and other hog producing regions.<sup>26</sup> Recent research establishes that soils overloaded with phosphorous generate significant amounts of soluble phosphorous that can be readily transported by surface water runoff even with minimal soil erosion.<sup>27</sup> Phosphorous overloading exacerbates eutrophication in surface water.<sup>28</sup>

2. Contamination of groundwater and surface waters by nitrates and pathogens endangers human health and the environment.

Liquefied manure systems endanger surface waters. Studies of the streams of Eastern North Carolina have demonstrated that even normal rainfall events carry nutrients from hog facility sprayfields across the field or through shallow groundwater into nearby receiving streams, leading to nutrient concentrations around these operations high enough to cause damage to aquatic ecosystems.<sup>29</sup>

The lagoon and sprayfield system of handling hog waste threatens public health because it puts all nearby groundwater at risk of contamination. Hog facilities contaminate groundwater with leaking lagoons and with leaching of waste applied to sprayfields.<sup>30</sup> Polluted groundwater is dangerous to human health and the environment because it may enter streams and other surface waters where people come in contact with it as well as poisoning wells used for human and animal consumption.<sup>31</sup>

Groundwater serves as the source of drinking water for nearly half the population of the United States.<sup>32</sup> Some areas that have many hog CAFOs, such as Eastern North Carolina, are especially vulnerable to groundwater pollution because they have sandy soils and a shallow water table.<sup>33</sup> Sand allows nitrates and bacteria to pass quickly to water supplies below.<sup>34</sup> Hog waste lagoons are a major source of groundwater contamination.<sup>35</sup> Most hog waste lagoons leak and studies show that even lagoons described as having "little seepage" still produced groundwater nitrate levels up to three times the allowable limit.<sup>36</sup>

In July 2001, the Minnesota Pollution Control Agency released a report on the dangers of animal manure lagoons that was based on several studies by its own staff and industry consultants.<sup>37</sup> The researchers had studied 37 manure lagoons and found that for every one of the lagoons older than five years underground pollution plumes could be detected.<sup>38</sup> The pollution plumes

<sup>26</sup> Id.

<sup>27</sup> Fretz at 3.

<sup>28</sup> Mallin at 35.

<sup>29</sup> Mallin at 34.

<sup>30</sup> *Framework for the Conversion of Anaerobic Swine Waste Lagoons and Sprayfields*, North Carolina Department of Environment and Natural Resources website, at <http://www.enr.state.nc.us/files/hogs/hogplan.htm>, at 2.

<sup>31</sup> Mallin at 35.

<sup>32</sup> Nugent, M.; Kamrin, M., *Nitrate -- A Drinking Water Concern*, a publication of the Center for Environmental Toxicology and the Institute of Water Research of Michigan State University, at 1.

<sup>33</sup> Warrick, J.; Smith, P., *New Studies Show that Lagoons are Leaking*, THE RALEIGH NEWS & OBSERVER, February 19, 1995, at <http://www.nando.net/project/hogs/1water.html>, at 2.

<sup>34</sup> Warrick at 53.

<sup>35</sup> Mallin at 35.

<sup>36</sup> Warrick at 44.

<sup>37</sup> Lien, D., *Pollution Control Study Rates Manure Pit Leakage*, PIONEER PRESS, July 25, 2001, available at [http://www.pioneerplanet.com/news/mte\\_docs/93221/htm](http://www.pioneerplanet.com/news/mte_docs/93221/htm).

<sup>38</sup> Id.



contained high concentrations of ammonia, organic nitrogen, phosphorous, organic carbon, potassium and chloride.<sup>39</sup>

Sprayed liquid hog waste similarly pollutes groundwater. North Carolina State University research of fields where hog waste was being sprayed as fertilizer reported that, "evidence of contamination was found almost everywhere" in the sandy soil beneath the spray fields.<sup>40</sup> Contaminants seeping from hog lagoons and spray fields include nutrients, numerous strains of harmful bacteria, and chemicals.<sup>41</sup>

The overnutrification of surface water bodies also endangers human health and the environment. North Carolina has officially designated several of its major rivers, including the Neuse River, as "nutrient sensitive waters." A major source of nutrient pollution to North Carolina's waters is runoff from croplands and intensive livestock operations.<sup>42</sup> Polluted groundwater contributes to overnutrification of surface waters. For example, an analysis by the United States Geological Survey of the impact of nutrients on the Chesapeake Bay found that nutrients leaking into groundwater were a major source of nutrient contamination of the Bay.

Nutrients that seep into groundwater from the land surface also make their way into the rivers and streams that flow into the Bay, or directly into the Bay itself. Groundwater is an important source of surface water and nutrients. The USGS has determined that about 50 percent of the water in streams comes from groundwater, but the amount can be as low as 27 percent or as high as 85 percent. The amount of groundwater varies according to the type of rock and sediment beneath the land surface. Up to one half of the nitrogen entering the Bay travels through groundwater. It is possible that about 10 to 20 percent of the phosphorous entering the Chesapeake Bay also travels through groundwater.<sup>43</sup>

The lagoon and sprayfield disposal of animal waste endangers public health and the environment by causing elevated levels of nitrates in groundwater.<sup>44</sup> Waste contains nitrogen-laden compounds that are converted to nitrates in the soil.<sup>45</sup> Nitrates are extremely soluble in water and can move easily through soil into the drinking water supply.<sup>46</sup> Because nitrates move with the flow of groundwater, the contamination can move great distances from its source.<sup>47</sup> As set forth above, research has established that hog lagoons and sprayfields are causing widespread contamination of groundwater. Although the U.S. Environmental Protection Agency has established a drinking-water standard for well water of 10 mg/L of nitrate or less, a 1995 study of North Carolina wells near swine waste lagoons found ammonia-N concentrations of up to 300 mg/L and nitrate-N concentrations of up to 40 mg/L.<sup>48</sup> A recent study of groundwater near

<sup>39</sup> Id.

<sup>40</sup> Id. Citing the findings of Dr. Rodney Huffman, professor of biological and agricultural engineering at North Carolina State University, who studied the groundwater quality in test wells in fields where hog waste had been sprayed as a fertilizer.

<sup>41</sup> Id.

<sup>42</sup> Warrick at 7.

<sup>43</sup> *What We Know So Far ... Nutrients, Ground Water, and the Chesapeake Bay - A Link with Pfiesteria?*, USGS website, <http://www.Usgs.gov/public/press/public-affairs/press-release/pr343m.htm>.

<sup>44</sup> Nugent at 1.

<sup>45</sup> Id.

<sup>46</sup> Fretz at 3.

<sup>47</sup> Nugent at 2.

<sup>48</sup> Mallin, M., *Impacts of Industrial Animal Production on Rivers and Estuaries*, AMERICAN SCIENTIST, vol. 88, January - February, at 35 (1998).

intensive livestock operations in Southern Ontario found excessive nitrate concentrations at 14% of wells, many having concentrations more than four times safe levels.<sup>49</sup>

The operational practices of many hog CAFOs contribute to elevated nitrates in nearby groundwater. The North Carolina Division of Water Quality and local health department tested over 1600 well water samples from people living adjacent to intensive livestock operations and found that more than 10 percent of these samples contain nitrate levels above the EPA's recommended limit of 10 ppm.<sup>50</sup>

Drinking water with elevated nitrates is dangerous to humans and animals. The greatest danger to public health from nitrate-tainted drinking water is methemoglobinemia. The condition occurs when hemoglobin, the oxygen carrying component of blood, is converted by nitrite to methemoglobin, which fails to carry oxygen efficiently through the body, causing vital tissues, including the brain, to receive less oxygen than they need.<sup>51</sup> Severe methemoglobinemia can result in brain damage and even death.<sup>52</sup> Young infants, especially those under six years, are highly vulnerable and some adults are susceptible to methemoglobinemia.<sup>53</sup> Ingestion of drinking water with very high levels of nitrate (greater than 1000 mg/l) can lead to acute nitrate poisoning.<sup>54</sup> Nitrate ingestion is also believed to contribute to the development of some cancers and cause adverse reproductive outcomes.<sup>55</sup> A University of Iowa study published in the May 2001 issue of the journal *Epidemiology* that looked at cancer incidents of nearly 22,000 women demonstrates that nitrates in drinking water, even far below the U.S.E.P.A. drinking water standard of 10 mg per liter, may increase the risk of bladder cancer by as much as three times.<sup>56</sup> Where animal waste has caused elevated nitrate levels, bacteria, viruses, and protozoa may also be present.<sup>57</sup>

Animal manure contains pathogens. Animals raised under the stress of intensive confinement actually excrete more pathogens than animals in less intensive environments.<sup>58</sup> Pathogens are disease-causing organisms including bacteria, viruses, protozoa, fungi, and algae. The 1998 National Water Quality Inventory indicates that pathogens (specifically bacteria) are the leading stressor in impaired estuaries and the second most prevalent stressor in impaired rivers and streams. Over 150 pathogens found in animal manure are associated with risks to humans.<sup>59</sup> Hog excrement from pork factories contains more than one-hundred known human viral, bacterial, and parasitic pathogens such as influenza viruses, polio virus, *Hepatitis A, B, and E* viruses, *Salmonella* species, *Escherichia coli*, *Yersinia*, *Leptospira*, *Cryptosporidium*, and

<sup>49</sup> Spears, T., *Fertilizers, Manure Pose Mounting Health Threat*, THE OTTAWA CITIZEN, May 2, 2001, available at <http://www.ottawacitizen.com/naational/010501/5009899.html>.

<sup>50</sup> McBride, D., (North Carolina State Health Director), PUBLIC HEALTH ISSUES RELATED TO INTENSIVE LIVESTOCK OPERATIONS (1998), at 4; and Crane, D.; Schriber, C., *Industrial Hog Operations Emissions Study Released*, News Release from the State of North Carolina Department of Health and Human Services, May 7, 1999, at 2.

<sup>51</sup> Nugent at 2.

<sup>52</sup> Nugent at 2-3.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id; and McBride at 4.

<sup>56</sup> Weyer, P., *EPIDEMIOLOGY*, vol. 11, at 327-38 (May 2001).

<sup>57</sup> Nugent at 4.

<sup>58</sup> Halverson, *Corporate Hogs*, at 48.

<sup>59</sup> Halverson, *Corporate Hogs*, at 48.

*Giardia*.<sup>60</sup> These pathogens, some of which can be fatal, also create illnesses in humans ranging from ear aches, respiratory disease, gastrointestinal illness to chronic diseases such as polio.

The risks are more than theoretical; many people have died in North America over the past decade due to viral and bacteriological contamination of public water supplies associated with waste discharges from industrial livestock operations.<sup>61</sup>

Pathogens migrate from manure pits by groundwater and surface water and by spraying of hog waste which increases the likelihood that diseases will spread via air, soils, and water. Birds and the huge populations of disease-carrying flies which thrive at hog factories can carry *Salmonella* species and other microbial pathogens such as new influenza virus strains.

Many other human health impacts from lagoons and sprayfields have been documented in the past two decades. People working in and living near hog facilities suffer from respiratory ailments, chronic diarrhea, and depression.<sup>62</sup>

### 3. Nutrient contamination contributes to outbreaks of the toxic dinoflagellate *Pfiesteria piscicida*.

Manure washing off hog sprayfields and leaking to groundwater also contributes to outbreaks of toxic *Pfiesteria piscicida*.<sup>63</sup> Toxic *Pfiesteria* zoospores consume urea found in animal waste as a source of organic nitrogen in their nutrition.<sup>64</sup> Nutrient loadings to surface waters also contribute to outbreaks of *Pfiesteria* by stimulating the growth of algae that *Pfiesteria* feeds on when in its non-toxic forms.<sup>65</sup>

Among the chief sources of nutrient pollution in coastal areas are polluted runoff from agricultural operations, and air pollutants that settle on land and water.<sup>66</sup> The *Pfiesteria piscicida* dinoflagellate is highly toxic to fish and dangerous to humans. A 1998 peer-reviewed article published in *Lancet* reported the following:

People with environmental exposure to waterways in which *Pfiesteria* toxins are present are at risk of developing a reversible clinical syndrome characterized by difficulties with learning and higher cognitive functions. Risk of illness is directly related to degree of

<sup>60</sup> McBride, at 2.

<sup>61</sup> For example, in 1993, half the population of Milwaukee, 400,000 people, were sickened and 114 people died during a cryptosporidium epidemic later traced to contamination of the municipal water supply caused by an industrial meat factory. In Spring 2001, an Ontario water supply contaminated by a meat operation killed three people.

<sup>62</sup> A review of many of these health studies entitled *Human Health Issues Associated with the Hog Industry* was done by Dr. Melva Okun in January 1999. It is available at [http://checcch.sph.unc.edu/rooms/library/docs/hogs\\_hhealth.html](http://checcch.sph.unc.edu/rooms/library/docs/hogs_hhealth.html).

<sup>63</sup> WASHINGTON POST, September 14, 1998, p. A1; and, Burkholder, J.M., Mallin, M.A., Glasgow, H.B., Jr., Larsen, L.M., Holden, M., Scalian, C., Deamer-Melia, N., Briley, D., Springer, J., Touchette, B.W., Briley, D., Springer, J., Touchette, B.W., Briley, D., & Hannon, E., *Impacts to a coastal river and estuary from rupture of a large swine waste holding lagoon*, JOURNAL OF ENVIRONMENTAL QUALITY, vol. 26, pp. 1451 - 1466 (1997).

<sup>64</sup> Lewitus, A.J., Burkholder, J.M., Glasgow, H.B., Jr., Gilbert, P.M., Willis, B.M., Hayes, K.C., (accepted) *Mixotrophy and nutrient uptake by Pfiesteria piscicida (Dinophyceae)*, JOURNAL OF PHYCOLOGY.

<sup>65</sup> *What you should know about Pfiesteria piscicida*, E.P.A. website, Office of Water, at <http://www.epa.gov/owow/estuaries/pfiesteri/fact.htm> at 6.

<sup>66</sup> Id.

exposure, with the most prominent symptoms and signs occurring among people with chronic daily exposure to affected waterways.<sup>67</sup>

A 1995 peer-reviewed article published in the *Journal of Toxicology and Environmental Health* documented numerous adverse effects on human health effects from *Pfiesteria* toxins absorbed from water or fine aerosols.<sup>68</sup>

#### 4. Ammonia from liquid hog waste endangers human health and the environment.

Liquid hog waste also endangers public health and the environment because it causes elevated ammonium levels when it enters the air and reaches groundwater and surface waters.<sup>69</sup> Whereas dry manure systems lose 15% to 40%<sup>70</sup> of their nitrogen to the atmosphere as ammonia, studies now show that 70 - 80% of the nitrogen in hog lagoons enters the environment as airborne ammonia gas.<sup>71</sup> An EPA study in Missouri reported that the facility under study emitted an estimated 1,200 pounds of ammonia per day from the barns alone.<sup>72</sup> In North Carolina, state wide, swine operations account for about 20% of nitrogen air emissions, in the form of NH<sub>3</sub> ammonia.<sup>73</sup> Huge quantities of ammonia escape hog CAFOs in liquid and gaseous forms. In Eastern North Carolina, where most hog facilities in North Carolina are located, hog facilities account for an astonishing 53% of the total atmospheric nitrogen compounds.<sup>74</sup> These compounds react with other constituents in the air and are deposited on land, vegetation, and water bodies.<sup>75</sup> In December 2000, the U.S. Geological Survey announced research that up to

<sup>67</sup> The study found that, "[p]eople with high exposure [to *Pfiesteria* toxins] were significantly more likely than occupationally matched controls to complain of neuropsychological symptoms (including new or increased forgetfulness); headache; and skin lesions or a burning sensation of skin on contact with water. No consistent physical or laboratory abnormalities were found. However, exposed people had significantly reduced scores on the Rey Auditory Verbal Learning and Stroop Color-Word tests (indicative of difficulties with learning and higher cognitive function), and the Grooved Pegboard task. There was a dose-response effect with the lowest scores among people with the highest exposure." Gratten, L., et al., *Learning and Memory Difficulties after Environmental Exposure to Waterways Containing Toxin - Producing Pfiesteria or Pfiesteria-like Dinoflagellates*, LANCET, vol. 352, pp. 532 - 39 (1998).

<sup>68</sup> The study reported that, "[h]uman exposure to aerosols from ichthyotoxic cultures ... has been associated with narcosis, respiratory distress with asthma-like symptoms, severe stomach cramping, nausea, vomiting, and eye irritation with reddening and blurred vision (hours to days); autonomic nervous system dysfunction; central nervous system dysfunction [sudden rages and personality change (hours to days), and reversible cognitive impairment and short-term memory loss (weeks)]; and chronic effects including asthma-like symptoms, exercise fatigue, and sensory symptoms (tingling or numbness in lips, hands, and feet; months to years). Elevated hepatic enzyme levels and high phosphorous excretion in one human exposure suggested hepatic and renal dysfunction (weeks); easy infection and low counts of several T-cell types may indicate immune system suppression (months to years)." Glasgow, H.B.; Burkholder, J.M.; Schmechel, D.E.; Tester, P.A.; and Rublee, P.A., *Insidious effects of a toxic dinoflagellate on fish survival and human health*, JOURNAL OF TOXICOLOGICAL AND ENVIRONMENTAL HEALTH, 46: 101 - 122 (1995).

<sup>69</sup> A 1995 study of hog lagoons by Dr. Rodney Huffman and Dr. Philip Westerman found average concentrations of ammonia-nitrogen of up to 1,000 mg/L in wells near hog lagoons. Mallin at 30, 35.

<sup>70</sup> *Cesspools of Shame*, at 18, citing Jackson, L., *Large Scale Swine Production and Water Quality, Pigs, Profits and Rural Communities*, Thu, K., and Durrenberger, E.P., ed., pp. 107-8 (1998).

<sup>71</sup> *Id.* and Warrick at 7.

<sup>72</sup> *Premium Standard Farms Whitetail Concentrated Animal Feeding Operation Air Monitoring Report*, U.S. E.P.A., at 7, May 31, 2000.

<sup>73</sup> *Framework for the Conversion of Anaerobic Swine Waste Lagoons and Sprayfields*, North Carolina Department of Environment and Natural Resources website, at <http://www.enr.state.nc.us/files/hogs/hogplan.htm>, at 3.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

35% of the nitrogen in coastal streams that flow into U.S. estuaries comes from nitrogen in rain and airborne particles.<sup>76</sup>

At sufficiently high levels, ammonium causes injury or death to fish and other aquatic life.<sup>77</sup> The open and exposed manner that hog waste is captured, stored and sprayed at the lagoon and sprayfield facilities allows the release of ammonium to groundwater and causes the substantial release of ammonia gas to the air. Every hog facility with a lagoon that is large enough to be defined as a CAFO produces tons of ammonia gas every year.<sup>78</sup> The ammonia then falls to earth as rain that triggers algal blooms.<sup>79</sup> Hog operations in North Carolina have caused significant levels of ammonia in the ambient air.<sup>80</sup> Ammonia and other gases, such as sulfur dioxide, are emitted and lead to the formation of fine particulate matter, which can endanger to human health.<sup>81</sup>

##### **5. Lagoons and sprayfields cause air pollution that damages human health and ecosystems.**

Hog CAFOs with lagoons harm air quality by emitting ammonia and other dangerous air pollutants, including hydrogen sulfide. Hog CAFOs with liquid waste management systems emit to the air multiple regulated air pollutants, including particulate matter, precursors to fine particulate matter, hydrogen sulfide, ammonia, methane, phenol, p-cresol, mercaptans, and chlorine. Hog facilities typically make no official records nor make any efforts to monitor, control, minimize, or prevent the emissions of these air pollutants from their impoundments, lagoons, manure pits, structures, and spray fields.

There is an ever-growing body of scientific data that demonstrates these harmful air emissions from CAFOs. Because hydrogen sulfide emissions are regulated by the state in Minnesota a wealth of data on CAFO hydrogen sulfide emissions has been compiled in the state in recent years. One study in Minnesota found that hydrogen sulfide concentrations exceeded the state standard for as far as 4.9 miles away.<sup>82</sup> Another study in Minnesota demonstrates that storing liquefied manure in earthen lagoons causes higher rates of hydrogen sulfide emissions than other systems.<sup>83</sup>

Hog waste impoundments and lagoons cause human health ailments in workers and neighbors. A 1999 health survey of over 150 people taken in North Carolina found that people living near large hog facilities with lagoons suffer significantly higher levels of upper respiratory and

<sup>76</sup> *Airborne Nitrogen Contributes Pollution to U.S. Estuaries*, Press Release, U.S. Department of the Interior and U.S. Geological Survey, December 15, 2000, available at [http://water.usgs.gov/nawqa/sparrow/coast/agu\\_sparrow.html](http://water.usgs.gov/nawqa/sparrow/coast/agu_sparrow.html).

<sup>77</sup> Mallin at 30.

<sup>78</sup> Research of Dr. Leon Chesnin, professor of waste management and utilization at the University of Nebraska-Lincoln, cited by Warrick at 7.

<sup>79</sup> Id., citing the research of Dr. Hans Paerl, professor of Marine and Environmental Sciences at University of North Carolina at Chapel Hill.

<sup>80</sup> Citing the research of Dr. Viney Aneja of North Carolina State University.

<sup>81</sup> McBride at 5.

<sup>82</sup> *Cesspools of Shame*, at 18, citing Pratt, G., *Dispersion Modeling Analysis of Air Emissions from Feedlots in Nine Townships in West-Central Minnesota*, Air Quality Division, Minnesota Pollution Control Agency (1998).

<sup>83</sup> *Cesspools of Shame*, at 18, citing *Feedlot Air Quality Summary: Data Collection, Enforcement and Program Development*, Minnesota Pollution Control Agency, at 12 (1999).

gastrointestinal ailments than people living in non-livestock areas.<sup>84</sup> People near hog facilities reported higher levels of headaches, runny nose, sore throat, excessive coughing, diarrhea, and burning eyes.<sup>85</sup>

Hog waste also places public health and the environment at risk because it contains antibiotics, hormone disrupter compounds, heavy metals, disinfectants, and other toxic substances and contaminants that are harmful to the environment.<sup>86</sup>

And the stench of liquefied manure is unimaginable. Waterkeeper Alliance has received many accounts from neighboring property owners who are life long farmers but say that the stench from these operation are unlike any odor they have known. Some farmers that have been in contact with Waterkeeper Alliance have recounted that on many days they are unable to work their own fields due to the stench from neighboring hog lagoons. One farmer stated recently, "We are used to farm odors. These are not farm odors."

#### **6. Lagoons and sprayfields contribute to the spread of dangerous infectious diseases.**

Liquefied manure systems tend to preserve pathogens more than other systems. In straw-bedded systems and other systems where the manure is composted, natural heating takes place that kills pathogens whereas liquid manure stored in waste pits never reaches the temperatures necessary to kill pathogens and parasites.<sup>87</sup> A recent report prepared for the Minnesota Planning Agency Environmental Quality Board explains why liquid manure poses a greater risk for preserving pathogens:

How manure is handled has consequences for human and animal health and the environment. During storage, slurry undergoes anaerobic decomposition. The cold process of anaerobic decomposition does not kill fecal pathogens, although they may die out as nutrients in the feces are exhausted. However, manure from the enterprise is continuously added to the storage structures, with the results that in liquid manure storage there is always a new supply of nutrients for pathogenic organisms to feast on as new pathogenic organisms are added continuously with the fresh waste as well. Consequently, in liquid storage, pathogens, parasites, and antibiotic residues are preserved until they are released to the environment.<sup>88</sup>

As early as 1988, scientists, including an expert panel convened by the World Health Organization identified liquid manure spreading as a critical pathway by which salmonellae and other pathogens are spread to the natural environment.<sup>89</sup>

<sup>84</sup> Crane at 1.

<sup>85</sup> Id.

<sup>86</sup> McBride at 4.

<sup>87</sup> Halverson, *Corporate Hogs*, at 48.

<sup>88</sup> (internal citations omitted); Halverson, M., *Farm Animal Health and Well-Being*, Supplementary Literature Summary and Technical Working Paper for the Minnesota Generic Environmental Impact Statement on Animal Agriculture, prepared for the Minnesota Planning Agency Environmental Quality Board, at 259-260 (April 2001), available at [http://www.mnplan.state.mn.us/eqb/geis/TWP's/HalversonTWPAHealth&WB\(2\).pdf](http://www.mnplan.state.mn.us/eqb/geis/TWP's/HalversonTWPAHealth&WB(2).pdf).

<sup>89</sup> Halverson, *Corporate Hogs*, at 48.

According to Dr. Dennis McBride, North Carolina's immediate-past Director of Public Health, the lagoon and sprayfield hog waste handling also endangers public health because hog excrement contains pathogens dangerous to humans and wildlife including a number of known human viral, bacterial, and parasitic pathogens, such as influenza, *Salmonella*, *E.coli*, *Yersinia*, leptospora, *Cryptosporidia*, *Giardia*, and probably several yet to be discovered.<sup>90</sup> The lagoon and sprayfield waste management system acts as a vector for communicable disease transmission and increases the risk of human exposure to these pathogens.<sup>91</sup> Diseases are transmitted when pathogens in hog waste contaminate human drinking water sources and recreational waters.<sup>92</sup>

Hog waste also transmits diseases when sprayed near homes. Spraying liquid animal waste creates opportunities for the aerosolized spread of the pathogens.<sup>93</sup> These pathogens are particularly hazardous because systematic overuse of antibiotics in animal agriculture has fostered the emergence of antibiotic resistant organisms in swine populations.<sup>94</sup> Some organisms in hog excrement are extremely hazardous to immune-compromised people, infants, and the elderly.<sup>95</sup> In 1998, North Carolina's highest ranking public health official characterized pathogens in hog waste as posing "a very serious health concern."<sup>96</sup>

Hog manure pits threaten public health by increasing the potential for the emergence of new influenza strains.<sup>97</sup> They create opportunities for people and birds to come in contact with hog waste.<sup>98</sup> The prospect of these potent new illnesses is more than speculative. In May 2000, a study appeared in Science magazine identifying a new viral species called the Nipah virus.<sup>99</sup> The virus, which is carried by pigs and other animals, killed 106 people in Asia in 1998 and 1999.<sup>100</sup> It causes severe encephalitis and is lethal to about 40 percent of people infected.<sup>101</sup> Contact with the urine and mucus of infected animals spreads the virus to humans.<sup>102</sup> The National Academy of Sciences reported in 1998 that potentially life-threatening microbes, including salmonella and *E.coli* are passed from animals to humans in food products and through contact with animals or their manure.<sup>103</sup> North Carolina's top health official states that the introduction of new illnesses like these in North Carolina's hog populations "could have serious, if not devastating, consequences."<sup>104</sup>

The threat to public health from microbes in hog waste that reaches surface waters can last for many weeks.<sup>105</sup> Scientists have found sediments contaminated by a hog waste spill with very

<sup>90</sup> McBride at 2, citing the research of Dr. Mark Sobsey, professor at University of North Carolina's School of Public Health, and other researchers.

<sup>91</sup> McBride at 3.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> McBride at 2.

<sup>97</sup> McBride at 4.

<sup>98</sup> Id.

<sup>99</sup> Recer, P., *Researchers Identify Killer Virus*, Associated Press wire story, May 25, 2000.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> *Antibiotic Use in Food Animals Contributes to Microbe Resistance*, News Release of the National Academy of Sciences, July 9, 1998.

<sup>104</sup> McBride at 4.

<sup>105</sup> Mallin at 31.

high fecal coliform counts 61 days after the spill.<sup>106</sup> When disturbed, these sediments threaten human health even when the water appears safe.<sup>107</sup>

**7. Liquefied manure systems contribute to “the ticking time bomb,” the rise of antibiotic resistant pathogens.**

The world’s most significant public health organizations have declared the overuse of antibiotics in livestock to be a serious and growing threat to human health. The Union of Concerned Scientist released a major report on the issue in January 2001, entitled *Hogging It*, in which it called the overuse of antibiotics in livestock “the ticking time bomb.”<sup>108</sup> The scientist warned that, if the current overuse of antibiotics in livestock continues, “we may soon reenter the era of untreatable infectious diseases.”<sup>109</sup> The report estimated that of the 50 million pounds of antibiotics produced annually in this country, a flabbergasting 25 million pounds are used for non-therapeutic uses in the cattle, swine and poultry industry.<sup>110</sup> This figure becomes all the more remarkable when compared to the total amount used to treat human diseases, 3 million pounds.<sup>111</sup> *Thus, the antibiotics used non-therapeutically in animals is more than eight times the amount used to treat human illness!*

Microbes become resistant when low doses of antibiotics wipe out the weaker microbes and allow the hardiest strains to survive and eventually predominate in the population. Then the antibiotics are no longer effective against them.<sup>112</sup> The World Health Organization, the United States Centers for Disease Control and Prevention, and the National Institutes of Health have all recognized that antibiotic usage in animals raised for food should be restricted.<sup>113</sup>

Antibiotics given to animals for non-therapeutic purposes are mixed in the animals feed or water.<sup>114</sup> It is estimated that over 95% of hog finishing operations are routinely administering antibiotics to their animals through in their feed or drinking water.<sup>115</sup> Antibiotics are used by livestock operations for two major purposes other than treating sick animals: to prevent diseases and to promote unnaturally fast growth.<sup>116</sup> Animals in intensive livestock operations are more susceptible to infectious diseases because they are crowded together, share feeders, and are under greater stress than animal raised in traditional farms.<sup>117</sup> Eleven of the antibiotics used for in livestock operations for non-therapeutic purposes are identical to antibiotics used to fight disease in sick humans.<sup>118</sup>

<sup>106</sup> *Id.* at 32.

<sup>107</sup> *Id.* at 30.

<sup>108</sup> *Hogging It: Estimates of Antimicrobial Abuse in Livestock*, Union of Concerned Scientists, at 1 (January 2001), available at <http://www.ucsusa.org/food/hogging>.

<sup>109</sup> *Hogging It*, at 10.

<sup>110</sup> *Hogging It*, at 57.

<sup>111</sup> *Hogging It*, at 57.

<sup>112</sup> *Hogging It*, at 1.

<sup>113</sup> *Hogging It*, at 2.

<sup>114</sup> *Hogging It*, at 18.

<sup>115</sup> *Hogging It*, at 39, citing U.S.D.A. publication, *Swine '95: Grower/Finisher, Part II: Reference of 1995 U.S. Grower/Finisher Health and Management Practices* (APHIS 1996b).

<sup>116</sup> *Hogging It*, at 11, 12.

<sup>117</sup> *Hogging It*, at 12 and Halverson, *Corporate Hogs*, at 32.

<sup>118</sup> Halverson, M., *Farm Animal Health and Well-Being*, Supplementary Literature Summary and Technical Working Paper for the Minnesota Generic Environmental Impact Statement on Animal Agriculture, prepared for the Minnesota Planning Agency Environmental Quality Board, at 65 (April 2001).



Humans may come in contact with bacteria from livestock through the food supply, through direct contact with the animals, or through drinking or surface water.<sup>119</sup> Research by the U.S. Geological Survey and others suggests that antibiotic resistant bacteria are increasingly a threat to the safety of the nation's drinking water.<sup>120</sup>

#### 8. Liquefied manure creates vectors for disease transmission.

Hog waste lagoons and sprayfields may also increase the opportunity for the spread of disease by supporting hugely increased populations of disease carrying vectors, especially several species of flies.<sup>121</sup> In sufficient numbers, these disease carriers pose an imminent threat to public health.<sup>122</sup> In reference to industrial hog operations, North Carolina's highest public health official has stated that, "[t]he potential for the transmission by flies or other mechanical vectors of disease greatly increases the risk to human health."<sup>123</sup>

#### 9. Liquefied manure systems unreasonably deplete groundwater supplies.

Liquefied manure systems consume massive amounts of groundwater. Groundwater seems to be consumed so cavalierly because it is free. A typical hog operation consumes 20 million liters of groundwater every year, using two-thirds of the water to liquefy the manure.<sup>124</sup> In Oklahoma, between 1990 and 1998, the number of pigs jumped from 230,000 to 1.98 million, and intensive hog operations caused a 66% increase in livestock water use from a single aquifer from 1990 to 1995.<sup>125</sup> At this rate, this aquifer is expected to be entirely depleted within 50 years.<sup>126</sup> In some cases, such excessive groundwater pumping may even destroy the remaining water by pollution by saltwater intrusion.<sup>127</sup>

#### Liquefaction of manure is dangerous for animal health and welfare.

For many of the same reasons they are dangerous to humans, liquefied manure systems are dangerous to animals' welfare and health. In most such systems, the pigs continually stand over the miasmatic vapors of their liquefied manure for their entire lives. There are many documented cases of animals dying from the fumes where ventilation systems have failed even for short

<sup>119</sup> *Hogging It*, at 2.

<sup>120</sup> *Hogging It*, at 5.

<sup>121</sup> McBride at 3-4.

<sup>122</sup> *Id.*

<sup>123</sup> McBride at 4.

<sup>124</sup> CBC News, *Hogs Use Lots of Water, 20 Million Liters a Year*, Webposted on July 6, 2000, available at <http://cbc.ca/cgi-bin/templates/Nwview.cgi?news/2000/07/06/hogfarms000706>. Depending on the size of the operation, this figure will vary. Another source estimates that a large operation of 80,000 finishing hogs uses 200,000 gallons of water per day, or 73 million gallons of water per year. *Cesspools of Shame*, at 38.

<sup>125</sup> Halverson, *Corporate Hogs*, at 51, citing Barlett, D. and Steele, J.B., *The Empire of Pigs: A Little Known Company is a Master at Milking Governments for Welfare*, TIME, November 30, 1998, at 52-64 (1998).

<sup>126</sup> Halverson, *Corporate Hogs*, at 51.

<sup>127</sup> Halverson, *Corporate Hogs*, at 51, citing Redwood, J.G., *Pump/Recharge Rate Affects Intrusion: Groundwater Mangement, Monitoring and Conservation Keep Intrusion Under Control*, Georgetown, ON, Solinst, Canada, Ltd., (Undated); and U.S. Environmental Protection Agency, *Identification and Control of Pollution from Saltwater Intrusion* (1973).

periods of time.<sup>128</sup> As described in above, low-levels of antibiotics are routinely administered to maintain the growth and productivity of swine kept in close confinement, particularly in the face of diseases caused by the continuous release of toxic gases when hog manure is liquefied. Therefore, the conditions in which the animals are kept has a direct connection to the human health and environmental impacts of these facilities.

#### **With Lagoons Come Abandoned Lagoons.**

All of the dangers connected with animal waste lagoons exist for abandoned lagoons. In addition, abandoned lagoons pose an even greater risk to human health and the environment because they generally receive even less maintenance, attention and government scrutiny than functioning ones. In North Carolina alone, there are an estimated 800 abandoned animal waste lagoons.<sup>129</sup> Although North Carolina's political leaders have stated that inactive lagoons must be urgently addressed,<sup>130</sup> little progress toward clean-up has been made. Cleaning up the lagoons has proven to be expensive.<sup>131</sup> The economic viability of the lagoon and sprayfield system seems to depend in part on this failure to clean up the lagoons once the facility ceases to function.

#### **D. EPA's Regulations for CAFOs Should Not Allow Lagoons and Sprayfields.**

For the past two decades, North Carolina had been a giant laboratory for the lagoon and sprayfield system. During that time, North Carolina's hog population has skyrocketed from below 2 million to 10 million today, and the state has gone from having a widely dispersed hog farming system where more than 25,000 family farmers were raising pigs without lagoons, to a highly concentrated system where with fewer than 5,000 hog operations today, the majority of which have lagoons. The state's experience has proven the system to be a failure.

The problems caused by hog waste lagoons have become so well known in North Carolina that virtually all of the state's major political figures have promised to eliminate them. During his term as Governor of North Carolina, Jim Hunt proposed eliminating lagoons with a ten-year phase out.<sup>132</sup> Gubernatorial candidates vying to succeed Governor Hunt were promising to eliminate hog waste lagoons in the most recent election.<sup>133</sup> While serving as Attorney General, current Governor Mike Easley signed an agreement with North Carolina's largest pork producer Smithfield Foods to put \$65 million toward the study of alternative waste management systems. The agreement purports to phase out the company's hog waste lagoons over a five-year period.<sup>134</sup> In 1998, Dewey Botts, then the Director of North Carolina's Division of Soil and Water Conservation, said that the hog industry should move away from the lagoon and sprayfield

<sup>128</sup> Halverson, *Corporate Hogs*; and Report on NASD Livestock Confinement Dusts and Gases, at <http://www.cdc.gov/NIOSH/nasd/docs6/mm98016.html>.

<sup>129</sup> *Tired Old Lagoons*, RALEIGH NEWS & OBSERVER, January 31, 2000, p. A10.

<sup>130</sup> *State Set to Erase Neglected Lagoons*, RALEIGH NEWS & OBSERVER, January 22, 2000, p. A1.

<sup>131</sup> For example, a retired farmer in North Carolina spent \$24,000 to clean up the lagoons at one operation. *State Set to Erase Neglected Lagoons*, RALEIGH NEWS & OBSERVER, January 22, 2000, p. A1.

<sup>132</sup> WILMINGTON STAR-NEWS, August 17, 2000, p. 8A.

<sup>133</sup> *Wicker Says He'll Build on Hunt's Progress*, THE BULLETIN FRONTRUNNER, January 18, 2000.

<sup>134</sup> WILMINGTON STAR-NEWS, August 17, 2000, p. 8A.

system and that North Carolina should develop criteria to evaluate and phase out every waste lagoon in the state.<sup>135</sup>

In the past several years, North Carolina's papers have been replete with letters to the editor and editorials saying that the lagoon and sprayfield system has proven itself a failure. The following editorial from the Winston-Salem Journal is typical:

For more than a decade, while North Carolina's swine population passed nine million, state leaders knew they were gambling with environmental disaster. As the waters from Floyd recede, it is now clear that North Carolina just lost that bet. When legislators return to Raleigh next May, they should set a short-term deadline for the closing of all hog lagoons. This technology is not safe...<sup>136</sup>

In spite of this recognition, North Carolina has taken no concrete steps to eliminate the vast majority of its thousands of waste lagoons.<sup>137</sup>

The problems set forth above are just some of the many dangers inherent in the lagoon and sprayfield system. Waterkeeper Alliance strongly supports EPA's proposal to require explicitly in NPDES permits that CAFOs apply manure at agronomic rates. Yet, the preceding paragraphs demonstrate that a liquefied manure system is rife with hazards to the environment and public health *even if* it is applied to sprayfields in agronomic rates. Therefore, to adequately protect human health and the environment, EPA must ban the liquefied manure waste disposal system.

A recent analysis of the lagoon and sprayfield system, *Cesspools of Shame*, by the Natural Resources Defense Council and the Clean Water Network, recommends that EPA ban the construction of new lagoons and require that old lagoons be phased-out.<sup>138</sup> Under the Clean Water Act, EPA must require that CAFOs use the best technology economically achievable.<sup>139</sup> Additionally, EPA is required by a consent decree to evaluate a range of non-lagoon waste disposal systems for the storage and land application of animal manure.<sup>140</sup>

#### **EPA CAFO Regulations Should Explicitly Require All CAFOs to Obtain an NPDES Permit.**

The Clean Water Act explicitly includes CAFOs as point sources. Therefore, for some three decades, federal law has required CAFO operators to apply for and obtain pollution permits. By EPA's figures, depending on the definitions used, there may be up to 26,000 livestock operations that qualify as Concentrated Animal Feeding Operations. Of those, only 2,530 are believed to have applied for NPDES permits at this time. In North Carolina, the nation's second largest hog producing state, with approximately 2,500 lagoon-sprayfield hog operations, only two had

<sup>135</sup> Shiffer, J., *Hog Farms Pose Risks of Waste Spills and Runoff, But That's Not All*, RALEIGH NEWS & OBSERVER, July 5, 1998.

<sup>136</sup> Halverson, *Corporate Hogs*, at 52, quoting from WINSTON-SALEM JOURNAL 1999.

<sup>137</sup> Note that although the Smithfield / Easley Agreement purports to eliminate hog lagoons, even if fully implemented, it would only affect the lagoons directly owned by Smithfield, which are a small percentage of the total waste lagoons in the state.

<sup>138</sup> *Cesspools of Shame*, at 47, 48.

<sup>139</sup> *Cesspools of Shame*, at 5.

<sup>140</sup> *Cesspools of Shame*, at 5.

applied for an NPDES permit at the beginning of 2001.<sup>141</sup> This situation simply makes no sense. The reason for it is, in part, the producers' ability under current regulations to argue that they are not required to apply for the NPDES permit. To rectify this disparity, EPA should clarify that these facilities need an NPDES permit.

### III. EPA Regulations Should Require the Corporation That Owns the Pigs be Co-Permitted.

Over the past year, Waterkeeper Alliance has spoken with hundreds of farmers about their experiences in the hog industry. From these conversations, it has become clear that many hog farmers submitted to contracts with major pork producing corporations because they had difficulty getting their hogs slaughtered if they were not under contract arrangements. Because these farmers have extremely disproportionate bargaining power, they often end up with unfavorable contracts. The Oklahoma Attorney General's office has even opined earlier this year that a typical hog contract is an adhesion contract. Therefore, hog operators who contract with any of the major hog corporations have little to no say in the manner in which they raise their pigs. Typically, the pigs do not even belong to the farmer, he is merely the steward of the animals. The manner in which they are housed, fed, watered, and treated is entirely dictated by the corporation that owns the pigs.

Smithfield Foods, the nation's largest pork producer, is typical. Smithfield's very manner of operating profitably is to completely dominate pork production at all stages, from baby pigs to pork chops. This market control strategy known as "vertical integration," is repeatedly touted by the Smithfield Annual Report for the year 2000.<sup>142</sup> Smithfield purports to exert tight control over all aspects of the manner that pigs in all of its facilities are raised. From publicly available information it is apparent that neither the Smithfield contract operators nor its subsidiaries have meaningful independent decision making ability with respect to anything that relates to the manner in which their pigs are raised. Most significantly, Smithfield completely dominates all substantive decisions that affect the waste stream produced at any of its operations.

For example, a much-touted agreement relating to hog manure pits was signed between Smithfield and North Carolina's Attorney General on July 25, 2000. Although it relates *only* to the hog-raising facilities owned by Smithfield, not its slaughter houses or processing plants, the agreement lists "Smithfield Foods, Inc." as the first party after the Attorney General in both its opening paragraph and in the list of signatories. The "Smithfield Agreement," as it is commonly-called in North Carolina, also specifically states that, "Smithfield owns *all* of the outstanding stock of the Subsidiaries."<sup>143</sup> This agreement is evidence that in an open and public manner, Smithfield is negotiating and signing contracts on behalf of its subsidiaries. Smithfield also regularly produces and disseminates public statements, such as press releases, on behalf of its subsidiaries and contract operations. For example, all press releases relating to the "Smithfield Agreement" as well as those relating to litigation in which Smithfield is currently involved were sent from Smithfield's headquarters in Virginia and quoted Smithfield officials, rather than those of the subsidiary or contract operators.

<sup>141</sup> Personal communication with the author and North Carolina Department of Environment and Natural Resources staff in January 2001.

<sup>142</sup> See SMITHFIELD FOODS, INC., 2000 ANNUAL REPORT, at 3-5 (2000).

<sup>143</sup> (emphasis added) SMITHFIELD AGREEMENT, JULY 25, 2000, N.C. ATT'Y GEN'L - SMITHFIELD FOODS, INC., at 1, para. 2.

Publicly available information also strongly indicates that Smithfield imposes a strictly uniform policy of operations upon its subsidiaries and contract facilities. According to its publications and public statements, Smithfield's philosophy is that strict control over the manner in which its pigs are raised will lead to a consistent product with a consistent flavor and quality. This drive toward uniformity in all of its pig factories is a constant drum-beat both in its publications and in the speeches of Smithfield's Chief Executive Officer, Joseph Luter, III. In fact, Smithfield's Annual Report touts the consistency of its pork product from all of its wholly-owned operations, such as in the following statement, typical of the content of the report: "By controlling half our hog supply, our processing operations are ensured of a consistent, high-quality source of raw materials for many of the Company's fresh and processed meat products."<sup>144</sup> This uniformity is achieved by a strict policy that requires all of its facilities to use the same pre-mixed feed and requiring all facilities to follow the same procedures of animal feeding and medication.<sup>145</sup>

To ensure product uniformity, Smithfield also requires its operations to follow a strict policy of genetic control over all the pigs at all of its facilities. This genetic program, controlled by an entity called Smithfield Foods' National Pig Development, produces the animals used in Smithfield Lean Generation Pork.<sup>146</sup> Smithfield also states that it controls the physical environment of its pigs, such as the temperature, ventilation and humidity of the individual pig-buildings.<sup>147</sup> Smithfield makes the decisions for individual facilities and subsidiaries on purchases of feed, fuel, and other materials.<sup>148</sup>

Smithfield also touts its unique ability to deal with the "environmental, regulatory, and political climate surrounding hog farming today," strongly indicating that Smithfield is involved in environmental, regulatory, and political matters for each of its hog-raising and facilities.<sup>149</sup>

The pre-mixed food that all Smithfield pigs must consume, along with Smithfield-proscribed medications, determine the make-up of the waste at all Smithfield owned and contract operations. It is the waste-stream that is at the heart of almost all environmental concerns with CAFOs. And EPA's CAFO regulations relate to pollution caused by the fecal matter and urine of the of the animals. In addition, uniform Smithfield practices and pricing structure, imposed by Smithfield upon all of its subsidiaries and contract operations determine the number of pigs that must be maintained at a facility in order for the facility to be acceptably profitable. Therefore, both the *quality* and the *quantity* of hog waste produced at Smithfield owned and contract operations are completely determined by Smithfield itself, not the subsidiaries or the individual operators.

<sup>144</sup> SMITHFIELD ANN'L REP., at 4. Another statement evidencing Smithfield's control over its facilities is the following: "[T]his vertical integration should provide a more predictable earnings stream because Smithfield Foods is now insulated from much of cyclical common to our business. . . . By participating in both ends of the business, we remove many of [the market] peaks and valleys." SMITHFIELD ANN'L REP., at 4. *See also*, the following quotation from CEO Joseph W. Luter, III, in the report: "Control over this level of supply also assures our processing operations of consistent, high-quality raw materials for fresh pork and processed meat products."

SMITHFIELD ANN'L REP., at 12.

<sup>145</sup> SMITHFIELD ANN'L REP., at 12.

<sup>146</sup> SMITHFIELD ANN'L REP., at 13.

<sup>147</sup> . SMITHFIELD ANN'L REP., at 12.

<sup>148</sup> SMITHFIELD ANN'L REP., at 12.

<sup>149</sup> SMITHFIELD ANN'L REP., at 2.

Finally, Smithfield's very operating requirements affect individual CAFOs ability to comply with federal environmental laws and regulations. All of these facts support the case that Smithfield and the other corporations that contract for hog-raising should be held responsible on the environmental permits themselves.

**IV. EPA Should Explicitly Regulate Phosphorous.**

EPA's CAFO regulations should explicitly address phosphorous. The Clean Water Act prohibits any discharge of a pollutant from a point source without a permit. The Act also explicitly defines CAFOs as a point source. The intent of the Act to prohibit discharges of pollutants from CAFOs absent a permit is clear. As set forth above, at the same time, scientific evidence is mounting that demonstrates that CAFO sprayfields are phosphorous saturated and that phosphorous moves more freely to surface and groundwater than previously believed. The application of phosphorous rich waste is causing and will continue to cause environmental problems. It is time to end the fiction that this phosphorous waste is "fertilizing" those crops and soils. To prevent further nutrient damage to surface and groundwater EPA must place phosphorous limits on CAFOs.

**V. EPA should Explicitly Regulate Antibiotics**

EPA's CAFO regulations should regulate the amount of antibiotics that can be present in animal waste. As set forth previously, the pervasive use of antibiotics by CAFOs is a significant and growing menace to human health. Research indicates that 80% of the antibiotics used in pigs pass through the pig unchanged, and enter the wastestreams. EPA's CAFO regulations should specifically address the role that CAFOs play in this emerging health crisis.

**VI. EPA Regulations Should Require that Animal Waste only be Applied at Agronomic Rates.**

Although hog waste lagoons pose many hazards that will not be eliminated by adherence to agronomic waste application rates, it is clear that overapplication of waste is exacerbating them. EPA's CAFO regulations should explicitly require that waste be applied at agronomic rates and that it not be applied when the ground is wet or frozen. Furthermore, recent research indicates extreme variability in nutrient levels of hog lagoon effluent. A recent Canadian study that evaluated 13 hog lagoon operations found that ammonia varied two to three fold over a single pump out and phosphorous varied 20 fold.<sup>150</sup> The study confirms that a single or outdated measure of lagoon constituents will not adequately protect the environment. Therefore, EPA should require appropriate testing of the effluent immediately prior to land application.

**VII. EPA Must Develop Regulations for CAFO Air Pollution.**

As set forth previously, animal waste lagoons and sprayfield significantly diminish air quality whereas other methods of raising pigs have significantly less impact on air quality. The air pollution caused by hog CAFOs are at the heart of many the detrimental impacts they have on the environment, quality of life and health. EPA's CAFO regulations should explicitly address and attempt to minimize CAFO air pollution.

<sup>150</sup> *Research Being Conducted by a Winnipeg Company Show Dramatic Variability in Some of the Components of Manure Fertilizer During the Pump Out of the Storage Lagoon*, Farmscape, Episode 719, July 10, 2001.

#### **VIII. CAFO Definition Needs to be Clear.**

In defining a CAFO, Waterkeeper Alliance believes that size should be a factor, but is not the only important issue. EPA is seeking comment on whether to use a “three-tiered” or “two-tiered” approach in defining a CAFO. Under the proposed “two-tiered” system, operations with 500 Animal Units, (1,250 mature swine weighing 55 pounds or more or 5,000 immature swine weighing 55 pounds or less), are defined as CAFOs. This would lower the threshold from the existing threshold of 1,000 animal units. The “three-tiered” system retains the structure of the existing regulations, all operations with 1,000 Animal Units or more are defined as CAFOs and those with 300 to 1,000 animal units are defined as CAFOs if they meet certain conditions or if designated by a permitting authority. 1,000 Animal Units are equivalent to 2,500 swine weighing 55 or more pounds or 10,000 swine weighing 55 pounds or less. 300 Animal Units are 750 swine weighing 55 pounds or more, or 3,000 swine weighing 55 pounds or less.

It is clear that large livestock operations pose greater risks to the health and the environment. However, the size of the operation is not the sole determinant of these risks. Rather, probably more important than the size is the manner in which the waste is handled, (i.e. whether the waste is liquefied), the number of animals in proportion to the size of the land being used for manure application, the total size of the facility to the density in which the animals are housed, and the amount of human attention given to each animal and to its waste. Therefore, we make no recommendation on the numerical threshold be retained but urge that much stricter criteria for the management of the animal waste be put into place.

#### **The 25-year, 24-hour Storm Provision of the CAFO Definition Should be Eliminated.**

EPA should eliminate all reference to the “25-year, 24-hour storm” in the CAFO definition section. The current regulations exempt from the CAFO definition a facility that discharges, “only in the event of a 25-hour, 24-year storm.” The proposed regulations would eliminate this portion of the CAFO definition.

Waterkeeper Alliance agrees with the elimination of this because, as suggested in EPA’s introductory language, this provision has been used inappropriately by CAFO operators to attempt to avoid the NPDES permit requirement. The provision places obstacles to citizens attempting to enforce the Clean Water Act. For example, in two federal Clean Water Act suits in North Carolina against Smithfield Foods, Inc., the CAFO operators are attempting to deny that they are CAFOs. There is no dispute that the facilities have the requisite numbers of animals to meet the definition of CAFO, and both CAFOs have had more than one discharge to surface waters documented by the state. Arguing that they are exempted from the CAFO definition by the “25-year, 24-hour” language is a tactical maneuver by defendants as it forces citizens who are attempting to enforce environmental laws to waste precious resources establishing that the defendants meet the CAFO definition when it is patently clear that they do. Some CAFO operators are misusing this provision to try to escape being regulated. For this reason, EPA should take the reference to the “25-year, 24-hour” storm out of the CAFO definitions section.

#### **Conclusion**

EPA's proposed regulations represent a step in the right direction. However, EPA must go beyond the proposed revisions to adequately protect human health and the environment from the myriad dangers caused by CAFOs. At a minimum, EPA should take immediate steps toward requiring the closure of all liquid waste lagoons. The people of this country deserve no less from their Environmental Protection Agency.

Respectfully Submitted,

Nicolette G. Hahn  
Senior Attorney  
Waterkeeper Alliance

Diane Halverson  
Animal Welfare Institute

---

## *Waterkeeper Alliance*

78 North Broadway, White Plains, NY 10603  
phone (914) 422-4410, fax (914)-422-4437  
[www.keeper.org](http://www.keeper.org)

January 15, 2002

Concentrated Animal Feeding Operation Proposed Rule  
United States Environmental Protection Agency  
Waterside Mall, West Tower  
Room 611  
401 M Street, S.W.  
Washington, D.C. 20460

Re: Proposed Revisions to Environmental Protection Agency Regulations for Concentrated Animal Feeding Operations

To the United States Environmental Protection Agency:

We write you on behalf of Waterkeeper Alliance, a national environmental organization, and the Animal Welfare Institute, a national animal welfare organization, to comment on the Environmental Protection Agency's Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulations and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, published in the Federal Register on November 12, 2001 (referred to herein as "the November 12 regulations" or "the NODA"). These comments supplement comments submitted by Waterkeeper Alliance and Animal Welfare Institute on July 30, 2001.



## Introduction

The November 12 regulations are an alarming retreat by the federal Environmental Protection Agency (EPA) from the January 12, 2001 version of the regulations. It is troubling that at the very moment in history that the public outcry over concentrated animal feeding operation (CAFO) pollution is the loudest, EPA signals its withdrawal from its earlier commitment to address it. The January 12 version, the result of years of EPA, citizen, and industry review and dialogue, was crafted to make necessary improvements in the regulation of CAFOs.

Although the Clean Water Act, adopted thirty years ago, explicitly recognized CAFOs as a major threat to water quality by enumerating them as a regulated point source, neither the federal EPA nor the state agencies have fully implemented a Clean Water Act permitting program for CAFOs. In fact, some states, such as North Carolina and Michigan, vehemently denied for years that they were required to establish a Clean Water Act CAFO program.

The failure of the states and the federal government to implement the Clean Water Act and enforce existing regulations with respect to CAFOs has resulted in the widespread violation of the statute and its regulations by the livestock and poultry industry. This widespread violation of the Clean Water Act is acknowledged by EPA and the livestock industry (See NODA, p. 58571), which is now ironically using its failure to conform to the original regulations as an excuse for its inability to bear the cost of the proposed regulations. This universal failure to implement the nation's most important water protection legislation is a national scandal. The November 12 regulations make the situation worse.

The January 12 CAFO regulations moved EPA in the direction of solving some of the ills caused by CAFOs, but the November 12 regulations substantially scale back these efforts and demonstrate a deterioration of the federal government's only serious attempt to address the crescendo of citizen and scientific voices in this country calling for major CAFO reform.

Waterkeeper Alliance and Animal Welfare Institute belong to a coalition of groups working to reform the concentrated livestock and poultry industries. Both organizations, along with many national environmental organizations, have made addressing pollution from CAFOs a top priority because it poses grave risks to the environment and human health that government has abysmally failed to address.

### **I. EPA's CAFO Regulations Must Prioritize Protection of the Environment, Not Protection of the Livestock Industry.**

Reading through the November 12 regulations, one might have guessed that "EPA" stands for "*Economic* Protection Agency." The NODA seeks input on approximately eighty-eight different issues, the majority of which request comments related to cost and economic or financial impact. Virtually every revision proposes a weaker regulation than the earlier version. In fact, in no case does the November 12 version propose a stricter environmental standard.

In those requests for comment that relate to the economic impact, EPA states that the January 12 regulations generated a significant number of comments from industry representatives or land grant university professors who argued that EPA had failed to adequately calculate the costs and

/ or economic impact. Section V, pages 58566-58591, is devoted entirely to financial and economic analysis.

While it is necessary for EPA to undertake economic analysis of its proposed regulations, it should go without saying that EPA's primary purpose is and should remain protection of the environment. It is imperative that the drafters of the regulations always maintain their focus on their purpose – protection of the environment -- not protection of the livestock industry. Every law and every regulation no matter what it mandates will have some demonstrated financial impact on some individuals. It never has been nor should it now become the focus of policy makers to use this economic impact as the driving force behind the shape of public policy. Rather, the greater public good that the law seeks to achieve is at the forefront. Then, as options are considered economic impact is taken into account to a reasonable degree. EPA seems to be going about these regulations in reverse order – looking first to cost and economic impact, then to the environmental benefits.

EPA's focus on economic analysis misses the point that its regulations should never be *designed* to allow the perpetuation of the status quo. They should be designed to protect the environment. This is especially true where, as here, the industry, by its own admission, is wildly out of compliance with the existing laws. A focus on avoiding too much economic impact would allow and even support perpetuating bad systems that would fail in a free market and fail to conform with the law.

Furthermore, there no discussion in the NODA of the economic analysis of CAFO pollution. Where is the dollar value assigned to loss of fisheries, loss of swimmable waters and drinkable groundwaters, injury to human health, and loss of quality of life? And how is this taken into EPA's economic equations? It appears that it is not.

At the same time, however, EPA's economic analysis should take greater account of the impact its actions will have on family-owned farms. There are sound environmental policy reasons for this. Farmers reside on their farms, live in the communities, drink from the groundwater under their farms, breathe the air from their operations, worship and shop with the people near their farms, and fish and swim in the surface waters affected by their farms. Simply put, family farmers are the best stewards of the land. Yet, EPA's analysis fails to consider whether the operation is a family farm in its economic analysis.

## **II. State Flexibility is Unwarranted Given States' Appalling Failure to Implement Existing Regulations.**

Several sections of the NODA are dedicated to the question of state flexibility. Numerous states apparently have submitted comments arguing that the CAFO regulations will strip them of their ability to implement creative solutions and that they need flexibility to address these issues. Given this flexibility, the states argue, they will adequately solve the problems, while a federally mandated program will prevent them from implementing these solutions. This is laughable. As acknowledged in the NODA, although the states have had thirty years to put the Clean Water Act requirements into action, the CAFO industry is vastly out of compliance with existing Clean Water Act regulations.

Waterkeeper Alliance has had meetings with high level officials of several farm states to discuss CAFO pollution. Without exception, the state officials have acknowledged that they have issued few or no CAFO NPDES permits. In most cases, they have attributed this at least partially to a lack of funding. They say that the state environmental agencies barely have funding for their existing programs. The same explanation is given for their failure to prosecute the thousands of known violations by CAFOs of environmental regulations and standards.

Given a proven lack of will, and the lack of resources at the state level, granting states continued “flexibility” would ensure that CAFO pollution will go unaddressed.

### **III. EPA Must Have More, Not Fewer, CAFOs Obtain the NPDES Permit.**

The NODA suggests several ways that the number of operations that are required to obtain an NPDES permit could be reduced and seeks comments on these methods. However, the underlying premise here is that it is desirable to reduce the number of operations that have to get the NPDES permit, which is false. To the contrary, the NPDES permit provides a proven, effective means for regulatory agencies, the public, and the industry to create and maintain a record of the operation. Agencies and members of the public know how to use them to monitor an operation, and industry has a substantial level of protection from environmental complaints by following the terms of its permit. In short, NPDES permits are a valuable and proven means of implementing the Clean Water Act. There is no logical reason to struggle to find an alternative to a good and viable program. Nowhere does EPA present a persuasive rationale for pursuing an alternative to NPDES permits other than pointing to the industry’s resistance to them.

Further, the Clean Water Act contains the requirement that point source dischargers get NPDES permits, 33 U.S.C. §1311, and defines CAFOs as point source dischargers, 33 U.S.C. §1362 (14). Thus the Clean Water Act mandates that CAFOs get NPDES permits. EPA is attempting to circumvent this requirement by seeking “equivalents” of the NPDES permit. This is counter to the plain wording and the intent of the Clean Water Act.

Finally, EPA creates a whole set of new problems for itself in reviewing these many purportedly equivalent programs. EPA has limited resources and should not create burdens for itself that it will likely be unable to fulfill. This will further delay solving the pollution problems for which these regulations are designed.

### **IV. EPA Must Implement Strict Groundwater Controls on CAFOs.**

In our earlier comments, we submitted information indicating that CAFOs are major contributors to groundwater contamination (pp. 4-7, 14). Thus, it is important that EPA’s CAFO regulations require that risks to groundwater be minimized and that CAFOs monitor groundwater quality.

In the November 12 regulations, EPA says that it is considering “adopting a performance standard based on ...[the] permeability [of synthetic / clay double liners]” rather than a zero discharge that would be verified by groundwater monitoring, which was proposed in the January 12 version. This is another example of EPA looking first at the economic issues rather than the environmental or public health issues and failing to consider the cost of degraded natural resources. It boggles the mind how EPA could recognize that a waste storage technology is poisoning groundwater and conclude from that that it must change its performance standard

rather than change the required technology. This is not the formation of good environmental policy.

We urge EPA to retain the groundwater controls and the zero discharge performance standard it had earlier proposed, which are necessary and important to protect the nation's groundwater supplies.

**V. EPA Should Not Allow Phosphorous "Banking."**

EPA's November 12 regulations pose the question whether it should allow the "banking" of phosphorous. The question is bizarre since the NODA itself states that "EPA is concerned some levels of phosphorous banking would no more prevent discharges to the waters than would unrestricted application rates or application of manure on a nitrogen basis." As noted in our earlier comments and in EPA's NODA, many CAFO land application areas are vastly over-saturated with phosphorous. It is poor environmental policy for EPA to propose that "banking," a practice that it doubts will protect the environment, be used to address the serious problem of phosphorous pollution from CAFOs. Instead, EPA should require CAFOs to limit their phosphorous application rates to agronomic rates.

**VI. Manure Should be Sampled With Greater Precision and Frequency.**

EPA's November 12 regulations ask for comments on allowing less frequent manure sampling. Our earlier comments (p. 20) pointed out that recent research has confirmed that there is great variability in the components of lagoon wastes, depending on when and how the samples are taken. There is a need to improve and increase the frequency of waste sampling prior to land application, not to diminish it.

**VII. The Chronic Storm Event Language Should be Removed.**

EPA's January 12 version proposed to eliminate the exception for permitted operations in the event of a "chronic or catastrophic" rain event. EPA's November 12 regulations indicate that it is reconsidering eliminating this language based on operations inability to meet it. For example, EPA seeks information on the storage capacity of existing lagoons. Here, EPA is going at the problem exactly backwards. Rather than looking at the environmental problem and coming up with the solution, EPA is looking at existing operations and asking what regulations they can tolerate. EPA also fails to consider obvious solutions to lagoons that are being over-filled over, such as requiring reduction of herd sizes during the rainy months. Rather, EPA's approach ensures the continuation of systems that are destroying the environment by polluting when it rains.

EPA's suggestion that it eliminate the performance standard is particularly ironic because the CAFO industry constantly insists that it operates "zero discharge" systems. We urge EPA to require that CAFOs operate without discharging and that EPA eliminate the "chronic and catastrophic" exception, as it had previously proposed.

**VIII. EPA Should Not Allow Non-Compliance to be a Boon to Violators.**

EPA notes that numerous commenters acknowledge that “many CAFOs do not have the necessary waste management components in place to comply with the existing CAFO regulations promulgated in the early 1970s.” EPA goes on to say that these commenters argue that EPA has wrongly underestimated the cost of financial impacts of the proposed regulations because it has failed to acknowledge this widespread noncompliance. In other words, the industry is arguing that many CAFOs are violating existing laws, and they should get a benefit from it. This is patently absurd. It argues that violators should be rewarded for failing to comply with the law. EPA should reject this backward logic and should base its regulations on sound environmental policy rather than on trying to figure out ways to perpetuate the status quo. We urge EPA to calculate costs as it had originally.

**IX. Environmental Management Systems (EMS’s) Cannot Substitute for Compliance with Clean Water Act and CAFO Regulations.**

EPA asks for input on the use of Environmental Management Systems (EMS’s). As examples, EPA states that EMS’s may deal with odor, noise, or energy conservation. These are matters that a responsible business should address to be a good corporate citizen, for its own protection against nuisance suits, and to save money. These matters have no connection to whether the CAFO is complying with a permit nor whether or not it meets the definition of a CAFO. While we do not object to EMS’s, we strongly object to the suggestion that an EMS can serve as a substitute for an NPDES permit or show compliance with any environmental regulations.

As specific examples of EMS’s, the NODA points to the ISO 14001, including that obtained by Smithfield Foods’ operations in North Carolina. Smithfield Foods’ North Carolina operations are a perfect example of why the EMS is virtually meaningless for environmental protection. Even a cursory review of state records reveals that Smithfield’s North Carolina operations continue to violate hundreds of regulations and standards. Neighbors see no tangible improvement in the operations, in spite of the ISO designations. EMS’s fail to provide necessary environmental protections. Therefore, EPA should reject the idea that it use EMS’s instead of permits or use EMS’s in its determination of which operations meet the definition of CAFO.

**X. EPA’s Definition of “Proper Agricultural Practice” is Faulty.**

EPA proposes to define “proper agricultural practice” as follows:

One of any number of conservation practices, production measures, or management techniques that the CAFO operator or manure recipient can use to improve the efficiency, economy, *or* environmental condition of the site and surrounding land areas and waterbodies. (emphasis added)

This definition is totally inappropriate because it would classify anything that made the operation cheaper or more efficient a proper agricultural practice, even if it had no legitimate agricultural purpose and even if it damaged the environment. For example, applying more manure to land so that crops were killed from overapplication and groundwater and surface water were threatened might meet this definition.

If EPA wishes to define the term “proper agricultural practice,” a reasonable definition must contain some reference to a benefit to the agriculture practiced at the site. Merely lowering the

cost of one's production cannot be the only criterion. Otherwise, virtually any conduct would fall within the definition, including blatantly illegal and environmentally destructive practices.

**XI. Co-Permitting Cannot be Replaced by Environmental Management Systems (EMSs).**

EPA proposes that the permit authority could "waive the requirement for co-permitting entities that exercise substantial operational control over a CAFO if the entity adopts and implements an EMS for its contract producers." This makes no sense. As set forth in our July 30 comments, it is the processor that controls the environmental systems of contract operations. That is precisely the logic for the co-permitting – the contract grower has no real control over the terms of the contract and is forced to accept the terms of the contract as dictated by the processor. Because the processor controls the terms of the contract, it determines both the nature and the quantity of the waste. It is also the processor that has the resources that make it best able to be responsible for the disposal of the waste. Therefore, using the processor's level of control over the operation as a reason not to waive co-permitting is counter-productive.

**XII. EPA Regulations Cannot Circumvent the Plain Language or Intent of the Clean Water Act.**

Finally, several of EPA's suggested new approaches, such as the consideration of "state flexibility," NPDES "equivalents," and EMS's are offered in the November 12 regulations to make it easier for CAFOs to comply with the new regulations. However, EPA does not have the discretion to implement regulations that are counter to the language or the intent of the Clean Water Act. As the NODA acknowledges, EPA has historically failed to require states to follow the law. It is now moving to weaken even the regulations it has proposed.

The Clean Water Act's mandate is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251. Not even EPA has the authority to ignore this mandate nor to fail to implement the provisions of the Act. EPA's January 12 version of the CAFO regulations was clearly intended to get more operations, not fewer, to be covered by NPDES permits. However, the November 12 regulations reverse this direction. Many of the EPA's new proposals are designed to reduce the number of AFOs that would need to apply for an NPDES permit, or to allow things that are less than an NPDES permit to serve as a substitute. This is contrary to the Clean Water Act. EPA must operate within its mandate to implement the purposes and the provisions of this Act in the formulation of these regulations.

**Conclusion**

The citizens of this country need and deserve protection from the environmental and health dangers posed by CAFOs. EPA must focus on the protection of the environment, not protection of the livestock industry.

Although they failed to do everything necessary to solve the environmental and health problems from CAFOs, EPA's January 12 regulations were a step in the right direction. Unfortunately, however, EPA's November 12 CAFO regulations propose to diminish even these improvements.

We respectfully urge EPA to refocus its efforts to producing CAFO regulations that will fully protect the environment.

Respectfully Submitted,

Nicolette G. Hahn  
Senior Attorney  
Waterkeeper Alliance

Diane Halverson  
Animal Welfare Institute

-----  
February 4, 2002

VIA OVERNIGHT MAIL

Concentrated Animal Feeding Operation Proposed Rule  
United States Environmental Protection Agency  
Waterside Mall, West Tower  
Room 611  
401 M Street, S.W.  
Washington, D.C. 20460

Re: Proposed Revisions to Environmental Protection Agency Regulations for Concentrated Animal Feeding Operations

To the United States Environmental Protection Agency:

Waterkeeper Alliance, together with Sierra Club, Natural Resources Defense Council, Southern Environmental Law Center, Environmental Defense, GRACE Factory Farm Project, the Animal Welfare Institute and Sustainable Agriculture Coalition submit these comments in response to the Environmental Protection Agency's Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulations and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), published in the Federal Register on November 12, 2001 (the NODA). These comments supplement comments previously submitted by the respective organizations.

The comments EPA are now seeking concern proposed changes to the original version of concentrated animal feeding operation regulations, published on January 12, 2001 (CAFO regulations). EPA states in the NODA that it received considerable comments and information from the regulated industry, which precipitated its reconsideration of the CAFO regulations. The changes proposed by EPA in the NODA represent an unlawful weakening of the CAFO regulations' environmental protections. We urge you to follow our recommendations submitted on the CAFO regulations and to require an absolute zero discharge standard for CAFO facilities.

## I. INTRODUCTION

The Clean Water Act prohibits the reduced standards that the NODA contemplates for several reasons. First, the report underlying the NODA is unverifiable industry data representing gross inflations of possible economic impacts on the CAFO industry. Thus, EPA's very issuance of the NODA is inappropriate because that type of economic analysis submitted by the CAFO industry is irrelevant to EPA's statutory obligation to establish effluent limitation guidelines (ELG's) under the mandatory Best Available Technology (BAT) standards. Second, even if EPA considers the industry's economic data, the BAT standard mandated for the CAFO regulations dictates that such economic factors be given, at most, minimal consideration in setting effluent limitation guidelines. Third, even if EPA concludes that the CAFO industry's data should be considered in establishing the ELGs, the data must be considered in light of the cost borne by the environment and society in the absence of stringent CAFO ELGs. Fourth, EPA is impermissibly proposing to allow states to substitute "functionally equivalent" program for Clean Water Act permits. Finally, EPA is impermissibly proposing Environmental Management Systems to lessen the permitting requirement for livestock facilities and corporations.

## II. BACKGROUND

### A. The NODA Data

EPA issued the NODA based on the submission of new data by the Food and Agricultural Policy Research Institute (FAPRI). The premise of the FAPRI report is that EPA's reliance in the CAFO regulations on data from an earlier USDA report had underestimated compliance costs of the regulations to the CAFO industry. However, EPA cannot rely on the FAPRI data to weaken the ELGs of CAFO regulations designed to protect the health, safety and welfare of the environment and the American people.

The FAPRI study is nothing more than an industry-generated report – a set of self-serving comments on the CAFO regulations issued by an economically interested party. In essence, the FAPRI report is a set of industry cost estimates for the technologies EPA proposes in the CAFO regulations. The report does not assert that the BAT standards proposed are not achievable; rather, it argues that the available technology is too expensive.<sup>151</sup> However, the BAT standards prohibit EPA from easing ELGs because available technology will be costly to industry. Accordingly, the FAPRI report, and its cost compliance estimate, are irrelevant to a proper assessment of the BAT standard.

<sup>151</sup> The National Pork Producers Council (NPPC) contend that EPA omitted from its cost calculations the cost of lagoon covers for a substantial percentage of hog operations ("Category III" operations within EPA's analysis). According to the NPPC, the cost of lagoon covers, as calculated by FAPRI, would result in the loss of as few as 150 sow operations out of the tens of thousands of CAFOs in the country. *See* Comments on Proposed Revisions To The National Pollutant Discharge Elimination System Regulations and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, submitted to EPA by the National Pork Producers Council, July 30, 2001. These estimated plant closures are losses contemplated by Congress, the EPA and courts under technology-driven CWA standards.



## B. Statutory and Regulatory Framework

### 1. Overview

Congress enacted the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. §§ 1251-1378, and established as a national goal the elimination of all pollutant discharges to surface waters by 1985. 33 U.S.C. § 1251(a)(1). “Congress foresaw and accepted the economic hardship, including the closing of some plants, that [Clean Water Act] effluent limitations would cause; and ... [it] took certain steps to alleviate this hardship ... .” *EPA v. National Crushed Stone*, 449 U.S. 64, 79 (1980). As the Supreme Court explained, Congress devised the Act with the economic consequences in mind:

Prior to the passage of the [Clean Water] Act, Congress had before it a report jointly prepared by EPA, the Commerce Department, and the Council on Environmental Quality on the impact of the pollution control measures on industry. That report estimated that there would be 200 to 300 plant closings caused by the first set of pollution limitations. Comments in the Senate debate were explicit: ‘There is no doubt that we will suffer some disruptions in our economy because of these efforts; many marginal plants may be forced to close.’

*Id.* at 80.

The Clean Water Act reduces pollution by requiring all polluters, including CAFOs, to obtain National Pollutant Discharge Elimination System (NPDES) permits for point source discharges. 33 U.S.C. § 1311. The permits contain pollution limits, which are established by EPA through a system of technology-based ELGs, supplemented by water-quality related effluent limitations, which protect specific bodies of water.<sup>152</sup> 33 U.S.C. § 1312. The NPDES permit takes the applicable effluent limitations and other standards and turns them into the obligations borne by the individual polluting entity. *NRDC v. EPA*, 822 F.2d 104, 110 (D.C. Cir. 1987).

The intended effect of the Clean Water Act permit and ELG process is to gradually reduce pollution to the point of elimination. Congress understood that compliance with the Act would have financial consequences to industry and, accordingly, adopted a phase-in compliance scheme. That scheme uses increasingly more stringent effluent limitation guidelines and NPDES permits to ratchet surface water pollution down to zero. As explained by the court in *NRDC v. EPA*:

[T]he [Clean Water Act’s] regulatory scheme is structured around a series of increasingly stringent technology-based standards

<sup>152</sup> “Whenever a technology-based effluent limitation is insufficient to make a particular body of water fit for the uses for which it is needed, EPA is to devise a water-quality based limitation that will be sufficient to the task.” 33 U.S.C. § 1312(a); see also *NRDC v. EPA*, 822 F.2d 104, 111 (D.C. Cir. 1987).

(beginning with the implementation of the best “practicable” technology (BPT) and progressing toward implementation of pollution controls to the full extent of the best technology which would become available (BAT). New sources would, again, be subject to the most stringent technology-based standards of all, namely “new source performance standards”. . . . [T]he most salient characteristic of this statutory scheme, articulated time and again by its architects and embedded in the statutory language, is that it is technology-forcing. . . . The essential purpose of this series of progressively more demanding technology-based standards was not only to stimulate but to press development of new, more efficient and effective technologies. *This policy is expressed as a statutory mandate, not simply as a goal.*

*NRDC v. EPA*, 822 F.2d 104, 123 (D.C. Cir. 1987) (emphasis added).

As explained above, Congress’ plan to eliminate surface water pollution requires that pollution permits be made more stringent over time. Thus, it devised a three-phase implementation plan:

- For permits issued before EPA had completed the limitation guidelines, EPA was to use its “best professional judgement” (BPJ).<sup>153</sup>
- By 1976, industries had to use the “best practicable technology” (BPT).<sup>154</sup> Later, amendments to the Act extended the deadline for use of BPT to 1979.
- By 1981, if total elimination of pollutant discharges was impossible, industries have to use the “best available technology” (BAT), a much more stringent standard.<sup>155</sup>

For new sources, the strictest standard, “best available demonstrated control technology” (BACT) is required.<sup>156</sup> 33 U.S.C. § 1316. Finally, all pollutant discharges to surface waters were to be eliminated by 1985. 33 U.S.C. § 1251(a)(1).

The 1987 CWA Amendments modified the mandate of BAT for all pollutants to require the “best conventional control technology” (BCT) for conventional pollutants and BAT for toxic

<sup>153</sup> “Best professional judgment” (BPJ): Where EPA has not yet promulgated national effluent standards for a particular category of point sources, the permit writer must use, on a case-by-case basis, his or her best professional judgment to impose “such conditions as the permit writer determines are necessary to carry out the provisions of the Clean Water Act. 33 U.S.C. § 1342(a)(1)(B); *NRDC v. EPA*, 863 F.2d 1420, 1424 (9<sup>th</sup> Cir. 1988).

<sup>154</sup> “Best practicable technology” (BPT): BPT represents the “average of the best existing performance by plants . . . within each industrial category.” *Kennecott v. EPA*, 780 F.2d 445, 448 (4<sup>th</sup> Cir. 1985).

<sup>155</sup> BAT uses “the optimally operating plant, the pilot plant which acts as a beacon to show what is possible.” *Kennecott v. EPA*, 780 F.2d 445, 448 (4<sup>th</sup> Cir. 1985). BPT standards are less rigid than BAT standards. This difference is reflected in the application of cost analysis as detailed below.

<sup>156</sup> “Best available demonstrated control technology” (BACT): The Clean Water Act places even stricter requirements on new sources of pollution – stricter than BAT. 33 U.S.C. § 1316; *NRDC v. EPA*, 822 F.2d 104, 110 (D.C. Cir. 1987). Moreover, new sources are considered major federal actions for purposes of NEPA. *Id.* at 112.

and non-conventional pollutants.<sup>157</sup> The waste generated at CAFOs includes insecticides, rodenticides, mercaptans, and other toxic and non-conventional pollutants, which fall within the BAT standard.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA, alleging that EPA had failed to comply with CWA § 304(m). *NRDC v. Reilly*, Civ. No. 89-2980 (RCL) (D.D.C.). Plaintiffs and EPA entered into a consent decree on January 31, 1992. The consent decree established a schedule by which EPA was to propose and take final action for eleven identified point source categories and for eight other point source categories identified only as new or revised. After completing a preliminary study of the feedlots industry under the decree, EPA selected the swine and poultry portion of the CAFO industry as the subject for New or Revised Rule #8, and the beef and dairy portion of the industry as the subject for New or Revised Rule #9. Under the decree the Administrator was required to sign a proposed rule for both portions of the CAFO industry on or before December 15, 2000, and must take final action on that proposal no later than December 15, 2002.

Given the history of improper disposal of CAFO waste and Congress' identification of CAFOs as point sources, the EPA has proposed to require specific agricultural practices under its CWA authority both to define the scope of the agricultural storm water discharge exemption and to establish the best available technology for these specific industries. The application of BAT to the CAFO industry is, therefore, a settled issue.

## **2. The BPT standard allowed EPA to average best performing plants in the industry.**

To determine BPT, the Clean Water Act allowed EPA to consider, among other factors, “the total cost of application technology in relation to the effluent reduction benefits to be achieved from such application.” 33 U.S.C. § 1314(b)(1)B). Under the BPT standard, EPA considered cost as a function of effectiveness; when the cost to reduce additional effluent became disproportionate to the amount of reduction, the additional reduction was not required. *Reynolds Metals Co. v. EPA*, 760 F.2d 549, 554 (4<sup>th</sup> Cir.1985). BPT was determined by averaging the best performing plants of various sizes, ages, and processes, and applying that average as the BPT standard for each industry at that time. *Organic Chemicals and Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards*, 52 Fed. Reg. 42522 (III)(A)(1) (to be codified at 40 C.F.R. §§ 414, 416.) This was Congress’ concession to industry to allow facilities to update and comply with approaching BAT requirements. Following the 1984 phase-out of BPT, cost could be considered only if the total elimination of discharge is impossible and, even then, only with regard to establishing the appropriate level of reduction for the best within the industry – the BAT standard. *Reynolds Metals Co. v. United States EPA*, 760 F.2d 549, 553 (4<sup>th</sup> Cir. 1985); *Texas Oil & Gas Ass’n v. EPA*, 161 F.3d 923, 928 (5<sup>th</sup> Cir. 1998), quoting *Chemical Mfrs. Ass’n v. EPA*, 870 F.2d 177, 226 (5<sup>th</sup> Cir. 1989).

<sup>157</sup> Conventional pollutants include suspended solids, pH, oil, grease, fecal coliform and biochemical oxygen demand (BOD). 40 C.F.R. § 401.16 (2002). Toxic pollutants include arsenic, asbestos, copper, cyanide, lead, mercury, nickel, selenium, silver, and zinc. 40 C.F.R. § 401.15 (2002); Non-conventional pollutants are all those that are neither conventional nor toxic. 40 C.F.R. § 439.1(k)(2002).

However, even under BPT, the less stringent standard, an industrial polluter could not escape complying with the regulations based solely on inability to bear compliance costs:

Because the 1977 limitations were intended to reduce the total pollution produced by an industry, requiring compliance with BPT standards necessarily imposed additional costs on the segment of the industry with the least effective technology. If the statutory goal is to be achieved, these costs must be borne or the point source eliminated.

*EPA v. National Crushed Stone*, 449 U.S. 64, 78 (1980).

**3. Best Available Technology standards require EPA to mandate practices of the single best performing operation and require the discharger to invest maximum possible resources.**

As explained above, the Clean Water Act requires BAT for CAFOs. “The BAT standard must establish effluent limitations that utilize the latest technology to reach ‘the greatest attainable level of effluent reduction which could be achieved.’” *NRDC v. EPA*, 863 F.2d 1420, 1431 (9<sup>th</sup> Cir. 1988). “BAT should represent a ‘commitment of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges.’” *Id.* at 1426. Indeed, “Congress intended [BAT limitations] to be based on the performance of the single best-performing plant in an industrial field.” *Texas Oil & Gas Ass’n v. United States EPA*, 161 F.3d 923, 928 (5<sup>th</sup> Cir. 1998).

Congress’ goal to work toward increasingly stringent pollution elimination standards is manifested in the extent to which EPA may consider costs in establishing effluent guidelines under a BAT standard. EPA may consider, among other factors, “the cost of achieving such effluent reduction,” 33 U.S.C § 1314(b)(2)(B), but it cannot perform a cost-benefit analysis: “[I]f the effluent reduction is technologically feasible and economically achievable [to the industry as a whole], it must be employed.” 92 Cong. Rec. S2770 (1972)(emphasis added).

The EPA Administrator is bound by a test of reasonableness. Several of the major U.S. industries, including the steel, chemical and mining industries, have filed lawsuits against the EPA’s promulgation of ELGs, claiming that the agency had been unreasonable by failing to consider environmental compliance costs either in establishing technology guidelines or refusing to issue variances to such standards. In each instance, the EPA’s steadfast refusal to give undue consideration to pollution control compliance costs was upheld by the courts.

For example, even under the less stringent BPT standard, courts have upheld EPA’s disregard of the type of data contained in the FAPRI. In *Chemical Mfrs. Ass’n v. EPA*, 870 F.2d 177 (5<sup>th</sup> Cir. 1989), chemical manufacturers maintained that the cost-effectiveness of Best Practicable Technology rulemaking should be measured by a “knee-of-the-curve” test to determine the point at which costs rise steeply per pound of pollutant removed. Under such a test, they argued, the BPT rules were not cost-effective. In supporting EPA’s interpretation of cost-benefit analysis and rejecting the chemical manufacturers’ argument, the Court stated,

Congress intended Section 304(b) to give the EPA broad discretion in considering the cost of pollution abatement in relation to its benefits and *to preclude the EPA from giving the cost of compliance primary importance.* (Emphasis added.)

*Chemical Mfrs. Ass'n v. EPA*, 870 F.2d 177, 204 (5<sup>th</sup> Cir. 1989) (emphasis added).

Senator Muskie, the principal Senate sponsor of the Clean Water Act, described the "limited cost-benefit analysis" employed in setting BPT standards as being intended to "limit the application of technology only where the additional degree of effluent reduction is wholly out of proportion to the costs of achieving such marginal level of reduction . . . ." *Remarks of Senator Muskie reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress) Ser. No. 93-1, p. 170 (1973).*

Because the standard applicable here is the higher BAT standard, compliance cost is given even less weight. In *American Iron & Steel Institute v. EPA*, 526 F.2d 1027 (3<sup>rd</sup> Cir. 1975), members of the steel industry sought variances from BAT standards set by the EPA, claiming the cost of compliance was prohibitive. The Court, again relying on congressional intent, explained the standard for compliance cost analysis under BAT as follows:

In making the determination of 'best available' for a category or class, the Administrator is intended to apply the same principles involved in making the determination of 'best practicable' (outlined above), except as to cost-benefit analysis . . . . While cost should be a factor in the Administrator's judgment, no balancing test will be required. The Administrator will be bound by a test of reasonableness. . . the reasonableness of what is 'economically achievable' should reflect an evaluation of what needs to be done to move toward the elimination of the discharge of pollutants and *what is achievable through the application of available technology - without regard to cost.*

*Remarks of Senator Muskie reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress) Ser. No. 93-1, p. 170 (1973) (emphasis added).*

This "reasonableness" standard for BAT cost assessment has been upheld in case after case. *See, e.g., EPA v. National Crushed Stone Assoc.*, 449 U.S. 64 (1980) (In mining industry challenge to the EPA's refusal to give due consideration to compliance costs, court held that compliance cost considerations for BAT were minimal, and less than that for BPT); *Rybachek v. United States EPA*, 904 F.2d 1276 (9<sup>th</sup> Cir. 1990) (In another mining industry challenge to EPA's cost analysis, court held that, under BAT's reasonableness standard, EPA has considerable discretion in minimizing technology costs, which are less-important factors than in setting BPT limitations).

Technology is economically achievable if affordable by an industrial category as a whole. See *Du Pont v. Train*, 430 U.S. 112, 126-30 (1977). “In promulgating nationwide pollutant effluent limitations the EPA need not consider the hardship faced by a particular plant.” *Chemical Mfrs. Ass’n v. EPA*, 870 F.2d at 236. Nor should it. See *Du Pont*, 430 U.S. at 128-30; *American Iron & Steel Inst. v. EPA*, 526 F.2d 1027, 1051 (3d Cir. 1975).

The BAT standard should represent “a commitment [by an industrial category] of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges.” See *EPA v. Nat’l Crushed Stone Ass’n*, 449 U.S. 64, 74 (1980). EPA has considerable discretion in determining what is economically possible. See *Natural Resources Defense Council*, 863 F.2d at 1426. EPA even has the discretion to weigh factors such as cost on a case-by-case basis, so long as its choice of the BAT is not manifestly contrary to the Act. See *BP Exploration & Oil, Inc. v. EPA*, 66 F.3d 784, 796 (6<sup>th</sup> Cir. 1995), *reh’g en banc denied*, 26 Env’tl. L. Rep. 20,037 (6<sup>th</sup> Cir. 1996); see also *Rybacheck v. EPA*, 904 F.2d 1276 (9<sup>th</sup> Cir. 1990); *Weyerhaeuser*, 590 F.2d at 1049-53. EPA must fully explain its cost analysis. See *Kennecott*, 780 F.2d at 456.

Courts have upheld the BAT selected by EPA for a variety of industrial categories, even though EPA predicted that the BAT would cause economic displacement, including plant closures, associated job losses and other significant impacts. For instance, the Third Circuit upheld performance standards for existing sources, which are set in accordance with the procedures for BAT standards, even though “EPA estimated that compliance with the [standards] would force 14% of all indirect discharging plants to close and cause a 1.2% reduction in total industry employment.” *Chemical Mfrs. Ass’n*, 870 F.2d at 250. As the court explained, “Congress clearly understood that achieving the CWA’s goal of eliminating all discharges would cause ‘some disruption in our economy,’ including plant closures and job losses.” *Id.* at 252. The Ninth Circuit has also upheld BAT that was projected to cause plant closures, observing, “Congress contemplated the closure of some marginal plants.” See *Association of Pacific Fisheries v. EPA*, 615 F.2d 794, 818 (9<sup>th</sup> Cir. 1980); *Rybacheck*, 904 F.2d at 1291.

### III. ARGUMENT

#### A. The FAPRI report data is nothing more than self-serving industry comments on the EPA regulations and irrelevant to a Best Available Technology assessment.

As explained in Part II.A above, the NODA is based upon data contained in the FAPRI report. There is nothing objective about this “new” set of data, and the EPA should give no weight to its cost estimates. Indeed, the EPA should consider the FAPRI report for what it is – the self-interested, unverifiable estimates of regulatory cost compliance submitted by an economically interested industry that seeks to benefit from continued non-regulation.<sup>158</sup> Thus, EPA should not have issued the NODA because its underlying data is irrelevant to EPA’s statutory mandate to set ELGs using BAT.

<sup>158</sup> In its introduction, FAPRI credits the Farm Foundation for providing travel expenses to industry experts, explaining that these CAFO industry experts “were assembled to help construct models of operations that are reflective of each of the agricultural industries.”

**B. The FAPRI report's economic data are not controlling to the BAT standard.**

**1. The "reasonable" standard for BAT mandates that EPA give minimal consideration to the FAPRI report data.**

The FAPRI report states that the "bottom line of any new regulation is the cost to the sector it attempts to regulate." That, however, is not the legal standard for BAT under the Clean Water Act. While § 304(b) of the Clean Water Act, 33 U.S.C. § 1314(b), states that "the cost of achieving . . . effluent reduction," is a factor that may be taken into account when assessing BAT, federal courts have unanimously held that the cost factor to the polluting industry is of minimal importance when creating industry technology standards. Consideration of any of the factors must always be judged in light of the underlying goal of the Clean Water Act to preserve the nation's waters by eliminating discharges altogether.

As explained in Part II.B.3 above, EPA has been equally vigilant in refusing to allow compliance cost concerns to enter into BAT assessment. EPA's consistent practice in establishing BAT standards and the courts' affirmation of these standards point clearly to a single conclusion -- cost of industry compliance with standards promulgated to protect the nation's health and welfare should not dictate or influence EPA's BAT standards. Such undue consideration, as requested by the CAFO industry here, would defeat the very purpose of the Clean Water Act and allow the CAFO industry in this country to continue its unrestrained pollution of our waterways.

**2. That existing pollution control technology for CAFOs will reduce CAFOs' profit margin is irrelevant.**

As detailed below and in our July 2001 comments on the proposed CAFO regulations, there are several available technologies that would significantly reduce or eradicate the enormous environmental and economic degradation caused by the CAFO industry. Yet the CAFO industry now wants EPA to ignore these technologies and sanction the adverse impacts caused by industry by relaxing the very regulations that are necessary to protect public welfare.<sup>159</sup> The steel industry made an identical argument in *American Iron & Steel Institute v. EPA*, in which the EPA estimated that the total annual costs for both air and water pollution controls compliance by the steel industry after 1983 would be \$1.24 billion, or 5.54% of the industry's gross revenue in 1972. The court upheld EPA's conclusion that such a percentage was a reasonable reduction in profit for the industry when furthering the goals of the Clean Water Act.

The fact that the CAFO industry will suffer a slight reduction in its enormous profits from Clean Water Act compliance is irrelevant. A reduction in corporate profits cannot be a basis for setting BAT standards and sacrificing the economic and environmental health of this nation. BAT for the CAFO industry needs to be implemented to "move toward the elimination

<sup>159</sup> The EPA has reopened this comment period because of new data submitted by FAPRI, which compiled its data with the CAFO industry's considerable influence. Yet the industry's new data, while alleging significant costs related to CWA compliance, ignores the vast profits derived by CAFOs from their current disregard for the health, safety and welfare of the nation's population and water resources. Before considering costs of compliance, the EPA should demand that the CAFO industry disclose its profit margin for the past two decades of operation. In addition, the EPA should commission a study of the costs to the environment from the industry's current practices.

of the discharge of pollutants...without regard to cost." It would be unlawful and unreasonable for the EPA to find otherwise.

3. EPA should consider other farming methods in determining BAT for CAFOs.

EPA's CAFO regulations and the NODA are based on the assumption that EPA need only consider CAFOs to determine BAT. EPA's approach runs counter to the purpose underlying the Clean Water Act to eliminate surface water pollution and contravenes Congress' implementation scheme of driving production toward more environmentally sound practices. As set forth above, Congress and the courts have repeatedly stated that production methods must move towards more stringent environmental safeguards until the zero discharge goal is attained. Thus, to determine BAT for operations that are producing livestock, EPA must look at all operations that are producing livestock to determine what production methods are the most protective of the environment, including traditional and other farming methods.<sup>160</sup>

EPA's economic analysis should not be limited to the compliance costs to the CAFO industry associated with adequate pollution control of animal waste and other pollutants. Rather, EPA's BAT analysis should, at a minimum, include non-confinement livestock and poultry production systems.

Non-confinement systems pose fewer pollution and public health hazards than CAFOs and are economically viable. Many farmers and ranchers raise livestock in non-confined systems that are integrated with production of crops and forages. Manure and other wastes, such as used bedding, are cycled within the system and represent system inputs, not wastes that must be removed from the system at considerable costs. Studies demonstrate that the economic costs and revenues *per animal* in non-confinement systems are superior to confinement production.

**a. Traditional farming, while not Best Available Technology, is a less polluting means to produce food animals than CAFOs.**

At the time the Clean Water Act was adopted in 1972, America's family farms were producing millions of animals for American consumers. According to data from the USDA, American farmers were producing adequate number of hogs, turkeys, chickens and beef cattle. This is particularly well illustrated by the pork sector. Using traditional farming to produce pork, farmers were able to produce adequate pork for America's domestic and export markets for hundreds of years. Using this method, American pork farmers produced the same number of pigs in inventory in 1915 as are in inventory in America today. Farmers typically owned and lived on the land they farmed, drank from the ground water beneath their farms, fished at nearby streams, passed on their land to their children and interacted with their neighbors. For these reasons, family farmers have strong incentives to carefully protect groundwater, surface water, and air near their livestock operations.

Traditional hog farming is a closed loop cycle. The traditional farmer spreads manure on fields as fertilizer to grow food crops for his herd. The farmer has incentive to keep the herd a manageable size so that manure production remains at agronomic rates. For the farmer, if manure production becomes greater than what crops can absorb, high nitrogen levels may burn out his fields or contaminate his groundwater. Congress recognized the importance of this

<sup>160</sup> "Traditional and other farming methods" include farms that do not use lagoon and sprayfield systems for hog waste management.



critical environmental balance when it created the agricultural exemption in RCRA. 40 C.F.R. § 257.1(c)(1); 40 C.F.R. § 261.4(b)(2)(ii). However, CAFOs are not entitled to the agricultural exemption unless they demonstrate that they are spreading manure at or below agronomic rates. See *Waterkeeper Alliance v. Smithfield Foods*, No. 4:01-CV-27-H(3)(E.D.N.C. Sept. 20, 2001)

However, it is possible to raise animals in confinement and still spread manure at agronomic rates to grow food crops where field size is adequate and soil chemistry and permeability is appropriate. This is a better, available technology than the present lagoon/sprayfield practice in the CAFO industry where fields are routinely over-saturated with nitrogen and phosphorous so that food crops cannot be cultivated and surface and groundwater are contaminated.

**b. Modern, sustainable farming methods are the best available technology for raising animals for food production.**

**(1) Modern rotational grazing (Dairies)**

Studies show that non-confinement, sustainable dairy farming is environmentally and economically superior to conventional, or confinement, systems. For example, a 2001 University of Minnesota study of modern rotational grazing demonstrated that sustainable dairy farming methods met or exceeded the environmental and economic performance of conventional farming methods. Digiacoimo, G. Iremonger, C., et al, *Sustainable Farming Systems: Demonstrating Environmental and Economic Performance* (June 2001). A University of Wisconsin study found that compared to confinement systems, managed intensive grazing systems for dairy cows can turn work hours into higher profits per animal by reduction of machine, production, and feed costs. Frank, G., Klemme, R., et. al., *Economics of Alternative Dairy Grazing Scenarios*, Vol 28, No. 3 Managing Agricultural Resources (October 1995), posted on the web at [www.aae.wisc.edu/www/pub/marnews](http://www.aae.wisc.edu/www/pub/marnews) ), (discussion and summary of the study posted on the web at [www.wisc.edu/cias/pubs/briefs/019.htm](http://www.wisc.edu/cias/pubs/briefs/019.htm)).

**(2) Hoop structures (Hogs)**

Similar research of hog production has found non-confinement systems to be a superior pork production method. A study sponsored by the Leopold Center for Sustainable Agriculture and the Iowa State University Extension System compared confinement hog systems with non-confinement systems in which pigs were provided hoop house shelters and farrowed and raised in pasture feeding systems. This method is not a return to antiquated hog production methods. Instead, it is a combination of appropriate technologies and management-intensive systems customized for a specific set of soil, plant, animal, and human resources, usually consisting of a farm and a farm family. The Leopold Center study compared the costs per animal of confinement systems with the costs of the non-confinement systems. One long-term survey of comparative costs, from 1989 to 1993, found that fixed costs were \$3.33 cents *less* per pig weaned for outdoor herds than for confined herds. The total production cost to produce a market pig of 250 pounds was \$4.88 cents *less* for outdoor, pastured herds than for confined pigs. Overall, fixed costs were 30 to 40 percent lower for pasture than for confinement systems and total costs were 5 to 10 percent lower for pasture. The number of total pigs weaned was lower on pasture, but sow mortality was also lower. Leopold Center for Sustainable Agriculture, *Swine*

*System Options for Iowa*, (May 1996) (available on the web at <http://www.leopold.iastate.edu/pubinfo/pubinfo.html> ).

### (3) Deep bedded straw system farming (Hogs)

Several countries in Europe have developed advanced methods of farming that EPA must consider in determining BAT for CAFOs. Sweden, for example, has become the international model for pig farming. Sweden outlawed intensive (CAFO-like) hog production years ago as scientific evidence demonstrated that confinement systems were dangerous to the environment and human health. Sweden has outlawed the routine administration of antibiotics in hog farming and forbids most of the practices used by hog CAFOs, such as gestation crates and liquefied manure handling systems.

Swedish hog farmers have not simply reverted to traditional practices. Rather, the country's farmers and scientists have been at the leading edge of developing safe, environmentally protective and productive hog farming methods that are better for the environment and produce a better quality of meat. Today approximately 80 percent of Sweden's farmers with sows use a deep-straw bed pig farming system in which sows and their litters live in a deep bed of continually-added straw, in which the waste and straw are composting, thus killing the pathogens contained in pig waste. The system is virtually odor free, and it allows the farmers to avoid giving their animals antibiotics and putting pollutants like insecticides and rodenticides into their waste stream. This benign composted waste is periodically removed and land applied. For a detailed explanation of the Swedish system, see Halverson, M., *Swine System Options for Iowa*, Iowa State University Publication (May 1997), and Halverson, M., *U.S. Hog Farmers Explore Humane Swedish Techniques*, Animal Welfare Institute Quarterly (1994).

In sum, if EPA focuses its BAT analysis exclusively on large-scale confined systems, it would violate the BAT standard by failing to acknowledge the available, and economically and environmentally superior, technology of non-confinement hog production.

### 4. Sewage treatment technology is another available technology to treat CAFO waste.

For decades, scientists have worked to develop the safest and most cost effective manner to treat the massive quantities of sewage generated by human populations in urban areas before it can be released to the environment. Using an estimate of hog waste quantities, generated by Dr. Mark Sobsey of the University of North Carolina, the number of hogs in North Carolina alone generate more fecal matter than all of the people in the states of North Carolina, New York, California, Texas, New Hampshire, and North Dakota *combined*. Animal waste generated by CAFOs is considerably more hazardous than human waste.

EPA has already recognized that sewage treatment for CAFOs is both necessary and reasonable, as evidenced by its consent decree in *Citizens Legal Environmental Action Network, Inc. v. Premium Standard Farms, Inc.*, Civ. Act. No. 97-6073-CV-SJ-6 (U.S. Dist. W. D. Mo. 2001), available at <http://es.epa.gov/oeca/ore/water/psf.html>. To resolve complaints of pollution to air and water, EPA is requiring a hog CAFO to construct a wastewater treatment system. In the consent decree, the system is described as one that will require the following:

- permeable covers on each lagoon for odor control and gas emissions reduction;
- transfer of the daily inflow (on average) from each existing lagoon to a central nitrification and denitrification system;
- covered anoxic basin (with synthetic liner) for nitrate and biochemical oxygen demand reduction;
- covered aeration basin (with synthetic liner) designed for ammonia conversion to nitrate through nitrification (with recycle to anoxic basin);
- open biosolids storage basin (with clay liner) for settling and further denitrification;
- open irrigation storage basin (with clay liner) for storage of treated effluent prior to land application.

EPA's recognition in this consent decree that the type of treatment described above is necessary for CAFO wastes should cause EPA to consider this type of treatment as well in the CAFO regulations.

C. EPA's focus should be on the nation's cost from CAFO pollution, not cost to industry for Clean Water Act compliance.

As explained above, the law does not allow EPA to focus on the CAFO industry's cost of compliance with the proposed regulations. Under the BAT standard, EPA is required to show only that the proposed standard is "technologically and economically achievable." 33 U.S.C. § 1311(b)(2)(A). Such an outcome is consistent with Congress' intent to "push pollution control technology." *Association of Pac. Fisheries v. EPA*, 615 F.2d 794, 816 (9th Cir. 1980).

The costs that EPA should consider in promulgating the CAFO regulations are the severe environmental and economic impacts created by CAFO facilities, including the environmental impacts of the unfettered discharge of pollutants to the nation's waterways, the human health effects caused by the dispersion of untreated animal waste into all sectors of the environment and the devastation of the rural economy by the undermining of the family farm system.

The cost to our nation's natural resources.

As set forth in detail in our July 2001 comments on the CAFO regulations, CAFOs contaminate groundwater, surface water, and air with nutrients, pathogens, and other pollutants. For example, among the chief sources of nutrient pollution in North Carolina coastal areas is polluted runoff from agricultural operation, in addition to air pollutants from those operations that settle on land and water. CAFO pollutants leak from lagoons and other storage structures, leach and run off from sprayfields, and volatilize to the air. CAFO-polluted groundwater and surface water can be dangerous to human health and the environment when people and wildlife come into contact with or consume it. Surface water pollution from CAFOs has caused massive fish kills and the loss of other aquatic life. *See* July 2001 Comments.

The cost to human health, welfare and wildlife.

CAFOs endanger public health because animal excrement contains pathogens dangerous to people and wildlife, including a number of known human viral, bacterial, and parasitic pathogens, such as influenza, Salmonella, E.coli, Yersinia, leptospora, Cryptosporidia, Giardia, and probably several yet to be discovered. Lagoons and sprayfield waste management systems act as a vector for communicable disease transmission and increase the risk of human exposure

to these pathogens, which can be transmitted when pathogens in animal waste contaminate human drinking water sources and recreational water sources. CAFO wastes can transmit diseases when sprayed near homes because spraying creates opportunities for the aerosolized spread of the pathogens. CAFO pathogens are particularly hazardous because systematic overuse of antibiotics in animal agriculture has fostered the emergence of antibiotic resistant organisms in the population of animals raised for food; these pathogens are especially hazardous to immune-compromised people, infants, and the elderly. *See* July 2001 comments.

CAFOs also endanger public health by contaminating groundwater with nitrates. Groundwater tainted with nitrates can cause methemoglobinemia, contribute to the development of some cancers and cause adverse reproductive outcomes. *See* July 2001 comments.

Research has documented that people living near large hog facilities suffer significantly higher levels of upper respiratory and gastrointestinal ailments than people living in non-livestock areas. *See* July 2001 comments.

The cost to rural economy and society.

CAFOs have destroyed the rural economy in many ways. In 1915, there were just as many pigs on farms in America as there are today. Today these millions of animals have been taken from the family farmers, who were active in every state in this nation, and concentrated in a few locations around the country. The result is a complete imbalance in nature's delicate ecological cycles. This practice has created a corresponding imbalance in rural economic support systems. Independent, rural family farmers are no longer able to compete with the animal factories, even though independent producers create three times as many jobs as corporate contract production. Big corporate livestock operations are also less likely to do business locally than are small and medium sized family farmers, thus having a further detrimental impact on the rural economy. Despite these real, and severe, economic impacts, the NODA indicates that EPA is considering narrowing its analysis of CAFO economics to the level of the animal production enterprise, divorced from other on-farm costs and benefits.

EPA must consider the social and economic consequences of large-scale CAFO production not only at the facility and production sector levels but also at the community level. Many of the environmental and public health burdens of CAFO pollution are imposed on local communities. In addition to dealing with problems such as contamination of private and public drinking supplies, these communities and surrounding landowners may also be faced with falling land values and a shrinking resource base.

CAFOs damage the environment and human health in ways that traditional farms do not.

As set forth previously, CAFOs pose significant risks to groundwater, surface, and air. *See* July 2001 comments. The larger and more concentrated the operations, the greater their danger to the environment.

This is particularly true for nutrient pollution. A 2000 study by researchers from the University of Northern Iowa and Iowa State University determined that, in the six square mile area of Hamilton County, Iowa, the land area required for agronomic application of the manure produced by CAFOs was 73% of available land and the land area required for an agronomic application of phosphorous was 9.4 times the amount of land that was being used, 6.2 times the

available land. Jackson, L., and Gilbert, E., *Swine Manure Management Plans in North-Central Iowa: Nutrient Loading and Policy Implications*, Journal of Soil and Water Conservation, vol. 55, no. 2 (2000). As this study demonstrates, the CAFOs currently operating in this Iowa county are functioning in an environmentally unsustainable manner. The results of this study would be similar or worse at most CAFOs around the country.

The same conclusion was reached by researchers who examined the phosphorous balance for Minnesota's CAFO permitting process. After analyzing 3,607 feedlot permits they found that the larger the operations, the greater the excess phosphorous per acre. The researchers concluded that Minnesota feedlots are currently overapplying 1.4 million pounds of surplus phosphorous every year. Schimmel, J., Levins, R., and Keeney, D., *Phosphorous Balance in Minnesota Feedlot Permitting*, June 29, 2001. Generic Environmental Impact Statement on Animal Agriculture in Minnesota. Final Technical Working Paper on Economic Structures, Profitability and External Costs. State of Minnesota. St. Paul, MN: Environmental Quality Board.

**a. CAFOs produce fewer jobs and jobs of lower quality than farms.**

Because CAFOs provide virtually no husbandry to the animals and generally liquefy the animal waste, they provide fewer jobs and jobs of lower quality than farms. A 1998 study by Iowa State University agricultural economist Daniel Otto that compared smaller hog farms to larger hog operations found that smaller operations created 34% more jobs and 23% more employee income than larger operations. *Iowa State University Study Shows More Economic Benefit from Smaller Hog Farms*, Press Release, Center for Rural Affairs (January 15, 1998). A Virginia study favoring expansion of the hog industry that compared larger corporate hog operations with smaller, independent producers concluded that the independent producers provided 10% more permanent jobs and a 37% larger increase in local per capita income. Thomsbury, S., et. al, *Economic Impact of a Swine Complex in Southside Virginia*, Virginia Tech University Department of Agriculture and Applied Economics (undated). The economic benefits to society from non-confinement, family farming are indisputable.

**b. The overall economic health of communities with cafos is poorer than communities with farms.**

CAFOs have a net negative effect on the health of rural communities' economies. As explained by noted agricultural economist, Dr. John Ikerd, at a March 2001 conference:

The impact of agricultural industrialization on the social fabric of rural areas rose to the public consciousness as rural communities began to feel the brunt of the farm financial crisis of the 1980s. Once prosperous farming towns withered and decayed as large numbers of farm families were forced off the land. The land was still farmed, but there were fewer people to buy groceries, school clothes, hardware, and hair cuts in the local business community. In addition, the larger industrial farms often bypassed the rural community in order to save a few dollars on input costs or to get a few more dollars out of their products. Fewer farm families and farm-related jobs in rural communities meant fewer people to

support schools, churches, and local civic activities. Ultimately, the corporate takeover of hog farming with their giant hog-factories raised the consciousness of the public in general to the destruction of the social fabric of rural America by the industrialization of agriculture.

*Economics of Sustainable Farming*, John Ikerd, Professor Emeritus of Agricultural Economics, University of Missouri, Presented at the HRM of TX Annual Conference 2001, Systems in Agriculture and Land Management, Fort Worth, TX, March 2-3, 2001.

Dr. Ikerd further explained that CAFOs are less sustainable than farms because they emphasize specialization and productivity over economic diversity. He stated,

Increasing specialization has led to loss of biodiversity, and thus, to increasing vulnerability of livestock and crops to insects, parasites, diseases and other pests, and to adverse growing conditions requiring ever increasing reliance on costly off-farm inputs. Increasing specialization has led to loss of economic diversity, and thus, to increasing vulnerability to depressed market prices or rising input costs of the specific commodities being produced requiring ever increasing reliance on commercial risk management strategies or contract farming. Farmers almost invariably find they lack the expertise or market discipline needed to use commodity markets risk management tools. Farmers invariably find themselves at a competitive disadvantage to large corporate firms when negotiating comprehensive production contracts. Farmers simply have not been able to manage the risks of large-specialized farming operations effectively.

*Id.*

These adverse effects on local economies were documented and quantified in an April 2000 study by University of Illinois researchers. The study carefully examined the impact of the increasing concentration of Illinois' hog sector on rural communities and concluded that concentrated hog operations hinder community economic health:

[S]tructural changes in agriculture and livestock production can have substantial impacts in rural areas. ... The results [of this study] reject the hypothesis that large hog farming [sic] contribute to the vitality of local economies. On the contrary, the several models developed here consistently indicated that large hog farms tend to hinder economic growth in rural communities.

Gomez, M., & Zhang, L., *Impacts of Concentration in Hog Production on Economic Growth in Rural Illinois: An Econometric Analysis* (April 2000), presented to the American Agricultural Economic Association 2000 meeting and posted on the web at <http://agecon.lib.umn.edu/aaea00/sp00go03.pdf>

**c. CAFOs damage property values and tax bases.**

CAFOs, because they liquefy and then collect, store and land apply huge quantities of raw animal feces and urine, generate odors that are described as unspeakable even by life-long farmers.<sup>161</sup> These devastating odors have wreaked social havoc on rural communities and have demonstrably diminished the property values near CAFOs. For example, a farm family in Manitoba argued to its tax board that the stench from a nearby hog operation had diminished his property by \$500,000. Bell, I., *Hog Barns Slash Land Value: Family*, June 21, 2001, available at [www.producer.com/articles/20010621/news/20010621news11.html](http://www.producer.com/articles/20010621/news/20010621news11.html).

A July 2001 study in the *Appraisal Journal* documented what every person living near a CAFO already knows, that “a property located near a concentrated animal feeding operation (CAFO) will be negatively impacted by this externality.” Kilpatrick, J., *Concentrated Animal Feeding Operations and Proximate Property Values*, *The Appraisal Journal*, vol. LXIX, No. 3 (July 2001). The study concluded that “diminished marketability, loss of use and enjoyment, and loss of exclusivity can result in diminishment ranging from 50% to 90% of otherwise unimpaired value.” *Id.*

A 1995 North Carolina study that looked at the impact of hog CAFOs on property values concluded that the “proximity of hog operations has a statistically significant and negative impact on property values.” Palmquist, R., et. al., *Hog Operations, Environmental Effects, and Residential Property Values*, *Land Economics*, Vol. 73, No. 1 (Feb. 1997).

CAFOs have been shown to injure the tax base as well. A 1998 study by Iowa State University found that smaller hog operations create 23% more local tax revenue, produce 20% more net revenue for the state, and pay 7% more property taxes than do larger operations of equal output. *Iowa State University Study Shows More Economic Benefit from Smaller Hog Farms*, Press Release, Center for Rural Affairs (January 15, 1998).

Some areas with substantial numbers of CAFOs have determined that they are under-taxing the operations. Butler County, Iowa’s County Auditor recently issued a statement that CAFO operations should be treated as corporations, rather than farms. The Auditor noted that the operations demand significantly more services than farms, such as damage to roads from heavy equipment and trucks transporting feed, hogs, and animal wastes. Butler County has found that it must apply for an additional 100 tons of rock per year to every mile of road near hog CAFO operations. “A conservative estimate of the additional expenses due to the damage caused by these operations is \$110,000 per year,” stated County Auditor Holly Fokkena. *Butler Official Wants Confinement Owners to Pay Up*, *Waterloo / Cedar Falls Corner* (January 9, 2002).

Incredibly, to exacerbate the economic impacts further, large, multi-national CAFO corporations seek tax abatements and other incentives for their operations that are not available

<sup>161</sup> This is demonstrated vividly by a recent circuit court case in DeKalb County, Alabama, *Jvey v. Gold Kist*, Civ. Act. No. CV-2001-081 (January 9, 2002), in which farmers and neighbors of a hog CAFO, were granted a substantial nuisance award because the court found the CAFO a nuisance because of the odor associated with the production of hogs and the spreading of sewage. The Judge noted: “The plaintiffs are not hypersensitive city dwellers complaining of a minor annoyance. They are a group of hardy, hard working, self sufficient, independent, reasonable, and fair minded men and women who expect to be treated just as they would treat others.”

to farms. For example, for a Manitoba slaughterhouse expansion, Smithfield Foods requested several public subsidies -- lower sewage and water rates, an expansion of hydro service, several hectares of city land, infrastructure support and lower property and business taxes—that it claimed it needed to be competitive. Tjaden, T., “*Good Corporate Citizen or ‘Hog-zilla?’ Schneider’s U.S. Parent Has a Spotty Track Record,*” *Winnipeg Free Press* (December 19, 1999).

**d. CAFOs waste precious natural resources including fossil fuels, groundwater, and inputs into worthless land cover like bermuda grass.**

CAFOs use more natural resources, including fossil fuels, than farms. CAFOs generally segregate animal production into sectors. For example, hog CAFOs will segregate farrowing, weaning, growing, and finishing. Traditional and sustainable hog farms are farrow to finish, having all phases of the pig’s life at the same farm. This means that CAFO systems consume huge amounts of fossil fuels in transporting hogs long distances, such as from Canada to the Midwest, and from the Midwest to the Southern United States. Similarly, because CAFOs in many parts of the country get their feedstock from distant locations, substantial fossil fuels are consumed in transporting the grains from, for example, midwest states to North Carolina. Report Documents Changing Structure of Pig Industry, Says Economist, *Agriculture Online* (July 3, 2001), available at [www.agriculture.com/default.sph/AgNews.class?FNC=sideBarMore](http://www.agriculture.com/default.sph/AgNews.class?FNC=sideBarMore).

Additionally, confinement systems, in contrast to pasture systems, continually confine animals in buildings that require heating, cooling, and constant ventilation, which consume significant amounts of fossil fuels. None of this is required by pasture systems.

CAFOs also use enormous amounts of groundwater, much more than a traditional farms. (See July 2001 comments).

Finally, traditional, sustainable farms use manure and farm equipment and labor more economically because they are not generating massive quantities of waste far in excess of the soils’ and crops’ absorption capacity. CAFOs routinely raise crops like Bermuda grass on their sprayfields in an attempt to absorb their excessive nutrients. This is a tremendous waste of the animal manure and the resources spent on the land application and harvesting of the grass because it is an unusable crop. Moreover, because it is nitrogen rich, it is often unusable and can routinely be seen rotting at the edges of CAFO sprayfields.

**e. CAFOs have devastating impacts on other local industries including fishermen, marinas, veterinarians, feed suppliers, and farm equipment suppliers.**

Because CAFOs typically buy in bulk and under the control of distant corporations that make national purchasing orders with national suppliers, they provide substantially less support to the local economy than farms. Researchers from the University of Minnesota Department of Agricultural and Applied Economics concluded that local farm expenditures made by livestock operations falls sharply as the size of the operation increases. The researchers explained,



Specialty equipment: also must often be accessed from distant merchants. In many cases, even the most basic input, feeder animals and breeding stock, cannot be supplied locally in the quantities and qualities required by large producers. In addition to these potential losses for local businesses, larger livestock operations often find it economical to process their own feed with on-farm equipment. This causes losses for local communities not only in the primary feed ingredients market, but also in antibiotics, protein sources, vitamins, and minerals, all of which lend them to discount purchases from distant dealers.

Chism, J., and Levins, R., *Farm Spending and Local Selling: How do They Match Up?*, Minnesota Agricultural Economist, 676, St. Paul: University of Minnesota Extension Service (Spring 1994). This effect was also documented by a Virginia study that found that smaller, independent hog producers have a 20% greater impact on local retail sales. Thornsby, S., et al., *Economic Impact of a Swine Complex in Southside Virginia*, Virginia Tech University Department of Agriculture and Applied Economics (undated).

CAFOs also require fewer services of locals, such as veterinarians than farms, driving independent farm animal veterinarians to virtual extinction. A February 2001 article in *Successful Farming* magazine quoted David Bristol, Dean of Academic Affairs at the College of Veterinarian Medicine at North Carolina State University, who said: "Animal agricultural consolidation has resulted in large corporate farms that employ a few veterinarians to oversee production of large numbers of animals at numerous farms. These farms do not support independent veterinarians." Freese, B., *Successful Farming*, 39 (February 2001).

Finally, because CAFOs damage surface waters and other natural resources, they have potential to injure water-related economies such as commercial and recreational fishing, bait shops, and marinas.

#### IV. FUNCTIONAL EQUIVALENCY

In part IV.C.1 of the NODA (p. 58597 of the Federal Register), EPA solicits comment on a proposal to exempt states from developing an NPDES permit program for CAFOs if they can demonstrate that their current permitting program is the "functionally equivalent" of an NPDES program. We believe that EPA lacks the legal authority to approve non-NPDES permitting programs for CAFOs.

Several states have developed permitting programs for livestock operations that cover all facilities within the state, regardless of whether those facilities meet the technical definition of a CAFO pursuant to 40 CFR Part 122. Many of these permitting programs, such as those in North Carolina and South Carolina, are comprehensive in scope and cover most of the intensive hog production facilities within the states' borders. While these permitting programs meet many of the technical requirements proposed in EPA's draft regulations, they nevertheless omit several elements that are necessary to be certified as an NPDES permit.

EPA has listed the elements that all NPDES permits must contain and that any "functionally equivalent" program would also have to contain. The NODA states that all

NPDES programs must contain five elements: 1) federal enforceability; 2) public participation; 3) citizen suits; 4) five-year permit terms, and 5) permit conditions and limitations designed to limit discharges. According to the NODA, in order for a state program to be functionally equivalent, it would have to issue permits that meet all of these elements. If a state has adopted a permit program that includes these elements, then it would simply require an administrative change to reclassify the permit as an NPDES permit, at minimal cost to the state. We can see no logical reason for allowing states to opt out of the NPDES program if its permit program does in fact contain all of these essential elements.

With the exception of citizen suits, all of these elements are listed in 40 CFR Part 123 as mandatory components of any delegated state permit program. Based on our experience in working with states and the regulated community to develop permitting programs for livestock operations that comply with the Clean Water Act, it is our assumption that states and the regulated community are interested in the concept of “functional equivalency” as a means by which to divest citizens of the opportunity to file independent enforcement actions for permit violations. We encourage EPA to clarify that although citizen suits need not be a specific part of an NPDES permit, citizen enforcement is nonetheless an essential element of a delegated state’s regulatory program. Section 505 of the Clean Water Act states that in the absence of diligent enforcement by the government, citizens may seek to enforce any effluent limitation and any part of an NPDES permit. 33 U.S.C. § 1365(a), (f). This authority is independent of the NPDES permit requirements and cannot be nullified by a state’s refusal to specifically include it in an NPDES permit. Without an explicit mandate that any “functionally equivalent” permit program specifically include citizen enforcement authority, this important and essential aspect of a valid NPDES permit would be lost and the will of Congress would be subverted. We encourage EPA to remain resolute in its assertion that all of these elements, including citizen enforcement authority, must be present.

## **V. ENVIRONMENTAL MANAGEMENT SYSTEMS**

In Part IV, D. of the NODA, EPA solicits comment on four options for using Environmental Management Systems (EMSs) as a means by which to lessen the permitting requirements for livestock facilities and corporations. We object to these proposals in their entirety. While we recognize the potential benefits to the environment of implementing a process that identifies all sources of pollution – including those beyond the scope of the Clean Water Act – those benefits are inchoate. The realization of those benefits depends on many factors that not only are beyond the control of the regulatory authority, but also are impossible to identify in the certification process. In sum, while a properly developed and implemented EMS can be a useful tool for identifying pollution sources and means by which to both reduce pollution and save money in the process, it is no guarantee for performance or compliance and is an inadequate – and impermissible – substitute for regulations.

An EMS is a protocol for developing a process by which a company reviews its operations and collects data about its environmental impacts and performance from each phase of its operations. It is designed to be a voluntary program that, if properly followed and implemented, can (1) enhance compliance with environmental laws, (2) elevate environmental awareness among the company’s employees and decision-makers, and (3) improve the company’s public relations and profile. As a voluntary program, the very intent of an EMS is at odds with the compulsory nature of a regulatory program. Moreover, the EMS audit is of a

process, not a substantive result. It is not a certification that the company's environmental performance goals have been achieved, or that the company is in or will come into compliance with regulatory requirements.

Beyond the logical flaws of substituting an EMS for a *bona fide* regulatory program, there are practical limitations that argue against this concept. There also are legal limitations that prohibit EPA from pursuing this course of action.

First, nothing in the Clean Water Act authorizes EPA to exempt regulated facilities from certain legal requirements in exchange for their adoption of voluntary measures and protocols. EPA's discretion, while considerable, is not unfettered. *NRDC v. EPA*, 863 F.2d 1420 (9th Cir. 1988). It would be an abuse of discretion to exempt point sources from complying with the terms of an NPDES permit and from associated regulatory oversight. This is especially true where the system EPA proposes for adoption is entirely private. This opt-out program would undermine the Act's public participation requirements and limit the public's ability to participate in all aspects of the permitting, inspection and enforcement program. This high level of participation is mandated by the Act and case law. See *Costle v. Pacific Legal Found.*, 445 U.S. 198, 215 (1980), *reh'g denied*, 446 U.S. 947 (1980); *NRDC v. EPA*, 859 F.2d 156, 175 (D.C. Cir. 1988) (quoting from Environmental Policy Division, Congressional Research Service, Library of Congress, A Legislative History of the Water Pollution Control Act Amendments of 1972, at 249 (Comm. Print 1973)); 33 U.S.C. § 1251(e).

Second, the quality and effectiveness of EMSs varies throughout an industry. There are several reasons for this deviation. Although there is a standard checklist to help guide a company through the development of its EMS, a company need not follow the guidance verbatim. "EMSs vary not only because they arise in different organizational settings but also because firms adhere to different external standards for EMSs – and in some cases, to no external standards at all because such standards are voluntary."<sup>162</sup> The standard that a company adopts will, in large part, determine the stringency and ambitiousness of its environmental goals, the type and extent of monitoring that it employs, the level of information provided to the public, its environmental performance, and the ultimate environmental benefit achieved.<sup>163</sup>

Significantly, even those companies within an industry sector that adopt the same EMS standards will have varied environmental performance because they likely will have different levels of commitment to meeting those standards and because the standards themselves are not specific. For example, an EMS standard typically requires a company to develop a list of targets and objectives. However, the standard does not specify the substantive nature of that target. Consequently, most companies limit their targets and objectives to compliance with the minimum requirements of the current law. This limited objective undermines EPA's premise that an EMS will effectively reduce environmental impacts, such as odor or air deposition, that are not explicitly regulated by law. It also raises the specter of reduced environmental performance, i.e., increased pollution, if the benefit of the EMS is an exemption from the regulatory process.

<sup>162</sup> Coglianese, Cary and Jennifer Nash, "Environmental Management Systems and the New Policy Agenda," p. 4, *Regulating from the Inside* (Resources for the Future 2001).

<sup>163</sup> *Id.* at 5-6.

Another example is that the EMS standard will direct the company to review the environmental aspects and impacts of its operations and identify which are "significant." However, the standard offers no tool by which to evaluate or measure the significance of the impact. Consequently, this determination is entirely subjective and not necessarily related to the significance of the company's impact on the environment, i.e., a significant impact could be limited to a determination of cost to the company. A determination of "significance" is thus unique to each company and variable even within an industry sector. Other examples of this lack of specificity include the failure to specify whom should be trained in the EMS and what those individuals should be taught and the failure to specify who will be responsible for implementation of the EMS.<sup>164</sup>

Third, the degree to which the adoption of an EMS leads to an actual reduction of the company's environmental impacts depends on many factors, such as the corporate culture and attitude towards compliance, the ability of mid-level employees to challenge the way things are done within the company, the quality of the targets and objectives identified during the certification process, and the level of participation of individuals within the surrounding community (i.e., non-employees) in the development of the EMS.<sup>165</sup>

Of these factors, several researchers have identified the corporate culture as the single biggest obstacle to the potential of an EMS to effect positive change. As one researcher notes, "[g]enuine, lasting cultural change is difficult to bring about in any organization." Moreover, EMS standards, including ISO 14001, "do not require firms to make dramatic changes or to abandon old ways of thinking about environmental responsibility... Many firms may use EMSs to simply document current practices, not transform practices."<sup>166</sup> Moreover, research conducted on the National Database on Environmental Management Systems (NDEMS) reveals that the quality of the EMSs developed and adopted by companies is determined by the factors that motivate the company's adoption. The research indicates that very few companies are motivated by concerns about the environmental impacts of their operations; consequently relatively few companies have identified improvements in environmental quality as an objective for the development and implementation of the EMS. The lower the target, the weaker the benefits likely to be achieved by the adoption of the EMS.<sup>167</sup>

Fourth, the registrars, i.e., those who conduct the audit and certify the EMS, are also varied in their qualifications, abilities, and sensitivity to environmental concerns. There is no consistent training for the registrars and no ethical standard to which they must adhere. Because they often act as both auditor and consultant to the companies that employ their services, there is

<sup>164</sup> *Id.* at 6; Gallagher, Deborah Rigling, "International Standards for Environmental Management Systems: A Future Promise for Environmental Policy?", presented at the Twenty-First Annual Research Conference for the Association of Public Policy Analysis (Nov. 4-6, 1999).

<sup>165</sup> *Id.*

<sup>166</sup> Coglianese and Nash, pp. 13-14. *See also* Gallagher.

<sup>167</sup> *See* Gallagher, Deborah Rigling, "Many Shades of Green: How do Internal and External Stakeholders Influence the Types of Environmental Management Systems that Facilities Develop?", presented at the Twenty-Second Annual Research Conference for the Association for Public Policy Analysis and Management (Nov. 2-4, 2000).

potential for conflict of interest. These conflicts of interest would be heightened if the stakes for certification were raised to offer a basis for exemption from government regulatory oversight.

Finally, we were unable to uncover any study that could document measurable improvements in either environmental performance or compliance with environmental laws by virtue of the adoption of an EMS. To the contrary, anecdotal evidence suggests that several companies that are EMS-certified have been cited for violations of environmental laws. One recent example is Murphy-Brown, LLC, a hog-producing subsidiary of Smithfield Foods, whose EMS process EPA commends in the NODA. Murphy-Brown held a press conference in the fall of 2001 advertising that it had developed an EMS that was ISO-14001 certified. Last week, a Murphy-Brown contract hog operation in North Carolina spilled several million gallons of manure and urine into Moores Creek. The lagoon, which the North Carolina Division of Water Quality had cited for freeboard violations in December, had been partially emptied by spraying its contents onto a field that lacked a crop to absorb it.

The studies that have been done conclude that it is difficult to measure the success of the EMS and to quantify the environmental and social benefits and outcomes.<sup>168</sup> Some researchers have cautioned that companies may use EMSs to avoid scrutiny under established regulatory programs.<sup>169</sup> An EMS is not a guarantee for improved performance or increased compliance, and “empirical research is needed to assess the . . . impact of EMSs” *before* taking a dramatic departure from the regulatory process.<sup>170</sup> In the absence of strict government oversight to ensure compliance with water quality standards and build confidence in the program, allowing companies to avoid compliance with regulatory programs could worsen overall environmental performance. We encourage EPA to wait until these studies are completed and demonstrate the potential for measurable improvements in environmental performance before using EMS as a means by which to offer the regulated community flexibility in the regulatory process.

#### IV. CONCLUSION

Imagine a garbage hauler, “Hauler X,” who, in order to escape the costs of landfill tipping fees, begins dumping his garbage into local rivers and spreading it on fields. These disposal methods allow Hauler X and its imitators to lower costs and increase profit margins. Within a few years, Hauler X and a few others who adopt its methods have come to dominate the industry by exploiting their competitive advantage from illegal dumping.

Imagine that as Hauler X’s business model proliferates, so do associated environmental problems.

- Half the population of a large Midwest City is sickened and many people die as the result of pollution from one of these operations.
- A billion fish die in a single fish kill in one southern river and 100,000,000 more die each year.

<sup>168</sup> See Coglianesi and Nash, p. 5.

<sup>169</sup> See *id.* p. 15.

<sup>170</sup> *Id.* p. 15.

- Super bugs immune to antibiotics appear around the dumpsites.
- Aquifers are destroyed and poisoned.
- Rural residents are driven from their lands and rural economies collapse in regions where these haulers locate.
- Industry workers sicken and die from poor working conditions
- Air quality chokes neighbors and drops property values
- Thousands of family owned businesses go bankrupt, unable to compete with Hauler X's pollution based prosperity
- Tourist dollars dry up in coastal regional affected by pollution
- Ironically, hauling fees to the consumer go up as the industry consolidates under this new business model.

Imagine that in response to a growing public outcry against these facilities, federal EPA proposes regulations to control this dangerous industry. However, just prior to promulgating final regulations, EPA reviews an economic analysis by Hauler X showing that Hauler X and its colleagues would make fewer profits if they were forced to obey the law. In response to this "study," EPA issues a NODA changing its regulations to insulate Hauler X type operations from prosecution and to institutionalize their competitive advantage over traditional law abiding haulers.

It is challenging to distinguish between the hypothetical above and EPA's November 12<sup>th</sup> NODA on CAFOs. Indeed, the destructive impacts imposed by CAFOs include all the damages described above and many more.

The destruction by CAFOs is especially dramatic in the hog sector. Pork factory CAFOs emerged twenty years ago. Using the destructive lagoon/sprayfield system, they have since almost completely displaced traditional hog producers and put tens of thousands of family farmers out of pork production. For example, when the industry was invented, there were 27,500 independent hog producers in North Carolina. Today, they are all gone – replaced by 2,200 hog factories, 1,600 owned by a single company, Smithfield!

Instead of using the best available technologies for treating their waste (including established technologies such as spreading manure on crop fields at agronomic rates or secondary treatment which is the conventional treatment for fecal waste), pork CAFOs rely on the lagoon and sprayfield system, which invariably discharges lagoon waste into the environment.

CAFOs did not come to dominate the pork production market by producing pork more efficiently than traditional farms but by avoiding the costs of waste disposal. The lagoon and sprayfield system allows CAFO owners to "externalize" (force the public to pay) these costs by escaping the costs of waste disposal. CAFO owners have been able to quickly consolidate control over American pork production.

CAFOs do not provide a social benefit. The accompanying studies show that:

- Since CAFOs do not require animal husbandry, CAFOs result in net reductions in local jobs.
- CAFOs put family farms out of business and replace them with some of the lowest paying, most dangerous and most unpleasant jobs in America.

- CAFOs do not result in cheaper pork to the consumer. The grocery store price of bacon and pork chops has risen or remained static over the past decade.
- Traditional farmers have, for centuries, produced adequate pork for domestic and export markets without the industrial style pollution associated with CAFOs. In 1915, there were as many hogs on American farms as there are today.
- CAFOs result in severe phosphorus contamination that has caused eutrophication (oxygen death) of thousands of miles of American waterways.
- CAFOs destroy a region's tax base and lower property values.
- CAFO pollution has devastated recreational and commercial fishing on the Neuse and other rivers throughout the country where hog confinement facilities are heavily concentrated and these activities exist. In North Carolina, the negative impact suffered by fishermen and the tourism industry have been equally devastating.
- CAFO pollution promoted the proliferation of dinoflagellates like *Pfiesteria piscicida* in American waterways.
- In 1991, approximately one billion fish died in North Carolina's Neuse River in less than 6 weeks due, in large measure, to nutrient-pollution generated and discharged by hog factories. CAFO pollution continues to kill 100,000 fish in the Neuse each summer. A high percentage of menhaden, at times 100%, as well as many other fish, often sport lesions from *Pfiesteria* and other microscopic predators associated with CAFO pollution.
- CAFO pollution is directly related to serious illness including open sores, respiratory injury and brain damage among fishermen and other water users.
- CAFOs shatter rural communities and their economics.
- The propagation of CAFOs has resulted in tens of thousands of human illness and deaths across North America because of contamination of water supplies. For example, in 2000 in Walkerton, Ontario, 7 people died and 2,300 sickened when *E. coli* and campylobacter poisoning from a CAFO entered the community's water supply. In 1993, cryptosporidium contamination from CAFOs sickened 400,000 people, half of Milwaukee's population, and killed 114.
- Rural residents report being driven from their land, not being able to hang laundry or sit on their porches or plough their fields because of stenches caused by this industry. Property owners have collected millions of dollars in tort suits in recent years because almost all of these facilities are public nuisances.
- CAFOs result in pollution of vast quantities of subsurface waters with deadly nitrogen.
- CAFOs rely more heavily on sub therapeutic antibiotics, which are excreted by their herds and the spread from lagoons and sprayfields onto the American landscapes and into public waterways promoting the probable development of "superbugs" immune to human antibiotics.
- CAFO factories use more growth hormones than traditional farm models and, therefore, discharge greater amounts of excreted hormones into the environment. These chemicals are sometimes potent endocrine disrupters with catastrophic impacts on human health and the environment.

- CAFOs use more disinfectants, biocides, rodenticides, mercaptans, metal feed additives and other toxics than traditional farm models and discharge these materials into the environment.

CAFOs impose other costs on society that defy quantification but should be considered by EPA in balancing other economic factors:

- CAFOs treat tens of millions of animals with unspeakable and unnecessary cruelty.
- These CAFO rules will result in monopoly domination of the American food supply by a few large corporate producers.
- These CAFO rules will encourage monopoly domination of the American landscape by a few large corporate producers to the detriment of American family farmer.
- Despite industry claims to the contrary, meat produced by CAFOs is bland and inferior tasting.
- Genetic engineering practiced by CAFOs robs farm animals of natural vitality and resistance.

Instead of acknowledging the catastrophic social costs of this business model, EPA cites an industry-generated calculation of compliance costs to justify a regulatory roll back and to abandon its regulatory responsibility. If cost of compliance were a reason to roll back or abandon environmental regulation, there is practically no environmental regulation that could withstand this test.

Instead of kowtowing to an industry made powerful by a destructive industrial model that threatens to destroy public assets and existing farming, fishing and tourist industries, EPA should prudently assess the full economic and social costs of this industry to the American people and force CAFOs to obey the same laws that apply to other Americans and industries.

Sincerely,

Nicolette G. Hahn  
Senior Attorney  
Waterkeeper Alliance

Diane Halverson  
Farm Animal Advisor  
Animal Welfare Institute

Michelle Nowlin  
Senior Attorney  
Southern Environmental Law Center

Melanie Sheperdson  
Project Attorney, Clean Water Project  
Natural Resources Defense Council



Ken Midkiff  
 Director, Clean Water Campaign  
 Sierra Club

Joe Rudek  
 Senior Scientist  
 Environmental Defense

Bill Weida  
 Consulting Economist  
 GRACE Factory Farm Project

Martha Noble  
 Senior Policy Analyst  
 Sustainable Agriculture Coalition

## APPENDIX E

### ENVIRONMENT: BUSH'S POLICIES HAVE HURT THE ENVIRONMENT IN TEXAS:

Texas leads the country in a frightening array of toxin- and carcinogen-release statistics, and last year Houston passed Los Angeles for the dubious distinction of America's smoggiest city." [Time, 2/21/00]

LCV President Deb Callahan: "The saying that 'everything is bigger in Texas' unfortunately applies to the state's environmental problems under Governor Bush.... To boil it down, if Bush applied his 'Texas knows best' standard to the rest of the nation, 30 years of environmental progress could be jeopardized in only four years. We believe that Bush represents the biggest threat to the environment of any leading major party presidential candidate." [League of Conservation Voters President Deb Callahan statement, 1/13/00]

Todd Martin, director of the Texas Campaign for the Environment: "The worsening of air pollution is a result of the deliberate and intentional policies of Governor Bush." [Fort Worth Star-Telegram, 10/20/99]

New York Times: "In any assessment of Mr. Bush's environmental record, the unmistakable subtext is the governor's relationship with business and industrial leaders. As an advocate of limited government, Mr. Bush believes that lawsuits and regulations are not the best way to achieve clean air and water... With Mr. Bush leading the Republican presidential race, environmentalists are criticizing his closeness to the industries regulated by his administration in Texas. Campaign records indicate that the companies that helped draft the new pollution law have since donated nearly \$1 million to Mr. Bush's presidential campaign. In addition, environmentalists say the law which allows companies to comply voluntarily with state state permit requirements, is weak and riddled with loopholes. They say other laws and policy changes during Mr. Bush's tenure have had the accumulated effect of weakening state oversight of industry." [New York Times, 11/9/99]

New York Times: "Unlike his father, former President George Bush, who declared himself 'the environmental president,' the younger Mr. Bush has not emphasized environmental issues since he became governor in 1995, despite the fact that Texas ranks as one of the most polluted states in the country." [New York Times, 11/9/99]

Ken Kramer, Director of the Lone Star chapter of the Sierra Club: "It's an environmental policy being run by business and industry and their friends in the regulatory agency. That means there will be very little scrutiny." [New York Times, 11/9/99]

New York Times: "In recent months, the severe ozone problems in Houston and Dallas-Fort Worth have led to increased criticism of Mr. Bush and his appointees by newspaper editorial writers as well as environmentalists. Without question, Texas has endured one of the worst ozone summers on record. So far this year, the state has registered the 24 worst smog readings in the country, including a reading in Houston on Oct. 1 that registered at twice the maximum level allowed by national health standards." [New York Times, 11/9/99]

Washington Post: "But there is statistical evidence that the air in Texas cities is as foul -- and perhaps more so -- than when Bush took power in 1995. The frequency of smog alerts in Houston, Dallas and Austin has risen steeply in the Bush years. Physicians say the smog can harm children, the elderly and asthmatics, and possibly cause long-term lung damage." [Washington Post, 10/15/99]

Washington Post: "Instead of demanding that industry clean up, environmental activists and federal regulators say, Bush's appointees have lightened the regulatory burden on Texas's dirtiest companies. The state environmental agency has all but ended surprise inspections of plants and made it harder for citizens to press complaints about polluters." [Washington Post, 10/15/99]

-----  
*Environment News Service May 19, 2000*  
 Copyright 2000 Financial Times Information  
 All rights reserved  
 Global News Wire  
 Copyright 2000 Environment News Service.  
 Environment News Service

May 19, 2000

WASHINGTON, DC, May 19, 2000 (ENS) - Texas produces more animal waste than any other state and is creating a public health and pollution hazard, concludes a new report released Thursday by the Sierra Club and Consumers Union Southwest Regional Office. Unlike many other livestock producing states, Texas provides little oversight or regulation of these facilities, the report finds.

"Animal Factories: Pollution and Health Threats to Rural Texas," shows that Texas produces about 220 billion pounds of animal wastes each year, and this number is rising. Current estimates show that Texas is producing 280 billion pounds or 40 pounds of manure per Texas resident per

day. "We already knew that Texas leads the nation in toxic air pollution from manufacturing industries, and now we have the dubious honor of holding the number one spot in manure production," said Ken Kramer, director of the Lone Star Chapter of the Sierra Club in Texas.

California holds the number two spot in manure production, but produces only half of the amount - 110 billion pounds of waste - that Texas does.

The report describes how weak state environmental regulations and lax enforcement allow Texas' factory farms to pollute, often for years, before any enforcement action is taken.

The pollution is taking its toll on local waterways - impairing 388 miles of streams and more than 23,000 acres of lakes. Stretches of Wright Patman Lake, Black Bayou, and the Upper North Bosque River are so polluted from industrial livestock waste that they cannot support aquatic life.

Areas of the North Bosque River and Leon River are contaminated to the point that they can no longer support recreation.

Air pollution from factory farms is also taking its toll on human health. Air testing near cattle feedlots shows sporadic, high particulate levels above state and federal standards. Air testing downwind of hog, cattle and chicken farms indicate strong, offensive odors and ammonia levels in excess of the state's health based effects screening level.

The report cites one child living next to a cattle feedlot who had to be airlifted to a nearby hospital because of severe respiratory distress caused by the large amount of fecal dust emitted from the facility. This family and others have moved from their homes rather than live with the constant odor and dust.

"While Texas residents suffer from manure pollution, Governor **George W. Bush** and Texas agencies refuse to keep factory farm waste out of Texas' air and waterways," said Ed Hopkins, senior Washington representative of the Sierra Club. "Other states have addressed environmental concerns and implemented effective solutions. Texas should follow in their footsteps and protect our environment."

Once known primarily as a beef cattle state, Texas is now also home to thriving dairy, chicken, egg, and hog production facilities, ranking among the top 10 or 15 states for each category of production.

"Our public officials have been negligent in their duty to keep factory farm waste out of Texas' air and waterways," said Reggie James, director of the Southwest Regional Office of the Consumers Union which publishes the widely read magazine "Consumer Reports."

"While other states have addressed environmental concerns and implemented effective solutions, Texas has stood still and even regressed," James said.

"Weak existing state environmental regulations and lax enforcement allow Texas' factory farms to pollute, often for years, before any enforcement action is taken," the report states.

According to the state's own environmental agency, the Texas Natural Resources Conservation Commission (TNRCC), just enforcing existing laws would have reduced water pollution from illegally discharged manure by more than one million pounds in 1999.

The report lists several problem areas:

In 1995, Texas regulators streamlined the permit process for confined animal feeding operations (**CAFOs**), limiting the ability of neighboring property owners to contest new permits or major expansions.

TNRCC does not consider the cumulative impact that a new **CAFO** will have when sited near many existing **CAFOs**, nor does it prohibit many of the practices that contribute to odor and water problems.

Lax enforcement of regulations allows **CAFOs** to pollute, sometimes for years, before action is taken.

Texas' recently amended "right to farm" law virtually eliminates the ability of neighbors to bring a nuisance action against most **CAFOs** even to protect their rights to use and enjoy their own property.

"In Texas, we're doing exactly the opposite of what common sense dictates," James said. "For example, while several states have placed moratoria on new **CAFOs**, Texas continues to welcome more facilities - particularly hog producers - to the state."

Other states have begun to make corporate farms jointly liable for pollution at their contract grower sites, but Texas has not done so. Some states have begun addressing air quality issues by applying stricter ambient hydrogen sulfide emissions standards to **CAFOs**, or defining feedlot dust as an emission for purposes of the Federal Clean Air Act. Texas has not.

"Unfortunately, Governor **George W. Bush** and the Texas Natural Resources Conservation Commission have failed to protect Texas citizens from industrial livestock waste," Kramer continued. "While this animal waste pollutes our air and water, Governor Bush and the TNRCC are welcoming factory farms into the state and inviting them to pollute. They should be implementing tougher standards that would combat this pollution problem."

Many states are beginning to take necessary steps to protect the public from air and water pollution. Overwhelmed by the health and environmental threats posed by industrial livestock operations, officials in Mississippi, North Carolina and Oklahoma have placed moratoria on all new operations.

Kansas, Iowa and Georgia have all adopted new rules regarding waste application. Minnesota has applied air standards to safeguard neighbors from health threatening emissions.

Meanwhile, despite overwhelming evidence of the pollution problems Texas is merely studying the issue, allowing hog, chicken and cattle waste to continue polluting the state's air and water.

"It's time for Governor Bush and the TNRCC to take notice of the damage that has been caused

by industrial livestock facilities in Texas," Hopkins said. "They should protect Texas' health and waterways and stop livestock factories."

Testimony of  
Dr. Kenneth Green  
Chief Environmental Scientist  
Reason Public Policy Institute

Hearing on Public Health and Natural Resources:  
A Review of the Implementation of Our Environmental Laws (Part 2).

Before the Senate Committee on Government Affairs  
March 13, 2002

---

Thank you Mr. Chairman. I am Dr. Kenneth Green, an environmental scientist with the Reason Public Policy Institute, a project of the Reason Foundation, a non-profit, non-partisan policy research and education organization headquartered in Los Angeles.

My interest in environmental policy originates quite a ways back, over 27 years, in fact, to the year when I was diagnosed with asthma, living in California's then-ferociously smoggy San Fernando Valley.

Actually, diagnosed isn't really the right word – one day, when running the 600, my lungs simply locked up, and I collapsed at the 600 yard line, my breath sounding like a steam whistle.

From then on, I was one of the kids sentenced to corrective physical education, to sit and play checkers while the other kids were out on the gym field.

The smog in those days was so thick that you didn't need weather forecasters to tell you about it, and its impact on the lungs was strong enough that you didn't need epidemiological studies to observe it.

Growing up with asthma taught me how important it is to have a healthful environment, and how radically environmental health hazards can impact the lives of our children.

But growing up with asthma was not my only formative experience. My father died when I was very young, and after a short stint with an abusive second husband, my mother decided to raise her two sons by herself, out in Los Angeles.

It was a brave decision that started out well at a small sandwich shop she opened with a friend, but they ran straight into the teeth of the 1970s economic recession.

As local building projects were cancelled, the business failed.

As rents inflated, and salaries stagnated, we were bumped from apartment to cheaper apartment.

I went to four different elementary schools in only two years. My mother's health, none too good to begin with, wasn't helped by the constant stress of trying to make it in an economy that was fighting against her.

We managed to stabilize things by the time I was 13, when my Bar Mitzvah brought me back a certain amount of my outdoor liberty.

Though it will no doubt horrify some listeners here today, that was when I took my \$200.00 in Bar Mitzvah money, and bought a small off-road motorcycle – an 80cc *Endura* Yamaha, to be specific.

Camping was the one recreation we could afford, and though I couldn't hike, even in the clean air of the mountains or desert, I could ride, and boy, did I.

That little bike took me places that would make mountain goats nervous. It let me indulge my budding love for nature in ways that would have been impossible to me without the motorized assist.

Was it noisy? You bet. Did it pollute? Yes. Did I destroy nature with it? No, I stayed on established roadways and trails.

It saddens me, now, to think of the kids like me that face no-motorcycle rules that would keep them from ever experiencing our country's scenic beauty, or standing on an inaccessible mountain-top by themselves, wearing the sense of accomplishment that only getting there solo can provide.

My love for things natural took me, ultimately, through my doctorate in environmental science and engineering at UCLA.

My smoggy childhood taught me these lessons that I've never forgotten:

Environmental quality is a vital good.

A sound economy is a vital good.

And the freedom of mobility, and the ability to develop oneself are vital goods.

My subsequent studies taught me, fortunately, that one needn't trade one of these for the others. Indeed, studying environmental science and policy convinced me that choice and economic competition were not the enemies of the environment.

Rather, choice, competition, and technological progress are the wellspring of safety, health, and environmental quality.

I've spent the years since my graduation looking for approaches to environmental problems that embody the wisdom of environmental science – approaches that are holistic, flexible, and cooperative.

Such approaches that tap into local knowledge are not only more likely to produce results, they're less likely to breed angry litigation, the ultimate waste of resources we need to invest in environmental quality.

There is a big debate right now over the Bush Administration's approach to environmental policy.

The arguments from those in opposition seem to embody an old, 1970s, "them versus us" mentality that holds voluntary, cooperative, and locally-derived approaches to solving environmental problems to be inferior to centralized, command-and-control approaches driven from Washington, D.C.

It is not my job to defend the Bush Administration. I'm sure they've got plenty of able-bodied defenders.

It is my job to defend an approach to environmental protection that can move society out of the bitter, recriminating legislative, regulatory, and judicial battles that have turned environmental policy into a battlefield, rather than the shared journey it could and should be.

Now I don't deny that the regulatory approach did considerable good – We have virtually eliminated open dumps, our air is constantly cleaner, we've reduced pollution in our surface waters, which no longer burst into flame, though we have a way to go before we can claim victory in that environmental arena.

But the low-hanging fruit is pretty much plucked. The environmental problems that remain are not the simple ones of the past that might yield to blunt-object regulatory approaches.

Today's problems require all the creativity that can be brought to bear, from the people with the local knowledge of the problem, and the technologies or behaviors that might ameliorate those problems all working together, rather than fighting it out in courtrooms, where only the lawyers benefit.

So let's review a few of the voluntary, cooperative, and locally-derived environmental policy approaches that have gotten results without all the negative baggage that command-and-control regulations historically breed.

First let's consider the air. Under the traditional permit-based approach to cleaning the air, Massachusetts found itself in an uncomfortable position in the 1990s, regulating some 10,000 businesses through 16,000 permits.



Some 4,400 of those permitted facilities were small, mom-and-pop businesses that combined, only emitted about 5 percent of the state's total air pollutant emissions.

So the state looked for a better way. Under the Massachusetts Environmental Results Program, a voluntary approach was tried.

Participating firms agreed to comply with a set of industry-wide whole-facility emission standards developed in cooperation with the Massachusetts Department of Environmental Protection.

Signing on to this voluntary, mutually agreeable standard would gain the small businesses of Massachusetts freedom from the equipment-based permits that kept them mired in a regulatory morass.

And the program worked. In the first few years alone, the program resulted in a 43 percent reduction in fugitive emissions from participating dry cleaners, and a 99 percent reduction in silver discharges by photoprocessors.

A similar program was implemented in New Jersey, which set emission caps on participating firms, but let them achieve those emission targets in whatever ways they felt were most effective and efficient.

For one firm, the old source-by-source permitting processes had generated ten full binders of paperwork. The new system replaced 80 separate permits with a single permit, and could be processed in 90 days, rather than the 18 months required under the old system.

The result? One firm estimated that it reduced 8.5 million pounds of emissions per year because the new system allowed them to modernize their facility without the pain of individual equipment permitting.

Through the modernization, the firm eliminated 107 of 350 pieces of equipment.

Now let's talk about water. In California's Feather River basin in 1985, Pacific Gas and Electric discovered that 250,000 cubic yards of silt was piling up behind its dams.

Since the sedimentation was reducing reservoir capacities and damaging power generation systems, PG&E was about to follow the standard, and legally acceptable approach of dredging the reservoir.

But a concerned history teacher named John Schramel, county supervisor of Plumas County, proposed that the money earmarked for the dredging be used in upstream erosion-abatement programs instead, solving the cause of the sedimentation problem, rather than the symptoms.

Gathering a coalition of anglers, business owners, government officials and environmental activists around his dining room table, Schramel formed the Feather River Alliance as a means to restore some of the local creeks and watersheds.

With funding from PG&E, the group did a trial run on the Red Clover Creek, and not only dramatically reduced watershed erosion and sedimentation, but restored what was a barren range riddled with sagebrush into a wet meadow lush with wildflowers and waist-high grasses, geese, herons, and sandhill cranes.

The Upper Clark Fork River basin in Montana has been utilized for over 100 years for mining and smelting purposes, and the water has steadily degraded.

In fact, 140 miles of the Clark Fork River, from Butte to Milltown, Montana constitute the largest Superfund site in America.

By the mid 1980's, copper and zinc concentrations in the water were high enough to be toxic to fish, and logging operations in the area were causing soil erosion and streambank degradation.

In 1985, environmental groups pleaded with Montana's department of Fish, Wildlife and Parks (DFWP) to initiate conservation efforts to increase instream flows to protect fish and wildlife habitats.

The DFWP agreed, but its plan was not exactly nuanced. The DFWP's conservation effort would have halted all development in the basin, setting aside the water as a nature conservancy.

While area businesses were willing to work to see the river cleaned up, a ban on all water use would simply have run the local businesses needing that water for irrigation right out of business.

Having already spent over \$1 million dollars in court over a previous hearing on the Missouri River, area irrigators wanted to avoid the judicial solution pathway.

Fortunately, a way was found out of the impending conflict. The Northern Lights Institute, a neutral third party stepped in to coordinate a voluntary agreement allowing the basin's water users and managers to develop a basin management plan that would balance the interests of all the users while preventing any new demands to be made on the river's flow.

Now over 10 years old, the Clark Fork project has a council of 21 members that work to not only clean and protect the river, but to balance the interests of the diverse area residents who want to use the river for business and recreation.

It has become popular to pooh-pooh voluntary, cooperative approaches to environmental problem solving, and some groups seem determined to keep environmental policy debates as partisan as possible, though polls show that virtually all Americans are environmentalists, regardless of where they work.

Further, success stories abound showing that such approaches have been embraced by members of both major political parties, industry groups, environmental activists, and informed citizens.

The low-hanging fruit of environmental problems has been plucked in the United States, and the problems that remain are tricky.

Solving them, while retaining the choice and economic competition that are the wellsprings of our safety, health, and environmental quality will require the cooperation of all parties, flexibility on all sides, the tapping of local knowledge, and the avoidance of wasteful litigation.

I urge you, in all the decisions you make, to ask first whether there is a flexible, cooperative, and local approach to environmental problem solving before you whip out the blunt-object of a centralized, one-size-fits-all regulatory approach run from afar.

Not only will we attain the environmental quality we seek that way, we'll preserve the benefits of choice, economic competition, and economic strength that are the foundations of our wellbeing.

I thank you for the opportunity to speak to you today, and I will gladly take your questions.

## Written Statement of Don Newhouse

March 13, 2002

August of 1999 Bema Gold announced they would close the Yarnell Mining Co. office and cease funding for the project due to depressed metal prices. Their request to BLM to continue the permitting process was denied and the Environmental Impact study was halted. Bema Gold has stated publicly that it intends to proceed with the project when a "favorable economic situation exists." The draft environmental statement still exists and this temporary departure could end at any time. In the meantime the residents of Yarnell live with this threat. Because Yarnell is in a two mile valley, there would be no escape from the fumes and emissions from diesel generators, earth moving equipment, and blasting. This is particularly worrisome for those who moved to Yarnell specifically to alleviate the symptoms of respiratory diseases. Two-thousand miles away in Washington D.C., President Bush has rolled back mining regulations that would clear the way for Bema Gold (Yarnell Mining Co.) to devastate our community. The new 3809 rules that went into effect prior to the Bush administration would have given the agencies the option of denying this mine. Comments on the rule change elicited more than 35,000 responses which ran 50 to 1 against the rollback. Who was listening to our comments? Not the administration! The process leading up to the draft environmental statement is interesting to say the least. Yarnell Mining Co. (Bema Gold) was in town several months before they submitted their plan of operation to BLM. They kept a very low profile but rumors were rampant as to their intentions. Most citizens felt this was just another scam to sell stock so denial was the response. In December of 1994 they did submit their mining plan of operation and BLM under the 1872 mining law began the process. There was immediate opposition to the project. The company chose a consulting firm and BLM authorizes that consultant. These "independent" consultants have, on numerous occasions, referred to Yarnell Mining Co. as their clients. How many clients would they have if they did not promote the project? The consultants take precedence over any contrary opinions. Reports by graduate geologists and those experienced in sound levels were completely disregarded. No response. No rebuttal. No mention in the EIS. The mining plan was presented with a total of 1718 acres acquisition. The draft EIS noted only 280 acres to be disturbed plus a fenced area of 294 acres. When BLM was questioned about this discrepancy we were advised it was an issue beyond the scope of the EIS and was dropped from discussion. No explanation rendered even though we asked the question repeatedly. Our reason for the inquiry was predicated on a situation along the Verde River in Arizona. The real estate division of a very large mining co. plans to develop an area they purchased for \$2.50 or \$5.00 an acre for mining. The mining project is long gone and the proposal is the development of a shopping mall, condominium units and a golf course on contaminated tailings waste rock dumps alongside the river. No clean-up, just cover up the pollution. A very lucrative investment. Probably legal under the 1872 mining law but another instance of corporate welfare. We have additional written comments on the draft environmental statement and will have them available to the committee at the hearing March 13.

Implementation of Environmental Law ( overview)

This should be titled " Interior Department vs. Environmental Protection Agency vs. Bureau of Land Management ". These three entities housed under one umbrella are by the nature of their mandates locked in a battle of philosophies. Interior has a constantly shifting vision of policy as political administrations periodically change from conservative to liberal and back like the tides of the sea. This years goals sometimes become next years political liability. Conservation or exploitation...expansion or recession...management or labor..etc. Sustained balance is difficult to achieve. This is especially true when examining the extractive industries, in particular precious metals, distinct from fuel minerals. Mining law enacted in 1872 had a social goal. The American West was seen as the logical fulfillment of the theory of "Manifest Destiny". The nation sought an incentive to promote a migration westward to populate and develop what were regarded as wastelands all the way to the Pacific Ocean. The riches of King Midas awaited those willing to make the trip. Who could reject the offer of land and all the resources beneath the surface free? The West expanded quickly and for 30 years mining boomed only to be followed by the inevitable bust. A small percentage of these pioneers were even mildly successful. The mines and towns were abandoned in favor of farming or cattle ranching. The destruction and pollution that mining had caused was ignored. Reclamation was unheard of for decades. The rivers and streams still harbor the toxins from historic mining. The nations plan was a success, the West is now heavily populated but at what cost? Remedial efforts have consumed billions of dollars and will continue into the unforeseeable future. About 7 decades later the nation realized that the environment was in jeopardy and thus was born the EPA. As it's name suggests environmental protection is the primary goal envisioned by Congress. The EPA has an almost impossible task in preventing the degradation of the environment. It has evolved into an agency determining only the degree of insult to our citizens, the water they drink, the air they breathe and the landscape they occupy. It is hamstrung in mining regulation by the 1872 Mining Law. This obsolete relic contains so many exclusions and exemptions that any meaningful environmental regulation is rendered impotent. If mining is still lawfully considered the "Highest and best use" of public lands a situation exists placing the mandate of the EPA in direct opposition to the law. The law of the land supercedes even the most modest attempts toward improved environmental regulation. The BLM is the real estate arm of the Interior Department. It's function is to manage the millions of acres of public lands in a fiscally advantageous manner. It has 3 basic sources of revenue. Ranching and Farming, Mining, and Forestry. Keeping the land in it's natural state is frowned upon as that generates no income. Intense pressures are generated by a wide variety of special interests. Developers, both housing and commercial, farm and ranching ventures, but by far the most politically active and financially powerful are the domestic and multi-national industrial mining corporations. Foreign mining conglomerates dominate the precious metals activity in the West taking full advantage of our laws. Sacrificial wholly owned companies are formed to absolve the parent corporation from liability. The three agencies are staffed by many intelligent and dedicated people that face an almost insurmountable task. The focus of good government is confused by courses of action that are diametrically opposed through no fault of their own. Results will be marginal when conflict exists between mandate and bad law.

**TESTIMONY OF HOPE SIECK REPRESENTING THE  
GREATER YELLOWSTONE COALITION BEFORE THE  
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS REGARDING  
WINTER USE MANAGEMENT IN YELLOWSTONE AND GRAND TETON  
NATIONAL PARKS  
MARCH 13, 2002**

---

Good morning Chairman Lieberman and members of the committee. My name is Hope Sieck. I am the Associate Program Director for the Greater Yellowstone Coalition, based in Bozeman, Montana. On behalf of our members, staff and board, thank you for inviting me here today. And Mr. Chairman, thank you for adding your name to a letter to the President last year asking for protection of Yellowstone National Park from snowmobiles. The Greater Yellowstone Coalition is a regional organization founded in 1983 to protect Yellowstone National Park and the lands that surround it. The Greater Yellowstone Coalition (GYC) has been significantly and actively involved in Yellowstone, Grand Teton and Rockefeller Parkway winter use issues since the organization's inception in 1983. GYC has more than 10,000 members nationwide. We also have over 80 local, regional and national member groups and 210 business members.

I am pleased to be here, two weeks after the 130<sup>th</sup> birthday of Yellowstone National Park, to share GYC's thoughts and concerns about winter use management in Yellowstone and Grand Teton National Parks. The future of these magnificent parks is at a crossroads: the choice before the Administration is whether to uphold protections of Yellowstone and Grand Teton from snowmobile use or to allow degradation of these parks to benefit of the snowmobile industry. The administration's ultimate choice will have a profound and far-reaching impact on these and all national parks.

Winter in Yellowstone is a magical time. The park's vast expanse is blanketed in snow and ice. Geysers and hot springs send plumes of steam into the air and shroud trees and wildlife alike in a coat of frost. Bison and elk move slowly along river valleys in search of food; bears hibernate; coyotes and wolves hunt; trumpeter swans and bald eagles depend upon geothermally influenced rivers—the Madison, Firehole and Yellowstone, that stay free of ice. Temperatures on Yellowstone's high plateau are often subzero and nature always takes a toll. Winter is a critical time for wildlife—survival is not guaranteed and existence is at its most difficult. Winter in Yellowstone presents a unique opportunity in our urbanizing world to be transported back to a time of quiet, filled with wildlife and the splendor of nature.

Congress has always recognized national parks as a unique national resource requiring special protection. The laws designed to protect national parks provide the greatest opportunity this country has to preserve lands, wildlife, and the qualities of peace, quiet, openness and wildness which are becoming all too rare in this country. Yellowstone is indeed a rare place.

The last wild bison found refuge in the park at the turn of the century. Today, Yellowstone is the only place in the lower 48 states where all of the native animals present before the establishment of this country still survive. Wolves, bison, bears, elk, bald eagles and other important species thrive alongside remarkable geothermal wonders, majestic mountains, pristine lakes and pure rivers.

It is these irreplaceable and rare attributes that Congress sought to protect when it created Yellowstone National Park in 1872. As the world's first national park, Yellowstone gave birth to the national park idea, a wholly American invention which has now spread throughout the world. Yellowstone's spirit inspired more than 100 countries to create 1200 national parks and conservation preserves. Today, the very foundation upon which Yellowstone and all other parks are built is in question.

130 years ago, as the Senate was debating the formation of Yellowstone National Park as the world's first national park, Senator George Vest of Missouri spoke out, asking his colleagues to imagine a day when the United States would have a hundred million or 150 million people. When that day arrived, Senator Vest told his colleagues, Yellowstone would serve as "a great breathing place for the national lungs." (Freeman Tilden, *The National Parks: what they mean to you and me*. Alfred A. Knopf, New York, 1951.)

Sadly, today instead of serving as a great breathing place for the national lungs, Yellowstone's own lungs are clogged. For half a decade now, fresh air has been pumped into ranger booths at the West Entrance to prevent headaches, nausea, burning eyes and other health problems caused by snowmobile exhaust. However, this effort did not prove enough to protect rangers from carbon monoxide, formaldehyde, benzene and other harmful air pollutants emitted by snowmobiles. This winter, for the first time in National Park history, rangers wore respirators to allow them to endure a work day in Yellowstone without ill effects.

Yellowstone in winter is a far different place than Congress envisioned when it set aside Yellowstone 130 years ago. Instead of embarking on a path to recovery, delays by the Administration have put off protection of Yellowstone and placed employees and visitors at risk from polluted air, opened wildlife up to harassment by snowmobiles, and marred the serenity and beauty of Yellowstone. New efforts aimed at reducing the impacts of snowmobile use in Yellowstone are costing taxpayers more than a quarter of a million dollars.

Yet even with the changes, hundreds of snowmobilers have been cited and warned this season for ignoring speed limits and other park rules established to protect public safety and Yellowstone's wildlife. Snowmobiles pushed park wildlife from its natural habitat and visitors found it difficult to hear the hiss and splash of Old Faithful geyser and other natural sounds within the park because of a nearly constant whine and roar from snowmobile engines.

Instead of a peaceful, quiet winter wonderland, visitors today are welcomed by extreme noise, choking pollution, noxious odors and rangers in respirators. This is far from the

Yellowstone that Congress envisioned 130 years ago and far from the Yellowstone that the American public expects and deserves.

Now, despite a protective decision by the Park Service to phase out snowmobiles from Yellowstone and Grand Teton National Parks because of the impairment to park resources and values the machines cause, a new Park Service planning process is underway. The process is costing taxpayers \$2.4 million and has delayed protection of Yellowstone by sixteen months already. However, recent release of the draft Supplemental EIS reveals no information provided in the new process would in any way alter the Park Service's decision. All of the "new" information was analyzed by the Park Service previously and found to support the original decision to protect the parks from snowmobile damage. The Bush administration's proposed reversal of the important and long overdue November 2000 Park Service decision to remove snowmobiles from Yellowstone and Grand Teton National Parks signals an attempt to contravene the very meaning and mission of what national parks mean under law and to the American public.

## **I. Snowmobiles: Impairing National Park Resources**

### **A. Park Service Recognizes Problem of Snowmobile Use**

Beginning more than a decade ago, the Park Service began to study the impacts of snowmobile use on park wildlife, air quality, natural quiet, human health, and visitor experience. The agency's Environmental Impact Statement's purpose and need outlined the problems caused by snowmobile use, including impacts to air quality, natural quiet, visitor experience, water quality, safety, health and wildlife.

Through comprehensive analysis during a three year NEPA process, the Park Service determined that snowmobile use in Yellowstone, Grand Teton, and John D. Rockefeller Jr. Memorial Parkway is damaging:

*"...wildlife, air quality, and natural soundscapes and natural odors. Further, it adversely impacts the enjoyment of those values and resources by other visitors. The impact on people who may visit the three parks once or twice in a lifetime, and who seek the resources and values for which the parks were created, may be adversely and irretrievably affected."* (NPS Record of Decision, November 2000).

The Park Service found a solution to the problems caused by snowmobile use in the parks in an already existing mode of winter transportation: snowcoaches, mass transit vehicles, much like vans. The decision to phase out snowmobiles outlined a plan to increase the number of snowcoaches so that the same number of winter visitors could continue to enjoy Yellowstone, with far less impact.

A snowcoach transit system "would reduce adverse impacts on park resources and values, better provide for public safety, and provide for public enjoyment of the parks in winter." (Final Rule, January 2001). The Park Service moved to make the snowcoach system a reality by outlining an implementation plan and a three year phase in period in the Record of Decision and final rule.



## **B. Park Service Study Reveals Numerous Impacts to Park Resources and Values By Snowmobiles**

The Park Service studies revealed a suite of impacts on park resources and values caused by snowmobile use. Impacts to wildlife, air quality, natural quiet and visitor experience occurred, even when technological improvements to snowmobiles were analyzed. The Environmental Protection Agency reviewed the Park Service's analysis and findings and wrote:

*"We would like to point out that this DEIS includes among the most thorough and substantial science base that we have seen supporting a NEPA document."*

EPA concluded that the Park Service demonstrated that snowmobile use in the parks causes "significant environmental and human health impacts."

### 1. Impacts to Wildlife

Images of bison and elk running up steep slopes and struggling through deep snow to escape snowmobiles demonstrates the problem which led to a Park Service finding of impairment caused by snowmobiles on park wildlife. "Even with technical advances in snowmobiles, the impacts of snowmobile use on wildlife, especially ungulates using groomed routes, constitutes disturbance and harassment at a time when individual animals are particularly challenged for survival." (Record of Decision). National parks were designed to serve as refuges for wildlife, but hundreds of such incidents occur each winter, many recorded on videotape.

Eighteen Ph.D. scientists, including many of North America's foremost experts in wildlife biology and ecology, recently concluded that the Park Service relied upon sound science in its decision to phase out snowmobile use from Yellowstone and Grand Teton national parks. In October, 2001, the scientists sent a letter to Interior Gale Secretary Norton cautioning her that: "ignoring this information would not be consistent with the original vision intended to keep our national parks unimpaired for future generations."

*Based on the scientific evidence, it is our professional opinion that snowmobiling results in significant direct, indirect, and cumulative impacts on wildlife, their behavior and environment. As documented in the scientific literature and the Park Service's EIS and ROD, impacts to wildlife include harassment, displacement from important or critical habitats, disruption of feeding activities, alteration in habitat use and distribution patterns, and depletion of critical energy supplies in individual animals potentially resulting in increased mortality or reduced productivity. Such impacts are magnified in the severe winter climate of the Greater Yellowstone Ecosystem where energy is a critical factor in determining survival.*

*Given the nature preservation mandate of the NPS, the harassment, degradation, and disruption of park wildlife attributable to snowmobiling clearly violate the NPS impairment standard. Ignoring this information would not be consistent with the original vision intended to keep our national parks unimpaired for future generations. (Letter to Secretary Gale Norton, October, 2001)*

### 2. Impacts to Air Quality

Although each year in Yellowstone, one million automobiles outnumber the 75,000 snowmobiles sixteen to one, snowmobiles contribute up to 68 percent of the carbon monoxide pollution and as much as 90 percent of the hydrocarbon pollution in the park. For six years, the Park Service has pumped fresh air into entrance booths to alleviate employee health problems caused by snowmobile exhaust. Visitors, too, must breathe the same polluted air, and many complain of the same symptoms as employees. Headaches, nausea, burning eyes, and more: the symptoms of carbon monoxide poisoning are found in park employees subjected to high levels of exhaust. This year, Park Service employees were outfitted with respirators to protect them from high levels of carbon monoxide, benzene and formaldehyde. An Occupation Safety and Health Administration inspection in February 2000 found higher than recommended levels of these pollutants. The Environmental Protection Agency noted that human health issues relating to air quality was a concern that needed to be addressed by the Park Service in its decision.

### 3. Impacts to Natural Quiet

Snowmobile use in Yellowstone National Park undermines visitors' opportunities to hear natural sounds and quiet as part of their park experience. Snowmobiles emit significant amounts of noise at higher frequencies than automobiles. This combination of volume and pitch makes snowmobile noise quantitatively and qualitatively different from other vehicle use in Yellowstone National Park.

The Greater Yellowstone Coalition conducted a percent-time audible study of snowmobile noise in Yellowstone National Park this winter. Percent-time audible data was collected at 13 sites in the Lower, Midway and Upper Geyser Basins of Yellowstone National Park between Madison Junction and Old Faithful. Eleven of the sites had snowmobile noise present more than 70% of the time, and eight of those were impacted by snowmobile noise 90% or more of the time.

Results of Greater Yellowstone Coalition Percent-Time Audible Study. Yellowstone National Park, February 19-20, 2000.

<u>Site</u>	<u>Percent of Time with Audible Snowmobile Noise</u>
Old Faithful	100%
Mystic Falls Trail	98
Grand Prismatic Spring	98
Solitary Geyser	97
Morning Glory Pool	97
Nez Perce Creek	92
Fairy Falls	90

Great Fountain Geyser	90
Boulder Hot Springs	88
Beehive Geyser	76
Fern Cascades	72
Goose Lake	41
Lone Star Geyser	0

NPS Management Policies of 2001 direct that “The Service will restore degraded soundscapes to the natural condition wherever possible, and will protect natural soundscapes from degradation due to noise (undesirable human-caused sound). “The Service will take action to prevent or minimize all noise that, through frequency, magnitude or duration, adversely affects the natural soundscape or other park resources or values, or that exceeds levels that have been identified as being acceptable to, or appropriate for, visitor use at the sites being monitored.” (NPS Management Policies at 4.9)

#### 4. Impacts to Visitor Experience

For the visitor able to come to Yellowstone in winter only once in a lifetime, the ability to breathe pure air, hear natural sounds and view wildlife in its natural state is of the utmost importance. “Winter visitor surveys indicate that the most important factors for visitor enjoyment in the parks are opportunities to view scenery and wildlife, the safe behavior of others, and opportunities to experience clean air and solitude.” (Final Rule). The Park Service found that snowmobile adversely impacts all of these components of visitor experience, detracting from the intent of Park Service mission and policies.

## **II. An Accessible Solution: Snowcoaches**

### **A. Snowcoaches Reduce Impacts to Park Resources and Values**

The final rule laid out a three-year phase out of snowmobiles from Yellowstone and Grand Teton National Parks (and the John D. Rockefeller Jr. Memorial Parkway). The plan, “overall, will shift oversnow motorized use of the parks from snowmobile use to snowcoach use, to allow continued winter use of the parks while eliminating the impacts on park resources and values from snowmobile use.” (Final Rule).

A system of snowcoaches will provide access to the same, if not greater, number of winter visitors. In no way is public access being eroded, rather a recreational pursuit is being eliminated due to its high impacts. A less damaging mode of transportation will be substituted to allow visitor access to the parks.

*Snowcoaches have lower impacts on park resources and values than snowmobiles...snowcoaches, operated by professional, trained drivers operating under NPS concession contracts or permits, are much less likely to be operated in a way that disturbs wildlife than snowmobiles. As a result, expanding the use of snowcoaches...will make it possible to accommodate large numbers of winter*

*visitors to the parks, while still preserving an enjoyable experience for most visitors and avoiding substantial adverse impacts on park resources. (Final Rule).*

Snowcoach transportation--which minimizes noise, air pollution, and trip frequency while maximizing educational opportunities--makes the most sense for Yellowstone in winter. These vehicles hold 10-15 people and provide opportunities for on-board education by drivers, as well as sharing among families, friends and fellow visitors. Snowcoach routes and timing can be synchronized like municipal transit systems to allow individual trip planning and quiet periods for exploring between stops.

Establishment of a snowcoach system in Yellowstone and Grand Teton will reduce overall vehicles in the parks up to 90%, result in fewer vehicle miles traveled and consequently minimize impacts on wildlife. Snowcoach access also will provide better opportunities for certain segments of society that currently visit the park in winter in very low numbers, such as women, children and senior citizens.

#### **B. Park Service Provides Good Models for Snowcoach System In Other Parks and In Yellowstone Record of Decision and Rule**

Seventy-four national parks have successfully implemented some form of mass-transit program. According to NPS staff in Denali, Zion and Acadia National Parks, one impact of these programs is that visitors spend more time shopping and dining in gateway communities than they did in the past as they wait for scheduled bus service. The NPS should be a leader in promoting clean, quiet and affordable modes of group transportation which are protective of the natural qualities of the parks. Yellowstone in winter is a natural place to look next for expansion of the alternative transportation program already taking place in the Park Service.

The Park Service outlined the components of a successful snowcoach system in the Record of Decision and Final Rule. In the original, November 2000 decision, the Park Service outlined an implementation plan to ensure that the parks would be best protected and that economic interests and local communities would be successful partners with NPS under new winter management. The SEIS did not place on hold the Record of Decision or Rule which outlined a transition from snowmobiles to a snowcoach transportation system. Therefore, the Park Service should be moving forward with implementation of steps necessary to protect the parks and the local communities. Some transition measures outlined in the Record of Decision (November, 2000) include:

- Unless otherwise noted, the parks will implement all actions the winter following the Record of Decision (ROD) for the winter use plans and EIS. (p.2)
- NPS will develop a detailed snowcoach implementation plan in coordination with gateway communities, concessioners and winter permittees.
- NPS will coordinate with gateway communities, concessioners and winter permittees and state tourism program resources on a new marketing strategy designed to facilitate winter visitation by snowcoach.”

- In the winter of 2000-2003, existing commercial snowcoach operators will be encouraged to increase their fleet size, and snowmobile and other new operators will be encouraged to purchase or lease coaches and reduce snowmobile numbers.

### III. A Good Decision Based in Law, Science and Public Process

#### A. The Yellowstone Rule Reflects Park Service Legal Obligations to Prevent Impairment

##### 1. The Highest Standard: The Organic Act of 1916

The National Parks are intended to preserve the nation's treasures in perpetuity. This can only be accomplished by preserving and maintaining each park's special features and the ability of citizens to enjoy those features. When it created the National Park Service in 1916, Congress gave the agency a clear mission:

*"...to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."* (NPS Organic Act)

Congress reaffirmed and further clarified the Park Service mission in the 1978 Redwood Act, stating:

*"...the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park system and shall not be exercised in derogation of the values and purposes for which these various areas have been established...."*

The fundamental purpose of the National Park Service is to "conserve park resources and values. The fundamental purpose of parks also includes "enjoyment" of park resources. This enjoyment is meant broadly to include people who visit parks as well as those who derive benefit from simply knowing that our national parks exist. The courts have time and again interpreted the Organic Act as holding conservation of park resources preeminent over enjoyment of them

##### 2. Park Management Must Put Protection First

Congress provided the National Park Service with the discretion to manage national parks, but limited that discretion by the requirements of the Organic Act that park resources and values be left "unimpaired" for future generations.

This duty to avoid impairment establishes the primary responsibility of the National Park Service. "The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park." (NPS Management Policies at 1.4.4). The Park Service has an affirmative duty to prevent degradation of park resources and values. "NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values." (NPS Management Policies at 1.4.3)

Impairment is an impact which affects a resource or value that is "necessary to fulfill specific purposes" identified in formation of the park or "key to the natural and cultural

integrity of the park or to opportunities for enjoyment of the park”. (NPS Management Policies at 1.4.5). The “park resources and values” that fall under the impairment standard include scenery, wildlife, natural soundscapes and smell, and all natural process and features. Also included is “the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system.” (NPS Management Policies at 1.4.6).

### 3. Snowmobiles Cause Impairment. Require Corrective Action

The Park Service found that snowmobile use in Yellowstone and Grand Teton National Parks impaired park resources and values. This finding led the Park Service to act to remove the impairment caused by snowmobile use and put the parks on a path to restoration. In November 2000, the Park Service made the final decision to phase out snowmobiles from Yellowstone and Grand Teton National Parks.

*The use of snowmobiles and snowplanes at present levels harms the integrity of the resources and values of these three parks, and so constitutes an impairment of the resources, which is not permissible under the NPS Organic Act. In YNP, the impairment is the result of the impacts from snowmobile use on air quality, wildlife, the natural soundscape, and opportunities for enjoyment of the park by visitors. In GTNP, the impairment is the result of the impacts from snowmobile and snowplane use on the natural soundscape and opportunities for enjoyment of the park by visitors. (Record of Decision, November 2000)*

In Yellowstone and Grand Teton National Parks, the highest standard of protection, Organic Act prohibition on impairment, is violated by snowmobile use. To correct the impairment, NPS decided to remove the cause of impairment and ensure that park values and resources received the highest protection.

That finding of impairment, combined with the finding that snowmobile use in Yellowstone and Grand Teton National Parks also conflicted with the directions given by Executive Orders 11644 and 11989, the Clean Air Act and NPS Management Policies, led the Park Service to its final decision.

### **B. Additional Layers of Protection: Executive Orders, NPS Policies on Wildlife, Air Quality, Natural Quiet and Visitor Experience, and the Clean Air Act**

#### 1. Executive Orders 11644 and 11989

The requirements of the Organic Act, Executive Orders, and the Park Service Management Policies all support the decision to phase-out snowmobiles. In the 1970s, with off-road vehicles causing increasing damage to public lands across the nation, Presidents Nixon and Carter signed Executive Orders 11644 and 11989 (respectively). The first required that the Park Service:

*ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of these lands...*

The second order directed that when the Park Service determines,

*that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands[it shall] immediately close such areas or trails to the type of off-road vehicle causing such effects...(emphasis added)*

Snowmobile use in Yellowstone and Grand Teton National Parks violates the Executive Orders by clearly causing “adverse effects”. In order to comply with the Executive Orders, NPS must uphold the decision to phase out snowmobiles

## 2. NPS Regulations

### *A. Wildlife*

According to NPS regulations, snowmobiles are prohibited except where designated and "only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and *will not disturb wildlife or damage park resources*" (36 CFR 2.18(c)) (emphasis added).

### *B. Natural Quiet*

The opportunity to experience natural sounds and silence is rare in our modernized world; one of the last refuges to experience natural sounds is in our national parks. Current use of snowmobiles in the parks undermines the opportunity to have natural quiet as a part of the national park experience. Snowmobiles emit extreme levels of noise at higher frequencies than automobiles. This combination makes snowmobile noise quantitatively and qualitatively different from other vehicle use in the parks. The Park Service must do everything it can to reduce noise levels in parks to prevent the intrusion of urban noises into park lands.

“The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks. Natural soundscapes exist in the absence of human-cause sound.” Natural soundscapes are comprised of animal sounds and sounds of the physical environment. In Yellowstone, the hiss and splash of a geyser, the bubbling of a mudpot and the grunt of a bison are an irreplaceable part of the park experience. Sadly, today the natural sounds of Yellowstone are too often drowned out by the roar and whine of snowmobiles.

### *C. Visitor Experience*

NPS Management Policies clarify the affirmative duty of the Park Service to protect resources and ensure the highest quality experience for park visitors. (NPS Management Policies at 8.2) The policies state that the Park Service will provide appropriate, high quality opportunities for visitors to enjoy parks. The policies also make clear that many forms of recreation enjoyed by the public do not require a national park setting and, in fact, can be accomplished more appropriately elsewhere.

As a result, the policies require the Park Service:

*To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that:*

- *Are appropriate to the purposes for which the park was established; Are inspirational, educational, or healthful and otherwise appropriate to the park environment;*
- *Will foster an understanding of, and appreciation for, park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and*
- *Can be sustained without causing unacceptable impacts to park resources or values. (NPS Management Policies at 8.2).*

Additionally, the Park Service is directed to “[p]rovide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks.” If some types of recreation are not suited for a national park setting, parks can “[d]efer to local, state, and other federal agencies; private industry; and non-governmental organizations to meet the broader spectrum of recreational needs and demands.” (NPS Management Policies at 8.2).

### 3. NPS Air Quality Policies and the Clean Air Act

Requirements under the Clean Air Act led to the Park Service’s decision to phase-out snowmobiles from Yellowstone. Yellowstone and Grand Teton’s exceptional air quality is essential to the Parks’ mission and mandates, and is threatened by snowmobile use.

Through the Clean Air Act, Congress required special protections for lands where air is clear and pure, designated as Class I airsheds. Yellowstone and Grand Teton are both Class 1 airsheds. The Clean Air Act states that the National Park Service, as a federal land manager, has “an affirmative responsibility to protect air quality related values, including visibility, from the adverse effects of air pollution in areas that are designated as “Class I”.

There are 48 Class I areas that are part of the National Park System; their management is proscribed by Prevention of Significant Deterioration program (PSD). Congress intended that these areas be afforded the greatest degree of air quality protection and specified that only very small amounts of air quality deterioration from new or modified major stationary sources be permitted.

One purpose of this Prevention of Significant Deterioration (PSD) program is “to preserve, protect, and enhance [emphasis added] the air quality in national parks.” (42 U.S.C. §7401 *et seq.*) “These policies require managers to assume an aggressive role in promoting and pursuing measures to safeguard air quality and related values from the adverse impacts of air pollution” (Flores and Maniero, 1999).

Violations of Clean Air Act standards place a stronger onus on park managers to restore air quality. National Park Service areas that do not meet the National Ambient Air Quality Standards (NAAQS) or whose resources are already being adversely affected by current ambient levels require a greater degree of consideration and scrutiny by NPS managers. Areas that do not meet the NAAQS for any pollutant (of the six criteria



pollutants) are designated as non-attainment areas. Section 176 of the Clean Air Act states:

*No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an [state] implementation plan... [T]he assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency or instrumentality.* (42 U.S.C. 7401 §176)

The NPS is mandated through both its own 1916 Organic Act (16 U.S.C. §1), the Clean Air Act (42 U.S.C. §7401 et seq) and Executive Order 12088, as amended, to protect air quality in National Parks. “Accordingly, the Service will seek to perpetuate the best possible air quality in parks” because of its critical importance to “preserve natural resources and systems” and “sustain visitor enjoyment, human health, and scenic vistas”. “The Service will assume an aggressive role in promoting and pursuing measure to protect values from the adverse impact of air pollution. In cases of doubt as to the impacts of existing or potential air pollution on park resources, the Service will err on the side of protecting air quality and related values for future generations.” (NPS Management Policies of 2001 at 4.7.1)

The Park Service’s 2001 decision to phase-out snowmobiles was required to comply with the Clean Air Act. That decision ensured that air quality in Yellowstone and Grand Teton National Parks would meet and go beyond existing legal standards. A phase out of snowmobiles is the only way for the parks to meet the affirmative requirements of Class 1 airshed standards.

### **C. Yellowstone Rule Based on Comprehensive and Inclusive Public Process**

The press release from the Secretary of Interior’s Office announcing the SEIS refers to the decision to phase out snowmobiles as “rushed rulemaking”. In reality, the Park Service process which led to a November 2000 decision to phase out snowmobiles included more than 10 years of scientific study, 3 years of NEPA analysis and public comment, 22 public meetings and hearings (17 of which were in local, gateway communities in the Greater Yellowstone Area

The public opportunity to engage in the winter use planning for YNP and GTNP was both extensive and comprehensive. In July, 1999 – after ten years of study and research – the National Park Service released its draft EIS for public consideration and comment. Since then there have been four separate opportunities for the public to comment, including 22 hearings in the region and across the nation. Locally, public hearings were held in towns such as West Yellowstone, Livingston, Cody, Jackson, and Idaho Falls. The public clearly welcomed the opportunity to comment on the Park Service’s various proposals to protect America’s oldest national park. The agency received over 70,000 individual comments.

At each stage of the input process, support for phasing out snowmobile use in the parks became more emphatic. Reacting to the DEIS, the greatest number of citizens who commented favored an end to in-park snowmobiling. This perspective grew to a two-to-one majority in the fall of 2000 when the public commented on the FEIS – and then to a four-to-one majority favoring a snowmobile phase out in early 2001 as the final rule went into the Federal Register. More recently, under the new Administration (in October 2001) the public sent the same clear message: 82 percent commented in favor of the Park Service decision to phase out snowmobile use in the parks over a three-year period.

**D. Phase Out of Snowmobiles Favored by Significant Portion of Local Economies, Protection of Park Encouraged as Best Business Plan**

Contrary to what the snowmobile industry has claimed, the residents of West Yellowstone, Montana, the most invested snowmobile economy in the region, are not uniformly in favor of continued snowmobiling in the parks. Over 150 business owners, elected officials, and residents – nearly a third of the town's voting population – signed a petition asking the Park Service and Congress to protect Yellowstone National Park.

Over the past eighteen months two town councilmen have asked Congress for the opportunity to convey that many of their constituents believe vigorous protection of Yellowstone is essential to their town's future economic health.

The economic relationship is not as strong as the snowmobile industry claims. Visitor spending in West Yellowstone during the winter season have increased each year since 1993 while the numbers of visitors to Yellowstone National Park through the west entrance have declined slightly during the same period. Graph A (attached) illustrates this point. According to the Final EIS, the average West Yellowstone visitor eager to snowmobile spends just one day in the park and far more time on the hundreds of miles of snowmobile trails outside Yellowstone. (FEIS p. 402)

Past changes within Yellowstone National Park have affected the economy of West Yellowstone to different degrees and present good models for success with the current situation.

- **Fires of 1988:** Many predicted disastrous economic consequences for gateway communities following the wildfires of 1988 and park visitation declined approximately 15 percent that year. By 1989, thanks to a creative, collaborative and well-funded advertising campaign, visitation had recovered to pre-fire levels and expenditures increased 6.3 percent. By 1990, expenditures had increased 13.1 percent over previous years (city of West Yellowstone, resort tax payments). A local paper reported, "*Nearly all agree...that the summer of 1990 was about the busiest ever for Wyoming's tourism industry...especially in the northwest (Yellowstone and Grand Teton National Parks) numbers were way up for almost every segment of the tourism sector.*" (Billings Gazette, 10/21/90)
- **Snowmachine World Expo:** Each year West Yellowstone hosts the Snowmachine World Expo late in the winter season. Three years ago Park managers announced the need for an early end to the winter season, meaning that Expo visitors could

no longer access the Park. A number of local businesses expressed concern that the early closure would reduce attendance at the Expo, and hurt the local economy. In fact, attendance at the Expo has increased each year since. Closing the Park's winter season appeared to have no impact on the number of visitors or on local businesses.

- ***Early End to Park Snowmobiling in 2001:*** At the end of the 2000-01 winter season, an early thaw forced the Park Service to close the park to snowmobile use. Visitors were still able to ride into the park on busses and transfer to snowcoaches. Park managers reported that the demand for bus seats exceeded the supply. Rather than canceling their vacation plans, Park visitors overwhelmed the available bus service in order to see Yellowstone. And the early closure of the Park to snowmobiles did not harm the local economy. In fact, visitor spending in West Yellowstone during March 2001 increased 63% over spending in March 2000. This point is shown in graph B (attached)

Over 150 West Yellowstone business people, elected officials and residents—nearly a third of the town's voting population signed the petition "A Call for a Healthy Economy and a Healthy Park) asking the Park Service and Congress to:

- Protect Yellowstone and thereby ensure that visitors continue to visit West Yellowstone and support the local economy'
- Support the community of West Yellowstone as it adjusts, diversifies and rises to meet the challenges created by changes in park management.

Gibson Bailey, newly elected member of the West Yellowstone Town Council, wrote:

*"We have a great opportunity to create a new economic future for West Yellowstone that is balanced. Yellowstone National Park is the ultimate tourist draw. We will never suffer for lack of visitors. We will suffer, however, if we fail to move forward in creating a future with a balanced, diversified economy that makes protection of Yellowstone National Park a priority."*

Jackie Matthews, business owner in West Yellowstone and president of West Yellowstone Citizens for a Healthy Park, stated that: *"...phasing out snowmobiles from Yellowstone National Park will not only be good for the park's environment but will also be good business for West Yellowstone."*

For two years, she and others have asked the Small Business Committee to help the town transition to snowcoach access into the Park. Specifically, they requested the following help:

- Funding for media and public education campaign to promote winter snowcoach tourism in Yellowstone, similar to the successful campaign following the fires of 1988;
- Low-interest loans for snowcoach acquisition and other business infrastructure;
- Cooperation among economic development agencies to promote transition to a sustainable future; and
- Job training and business development programs.

The 2000 EIS and decision support that phasing out snowmobiles will not cause catastrophic local economic failure. Contrary to a small vocal industry-supported minority, the West Yellowstone economy will survive and flourish without snowmobiles. Protection of Yellowstone National Park, the chief economic asset of local communities, will do the most to ensure continued economic success for West Yellowstone and other gateway towns.

#### **IV. Yellowstone's Future in the Balance: Protective Decision at Risk**

##### **A. Department of Interior Settles Industry Lawsuit, Re-opens Yellowstone Decision**

Although the rule is still in effect, NPS is currently engaged in a new NEPA process which was the result of a settlement of an industry lawsuit. The International Snowmobile Manufacturers Association (ISMA) and the State of Wyoming challenged the Yellowstone decision on the grounds that the process was flawed and, most notably, that the decision did not take into account new information on snowmobile technology. While denying all of ISMA's claims, the Department of Interior acceded to the industry's request for a new process. In a private settlement, the Department agreed to consider allegedly new information, issue a new decision, and, if necessary, promulgate a new rule prior to the 2002-2003 winter season (when reductions in snowmobile numbers would take effect under the existing rule).

The Supplemental EIS (SEIS) considers four alternatives. Alternative 1a and 1b are the original decision, a snowcoach system, and differ only in timing of implementation. Alternative 2 was designed by the State of Wyoming and envisions continued use of snowmobiles at numbers on par with current use. Technological improvements and early application of upcoming EPA emissions standards for snowmobiles are cornerstones of this alternative. Alternative 3, designed by the Park Service and borrowing from previously analyzed FEIS alternatives, controls "best available technology" snowmobiles through a guided-only management system. As discussed below, neither of the two snowmobile alternatives yield conclusions that would justify changing the original decision to phase out snowmobiles from Yellowstone and Grand Teton National Parks. This result is due to the lack of new information that changes any of the Park Service conclusions that were the basis of the decision to shift to a snowcoach system.

##### **B. Lack of "New" Information in Supplemental EIS**

The claimed existence of additional information concerning snowmobile air and noise emissions served as a chief reason for the new process. Four-stroke snowmobiles were first used in Yellowstone during the winter of 1999-2000 by the Park Service and first by the public via rental companies in West Yellowstone in 2000-2001. No scientific information regarding the machines' specific air and noise emissions has ever been released. The Park Service, in a February 5, 2001 letter to Arctic Cat CEO Christopher Twomey, asked for "results of last year's use and what improvements, if any, were made for this year's model. Specifically, if you have any scientific reports on noise and emissions from this year's four-stroke snowmobiles that you can share with us, we

would appreciate copies of them. If you do not have these scientific reports, please refer us to the appropriate contact.” (emphasis added)

The Park Service received no answer to this information request. Instead, the International Snowmobile Manufacturers Association (ISMA) pressed on with litigation, stating that in fact new information did exist. According to the settlement agreement, ISMA had to provide any new information to the Park Service by July 30. ISMA did not adhere to this court-ordered deadline, and instead submitted an information packet nine days later, on August 8. ISMA stated that “the enclosed information is what is currently available and releasable”.

If that were the case, predicated a \$3 million new public process on such “new” information is untenable. The information submitted did not include any scientific analysis or hard data. Instead, the submission was comprised of assertions of technological improvements that are not backed up by information concerning how those assertions were obtained, under what conditions or if they are replicable.

Rather, Arctic Cat reported “that exhaust emissions have been cut by more than one half for CO and three quarters for HC”. These types of emissions levels, and stricter, were analyzed by the Park Service in the Winter Use EIS and found insufficient to address issues of park impairment. Polaris reported that their “preliminary emissions data” show that the four-stroke machine will achieve “the 30% exhaust emission reduction of both HC and CO proposed by the industry to EPA for fleet average implementation in 2006.” The Park Service went far beyond the 30% HC and CO emission level reductions advocated for by the snowmobile industry in its previous analysis and found that such reductions failed to address issues of impairment.

Although ISMA was required by the settlement agreement to provide emissions and noise data on new technologies by July 2001. ISMA failed to provide any relevant data until later October 2001 (following repeated requests by NPS to fulfill their end of settlement agreement). The data that ISMA eventually did provide was found to be already analyzed within the parameters of the FEIS. Descriptions of the “new” information are found in the Draft SEIS and the internal review draft. Each description dismisses the “new” information as not providing additional data or rationale for new analyses. The language of the internal review draft is more critical of this lack of new information than language in the Draft SEIS. (Tables attached).

### **C. Park Service Previously Considered Technological Fixes and Found that Technology Does Not Protect Yellowstone From Snowmobile Damage**

The Park Service did, in fact, examine within its EIS how changes in snowmobile technology could affect the future of Yellowstone and Grand Teton national parks. The agency concluded:

*Cleaner, quieter snowmobiles would do little, if anything, to reduce the most serious impacts on wildlife, which are caused more by inappropriate use of snowmobiles than by the machines themselves. Quieter snowmobiles are still noisy, and are audible at greater distances than 4-track conversion snowcoaches.*

*Since snowcoaches carry many passengers and snowmobiles only one or two, snowcoaches can accommodate the same level of overall winter visitation with far fewer noise impacts on the natural soundscape and other visitors than even quieter snowmobiles.*

Although the snowmobile industry reports that it is on the threshold of mass-producing much cleaner and much quieter machines—it says something entirely different to the EPA. In letters submitted to the EPA, the industry has argued for a weak emission standard. Specifically, the manufacturers have said it will not be until 2010 (at the earliest) that they can reduce carbon monoxide emissions by 50 percent. The manufacturers are also resisting labeling of their machines, which would leave the Park Service unable to distinguish between more-polluting and less-polluting snowmobiles.

In relation to wildlife impacts, the Park Service concluded that "[e]ven with technical advances in snowmobiles, the impacts of snowmobile use on wildlife, especially ungulates using groomed routes, constitutes disturbance and harassment at a time when individual animals are particularly challenged for survival." (Record of Decision).

#### **D. NPS Analyzed Alternatives Examining Improved Snowmobile Technologies in the Original EIS and Found Them Insufficient to Protect Park Resources**

The range of alternatives presented in the DEIS and FEIS incorporated continued snowmobile use and redesigned snowmobile design. Six of the seven alternatives examined continued snowmobile use in the parks. Continued snowmobile use was analyzed in several contexts: with minimal mitigation measures in the No Action alternative A to thorough analysis of potential improvements to snowmobile technology and implementation of those improvements through adaptive management in other alternatives. The Park Service thoroughly analyzed redesigned snowmobile technology in the Draft and Final EIS based on scientific information and modeling.

"Cleaner and quieter" snowmobiles were examined in several of the alternatives in the Draft and Final EIS. For example, the Final EIS provides analysis of improved snowmobile technologies in Alternative D. "In alternative D only 10% ethanol-blend fuels and bio-based lubricants would be sold in the parks. By winter 2008-2009, only snowmachines that have been certified to meet stricter emissions standards would be allowed in the parks. Oversnow vehicle emission rates would 40% of the baseline CO emission rate, 75% of the baseline PM<sub>10</sub> rate, and 70% of the baseline hydrocarbon emission rate." (FEIS, Chapter IV, page 334).

These numbers were generated with the assistance of the Montana Department of Environmental Quality using best professional estimations of the then-current capacity for technological improvements. Today, with four-stroke technology it is likely that professional judgment would yield still stricter emissions control estimates. Despite the snowmobile industry's assertions regarding redesigned machines and improved emissions, industry numbers and projections remain well below what the Park Service already analyzed and determined insufficient for protection of park resources.

The Park Service's conclusion for Alternative D noted improvements in CO and PM<sub>10</sub> emissions relative to no action. Yet NPS went on to stress that "these major and moderate beneficial impacts would not be realized until winter 2008-2009, except for minor benefits attributable to bio-based lubricants and ethanol fuel blends." (FEIS, Chapter IV, at 336). Such improvements over an extended period were deemed insufficient to meet national park law and policy prescriptions. As a result, Alternative G, the snowcoach only alternative, was selected as the alternative which best protected park resources and visitor experience.

For noise emissions and impact on natural quiet, the Park Service analyzed a 60dBA level at 50 feet as a "clean and quiet" level for all oversnow vehicles. The FEIS alternative for quieter snowmobiles yielded a substantial improvement over existing condition was noted, the noise levels of the "cleaner and quieter" technology remained "slightly greater than alternative G", the preferred and chosen snowcoach alternative. (FEIS, Chapter IV, at 350). This noise level is extremely low. In the SEIS snowmobile alternatives, noise emissions remain above 70dB (Alternative 2) or are undefined (Alternative 3).

EPA, a cooperating agency in the SEIS process, has stressed to the Park Service and the other cooperating agencies that it is unclear when snowmobiles will be regulated by EPA, and if they are, by how much. Any EPA promulgated regulation will take 6-10 years to be fully implemented on the ground—this time lag is yet another factor that the Park Service analyzed in the EIS and found insufficient to address impairment issues and other impacts. Despite this information from EPA, the State of Wyoming's alternative 2 relies heavily on early implementation of the anticipated EPA emissions standards.

**E. The SEIS Reconfirms the NPS Decision to Phase Out Snowmobiles: A Snowcoach Transportation System Best Protects Yellowstone's Resources and Values**

The SEIS makes clear that there is no new information or analyses that justify reversing the Yellowstone rule. As discussed above, none of the FEIS "cleaner and quieter" snowmobile alternatives were found to protect park resources and values as required by law. The Park Service concluded that "[t]he continued use of snowmobiles as provided in the alternatives studied...is found to be inconsistent with the health and integrity of resources existing in the three park units." (NPS Record of Decision, November 2000). Since the "analysis and the alternatives in the SEIS are not vastly different than those in the FEIS. What appears to have changed is the public's perception regarding new technology, or its willingness to consider its use, and industry's willingness and ability to produce it." (SEIS, p. 16)

1. Wildlife

The SEIS makes clear that the snowcoach decision would best protect park resources and values and a high quality visitor experience. A snowcoach system protects wildlife by "reducing traffic volumes, lowering average travel speed, and facilitating travel operations in a scheduled and controlled fashion." (SEIS at xi). The document plainly shows that moving to snowcoaches will reduce impacts on Yellowstone's wildlife. The

snowmobile alternatives would put winter-stressed elk, bison and other animals at higher risk.

### 2. Natural Quiet

The SEIS demonstrates that a transition to snowcoach access will dramatically reduce the number of places in Yellowstone and Grand Teton where visitors will hear engine noise more than 50 percent of the time. It shows that if snowmobile use is not phased out, the amount of park land dominated by the roar and whine of machines will be ten to 20 times greater than visitors would experience with snowcoach access. (SEIS at 220)

### 3. Air Quality

Upholding the snowcoach decision would “improve air quality in the parks more than the other alternatives.” (SEIS at x). In the study’s summary, Table S-2 reveals that alternative 2, backed by the snowmobile industry would spew three times more carbon monoxide and seven times more hydrocarbons into the air of Yellowstone and Grand Teton National Parks than snowcoach access would produce.

### 4. Human Health and Safety

The SEIS is clear that upholding the snowcoach alternative “would achieve the greatest improvement relative to the existing condition...With the fewest numbers and types of vehicles operating at speeds and schedules that minimize risk of incident”, a snowcoach system is safer than continued snowmobile use. Upholding the snowcoach decision would also “produce the lowest emissions levels.” (SEIS at xi). With rangers wearing respirators, and visitors breathing the same unhealthy air, the SEIS outlines a clear choice for the administration.

### 5. Visitor Experience

The SEIS shows that “impacts on the natural soundscape, the viewing of wildlife, clean air, and other experiential factors” are remedies to the greatest extent by a snowcoach decision. Upholding the original decision would also “represent an incentive to visit for other potential visitors who have been displaced in the past or who do not visit because of the existing condition.” (SEIS at xii). The only drawback of the snowcoach system for visitors identified in the SEIS is to those visitors whose enjoyment of the park “is based fundamentally on access by snowmobile”. The presence of absence of the other factors listed above that are valued highly by the majority of park visitors is of little consequence to those visitors.

In conclusion, the Park Service determined, through the original three- year process, that national parks cannot wait for improved technology and that, furthermore, improved technology does not address the range of issues NPS must in managing national parks. In Yellowstone and Grand Teton National Parks, this range of issues extends far beyond air quality and soundscapes to wildlife, visitor enjoyment, employee and visitor health and safety, road conditions and park values.

The SEIS, causing a 16 month delay in protecting Yellowstone and costing taxpayers \$2.4 million, arrives at the same determination: a phase out of snowmobiles is needed to



protect park resources and values and provide a high quality visitor experience. A failure by the administration to follow through on the SEIS determination and uphold the rule to protect Yellowstone from snowmobile damage would be based solely on a desire to satisfy the snowmobile industry. Such a decision to allow continued degradation of Yellowstone and Grand Teton National Parks would be at odds with national park law, regulation and policy, a large body of science, and an extensive public process.

In the meantime, an eminently feasible snowcoach plan sits on the books with an implementation plan thoughtfully laid out by the Park Service two years ago. The Park Service and the Department of Interior have the opportunity to move forward with plans to create a successful winter snowcoach transit system in Yellowstone by working with local communities to transition economies and purchase additional vehicles.

Sadly, little energy or resources have been expended to implement the existing decision, which is still legally in force. That decision will hold if continued snowmobile use is found again to adversely impact resources. The delay in moving forward with implementation measures will be translated in to a further delay for protection of the parks, if the phase out is put off for even longer.

#### **Conclusions: The Pivotal Role of Congress in Protecting Yellowstone**

This past September, 102 Members of the House of Representative sent a bipartisan letter to President George Bush urging him to implement the decision of Park Service professionals and phase out snowmobile use from Yellowstone and Grand Teton national parks.

*The letter states in part that, "In the EIS, the Park Service has already analyzed whether the development of new snowmobile technology would allow compliance with the laws and regulations governing snowmobile use in the parks. The Service concluded it would not. Even less polluting and less noisy snowmobiles would still cause unacceptable air and noise pollution in the parks.... We urge you to stay the course that gives Yellowstone and Grand Teton the protection they deserve and need as two of America's most special places."*

Last May, Chairman Lieberman was joined by colleagues in asking the president to "adopt a new vision for Yellowstone National Park." The Senators expressed hope that 130 years after its creation, "Yellowstone can again lead the world in developing a transportation system that protects park resources while providing access and enjoyment for visitors... This vision for the future of Yellowstone would eliminate the serious impacts from tens of thousands of individual snowmobiles entering the park, while simultaneously providing all visitors with the opportunity to enjoy the park in multiple ways."

The Senators concluded by stating that "We believe that protection of our national parks is a bipartisan issue on which all Americans can agree."

We join with you in being hopeful that all Americans and our government will agree that protection of Yellowstone National Park must not be undermined to satisfy short-sighted industry interests. Our National Parks were not created in order to serve as national playgrounds, available for any and all uses. They were created to preserve "nature as it exists" (H. Rep. No. 700, 64th Cong., 1st Sess. 3 (1916)), affording Americans and people worldwide the unparalleled opportunity to see, hear and experience these national treasures in as natural a state as possible. There are more than enough areas, both on and off federal land, where snowmobiling can continue. But our unique and irreplaceable national parks should not be among those areas. Therefore, we urge this Committee to support the Park Service's endeavors to protect the unique resources and visitor experiences of Yellowstone and Grand Teton National Parks.

**Testimony of**

**Dr. Stephen C. Torbit**

**Senior Scientist**

**Rocky Mountain Natural Resource Center**

**National Wildlife Federation**

**Introduction**

My name is Stephen C. Torbit, and I appreciate the opportunity to submit this statement to the Senate Governmental Affairs Committee. I am testifying today on behalf of the National Wildlife Federation, Wyoming outdoor Council, Biodiversity Associates and myself.

The National Wildlife Federation (NWF) is the nation's largest member-supported conservation education organization. For more than 65 years, millions of NWF members and supporters from across America have invested their time, energy, passion, and grassroots action in conserving and restoring the living legacy we will bequeath to our children--in keeping the wild alive.

Established in 1967, the Wyoming Outdoor Council is the state's oldest and largest independent statewide conservation organization. Their mission is to protect and enhance Wyoming's environment by educating and involving citizens and advocating environmentally sound public policies and decisions.

Biodiversity Associates is a Wyoming-based conservation group dedicated to preserving wildlife and wild places. This group serves as a voice for native species and public lands in the Red Desert and other parts of the Intermountain West and Great Plains.

I earned my Ph. D. in Wildlife Ecology from Colorado State University in 1981, and have worked as a wildlife educator, researcher and biologist for the Colorado Division of Wildlife, the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service. I currently am the Senior Scientist for the National Wildlife Federation.

I am a native of the west and have been involved with energy development on western public lands for more than 20 years. I am

here today to discuss this Administration's National Energy Policy and its impacts on our western landscape. Although this Congress is currently considering legislation to enact this National Energy Policy, I can assure you that significant pro-energy development policies have already been put in place by this Administration. These radical changes have completely reversed the logical sequence of environmental analysis, public input and agency decision. This has occurred in a vacuum of no public input and in a manner that compromises unbiased environmental analysis and disregards the other public-trust resources on the federal estate.

I also understand the debates in this Congress concerning the opening the Arctic National Wildlife Refuge for oil and gas development. NWF has been actively engaged on this issue and has been working to protect the wildlife values of this unique area. In addition to the Arctic Refuge, NWF is extremely concerned about the many other actions already threatening wildlife and other resources on our western public lands. In my testimony, I will illustrate some of the impacts of the Administration's energy policies on an area that is personally and professionally very important to me, Wyoming's Red Desert.

As a professional biologist, I have been engaged with wildlife issues in Wyoming's Red Desert since the late 1970s. Additionally, I have used the Red Desert personally for recreation including hunting, hiking, photography and camping. The Red Desert epitomizes the west; its wide-open spaces and its abundant wildlife resources allow me to reconnect to my western heritage. I have harvested significant numbers of mule deer and pronghorn antelope from the Red Desert and those animals were an important source of food for my family when we resided in Wyoming. I continue to hunt, hike and camp in the Red Desert although I no longer live in Wyoming.

### Wyoming's Red Desert

Despite its name and its appearance to the uninitiated, the Red Desert is not an empty wasteland. The Red Desert of Wyoming is truly an ecological, geological and wildlife wonder. The Greater Red Desert region includes the largest undeveloped high elevation desert left in the United States, the continent's largest active sand dune system, two-thousand-year-old rock art and Shoshone spiritual sites, portions of the Oregon, California and Pony Express Trails and 10 Wilderness Study Areas. This special area is rich in wildlife because of the integrity of the habitat. More than 350 wildlife species call this area home including the largest desert elk herd in North America, and the largest migratory game herd in the United States outside of Alaska consisting of some 45,000 - 50,000 pronghorn. The Red Desert also provides important habitat for mule deer, sage grouse, numerous small mammals and nesting and wintering habitat for birds of prey. It was principally because of the integrity and viability of these habitats that the Department of Interior chose not to list ferruginous hawks under the authorities of the Endangered Species Act of 1973, as amended.

Since 1898, there have been efforts to set aside and protect portions of the Red Desert and the wildlife habitat it supports. In 1935, the Governor of Wyoming proposed establishing the Great Divide Basin National Park. In 1973 and again in 1976, the National Park Service reviewed Adobe Town, a series of badlands formations on par with Badlands and Bryce Canyon National Parks, for designation as a National Natural Landmark. The reviewers concluded, "the greatest natural value of this area is that it is still a 'howling wilderness,'" (1) and rated the area as having the highest rating for ecological and geological values, a rating that reflects the "high degree of national significance," (2).

But now this area rich in ecological, geological and cultural wonders is at risk from multiple entities that would cast aside these

public values and dominate the landscape with energy development.

### **Expedited Energy Development**

Our public lands already provide a substantial amount of oil and gas from an estimated 57,800 producing oil and gas wells. According to a 1999 report published by the National Petroleum Council, roughly 95% of BLM lands in the Overthrust Belt of the Rocky Mountains are already open for mineral leasing and development.

While this Congress considers and debates the National Energy Policy, many actions are already accelerating energy extraction on the Red Desert and other public areas in a way that will permanently alter the character and resources of these public lands. Currently, public land managers are not considering the multiple assets of public lands and are not working proactively to balance conservation of these assets with energy development demands. Rather, this Administration is using its discretionary authorities to totally skew decisions toward domination of the landscape by extractive industries. Indeed, we are witnessing the rapid industrialization of our western public lands.

### **Recent Executive Orders**

There is ample evidence to justify our concern. Until now, federal land managers were expected to fully evaluate the impacts of their proposed decisions on the environment, to disclose those impacts to the public and consider public input prior to finalizing their decision. In decisions to lease or permit drilling, prescriptive restrictions were often attached to minimize or avoid impacts to public resources (water quantity and quality, air quality, historical and wildlife resources, etc). In essence, the logical framework was

to “look before you leap” to assure no irretrievable commitments of resources were unknowingly made.

However, this Administration has turned this entire process on its head by ordering agencies to first analyze whether any proposed actions (e.g. winter range improvement for wildlife) will impede or accelerate energy development on public lands before issuing a final decision. Specifically, Executive Orders 13211 (3) and 13212 (4) now require an “Energy Effects Statement” to specify “any adverse effects on energy supply, distribution or use...” of federal actions. Furthermore, for energy related projects, agencies are encouraged to “expedite their review of permits or take other actions as necessary to accelerate the completion of such projects...” This message has been heard clearly by those who manage the federal estate. The result is that certain actions are discouraged if they impair the federal government’s ability to extract energy reserves. If environmental protections are already incorporated into existing energy development decisions, federal managers are encouraged to be creative in circumventing those protections to benefit energy extraction.

### **Threats to the Red Desert**

Examples of what this new policy of expedited development has meant to the Red Desert include:

- The BLM released a proposal in June 2001 to allow up to 3,880 coal-bed methane wells in the Atlantic Rim Project Area, an area of critical importance to wintering wildlife. Consistent with new policies to accelerate oil and gas development on public lands, the BLM is proposing piecemeal development of up to 200 wells before completing a thorough and comprehensive environmental analysis of the entire proposal. This piecemeal approach is designed to leverage the ultimate decision by

establishing a “beach head” for energy development by first minimizing the environmental impacts of these smaller projects.

- In August 2001, the BLM approved seismic exploration in the Adobe Town area. Seismic trucks drove through roughly 50,000 acres of citizen-proposed wilderness areas in September through December 2001, degrading this fragile landscape, laying the foundation for future development and thus undermining the integrity of the citizen’s proposal. Exploration continued within crucial wildlife winter ranges during the winter months, in violation of agency commitments to avoid the area during that sensitive time.
- The BLM proposed in December 2001 to permit an eight-mile long hand-laid seismic study entirely within the boundaries of the Adobe Town Wilderness Study Area. Thereby, BLM may have undermined wilderness designation for Adobe Town.

### **The Administration’s National Energy Policy**

There are more examples of the Administration expediting permits evaluating impediments to leasing public lands and removing these impediments as “unnecessary” obstacles to energy production. These examples come from many areas in the west in the new rush for energy development, including:

- BLM authorizing seismic exploration in Utah’s Dome Plateau, just outside of Arches National Park. The Interior Office of Hearings and Appeals (OHA) halted this project finding it was likely that BLM had inadequately considered the environmental impacts of this action on public lands.
- In January 2002, the Wyoming State BLM Director presented an Award for Excellence to the Buffalo Field Office. This one



field office was recognized for approving more drilling permits than all other BLM offices combined, excluding New Mexico. This one area of northeastern Wyoming is proposed to soon be home to tens of thousands of gas wells. The Buffalo Field office was praised for working “diligently” and “creatively” with industry in approving the record number of oil and gas permits.

- BLM is characterizing wildlife lease stipulations as obstacles to production. These minimal measures are now the only wildlife mitigation measures found on drilling permits and leases. They are intended to balance natural resource values against energy development and protect critical wildlife habitats, such as crucial winter ranges, migration corridors, calving and nesting grounds. If these protections are stripped, the vast array of wildlife species calling the Red Desert home will diminish in the onslaught of energy development.
- Overturning lease stipulations designed to protect important wildlife habitats. The Wyoming BLM has already approved nearly 70 percent of the 88 requests for exceptions to lease stipulations requested by the natural gas industry for the Green River Basin this winter. These waivers follow two years of extensive drought when wildlife and wildlife habitat is already stressed.
- Opening “all public lands” regardless of existing environmental safeguards as promoted by the National Energy Policy. This attitude is manifested by BLM’s seismic testing operations in federally designated Wilderness Study Areas in the Red Desert. It is important to point out that all of the seismic operations in the Red Desert were proposed after the Administration’s National Energy Policy was released.

Previous legislation enacted by Congress, approved by other Administrations and consistently upheld in the courts, promote multiple uses of public lands where a mix of resource values are developed or maintained across the public estate. The provisions of the National Energy Policy ignore the multiple use mandate and propose to eliminate even the token balance between resource conservation and energy exploitation and substitute a dominant use for multiple use.

Certain special areas on our public lands are simply too wild to waste. These areas include our National Parks, National Monuments, National Wildlife Refuges, roadless areas, and lands with special values such as Wyoming's Red Desert, Montana's Rocky Mountain Front and Colorado's Vermillion Basin.

Well-planned, responsible development can balance our country's energy needs with the conservation of wildlife habitat and other natural treasures for future generation to enjoy. Responsible development requires thorough pre-leasing environmental review, full compliance with all environmental and land management laws, measures to protect wildlife migratory routes and other sensitive lands, full reclamation of developed areas once operations cease and minimization of road building.

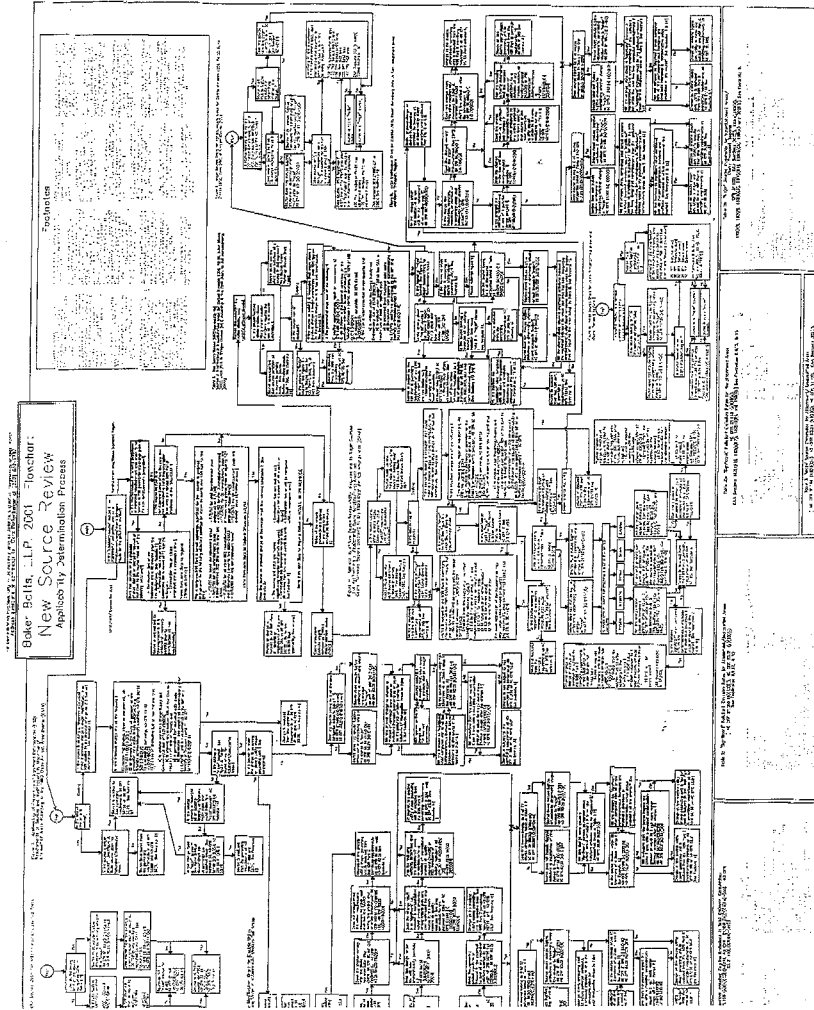
Unfortunately, rather than encouraging a thoughtful, strategic and balanced approach to energy development, the Administration's National Energy Policy is recreating the chaos of the western gold rush of the 1800s. Like that archaic approach, these new tactics give no consideration for other users or resources. Like the old western gold rush, this new "western energy rush" will leave impoverished natural resources and cleanup as the legacies for future generations. I invite the members of this committee or their staff to come to Wyoming with me and visit Adobe Town, Jack Morrow Hills and other unique and valuable areas of the Red

Desert to view these areas and the consequences of industrialization.

I appreciate the Committee's interest in these critical issues and urge you to take action to ensure that we do not replicate the mistakes of the past and instead manage the public lands in the public interest not only for today but for tomorrow as well.

### References

1. McGraw, P.O., T.M. Brown, M.W. Hager and B. Mears. Inventory of Significant Geologic Areas in the Wyoming Basin Natural Region, Prepared for U.S. National Park Service Under Contract # 9900X20047. Laramie, WY; Department of Geology, University of Wyoming. 1974.
2. Knight, D.H., R.J. Hill and A.T. Harrison. Potential Natural Landmarks in the Wyoming Basin: Terrestrial and Aquatic Ecosystems, Prepared for U.S. National Park Service Under Contract # 9900X20047. Laramie, WY; Department of Botany, University of Wyoming. 1974.
3. Executive Order No. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," on May 18, 2001.
4. Executive Order No. 13212, "Actions to Expedite Energy-Related Projects," on May 18, 2001.



U.S. COURTS

01 APR -5 PM 1:57

REC'D FILED *Clay*  
CAMERON S. BURKE,  
CLERK. IDAHO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STATE OF IDAHO, ex rel.; DIRK  
KEMPTHORNE, Governor; PETE T.  
CENARRUSA, Secretary of State; ALAN G.  
LANCE, Attorney General; J.D. WILLIAMS,  
State Controller; MARILYN HOWARD,  
Superintendent of Public Instruction, as the State  
Board of Land Commissioners; and WINSTON  
WIGGINS, Acting Director, Idaho Department of  
Lands,

Case No. CV01-11-N-EJL  
ORDER

and,

GOVERNOR DIRK KEMPTHORNE, in his  
capacity of Chief Executive of the State of  
Idaho and President of the Idaho Board of Land  
Commissioners,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, and  
MICHAEL P. DOMBECK, Chief United States  
Forest Service

Defendants,

and,

IDAHO CONSERVATION LEAGUE, IDAHO  
RIVERS UNITED, SIERRA CLUB, THE  
WILDERNESS SOCIETY, OREGON NATURAL  
RESOURCES COUNCIL, PACIFIC RIVERS  
COUNCIL, NATURAL RESOURCES DEFENSE  
COUNCIL, and DEFENDERS OF WILDLIFE,

Defendant-Intervenors.

Pending before the Court in the above entitled matter is Plaintiffs'<sup>1</sup> Motion for Preliminary Injunction. Docket No. 15. Having reviewed all briefing submitted, as well as other pertinent documents in the Court's file, and having heard oral arguments the Court issues the following order.

#### I. INTRODUCTION AND BACKGROUND

The Forest Service has been studying and evaluating roadless areas for nearly thirty (30) years. The process began in 1972 with a study called the Roadless Area Review and Evaluation ("RARE I"). See *California v. Block*, 690 F.2d 753, 758 (9th Cir. 1982). A more comprehensive study called the Roadless Area Review and Evaluation II ("RARE II") was commenced in 1977. *Id.* This evaluation process resulted in the Forest Service's development of an "inventory" of roadless areas larger than five-thousand (5,000) acres. *Id.*

In RARE II, the Forest Service attempted to allocate inventoried roadless areas among various management regimes. *Id.* The Ninth Circuit Court of Appeals held, in part, that the Forest Service's action violated the National Environmental Policy Act ("NEPA") since it failed to include a site-specific analysis of the environmental impact that the management regimes would have on each specific roadless area. *Id.* Since *Block*, management decisions regarding inventoried roadless areas have been made on a site-specific basis as part of the forest planning process.

Through RARE II and the forest planning process, 9.3 million acres of national forests within Idaho have been identified as inventoried roadless areas. Docket No. 2, Strack Aff., Ex. 19a, Roadless Area Conservation Rule, Final Environmental Impact Statement ("FEIS") at 3-4. Outside of Alaska, Idaho has the highest total inventoried roadless areas in the nation, with Montana being next highest at 6.3 million acres. *Id.* Idaho also has the highest percentage of inventoried roadless areas. Seventeen percent (17%) of Idaho's total land area is located within national forest inventoried roadless areas. *Id.* at A-3. The next highest state is Utah, with 7.3 percent. *Id.* at A-4. Of the 9.2 million acres of inventoried roadless areas within Idaho, 5,666,000 are currently allocated to a management prescription that allows road construction and reconstruction. *Id.* at A-3.

<sup>1</sup> Plaintiffs are individually identified as the State of Idaho; *ex rel.* Dirk Kempthorne, Governor, Pete T. Cenarrusa, Secretary of State, Alan G. Lance, Attorney General, J.D. Williams, State Controller, Marilyn Howard, Superintendent of Public Instruction, as Board of Land Commissioners; Winston Wiggins, Acting Director, Idaho Department of Lands; and, Governor Dirk Kempthorne, in his capacity as Chief Executive of the State of Idaho and resident of the Idaho Board of Land Commissioners.

## II. FACTUAL AND PROCEDURAL HISTORY

The facts in this case are largely undisputed by the parties. On October 13, 1999, President Clinton directed the Forest Service to develop and prepare for public comment regulations to end road construction and to protect inventoried and uninventoried roadless areas across the entire national forest system. On October 19, 1999, in response to the Presidential directive, the Forest Service issued a "Notice of Intent to Prepare an Environmental Impact Statement." The NOI provided for scoping comments to be filed with the Forest Service within the following sixty (60) days.<sup>2</sup> Despite repeated requests from a number of parties, no request to extend this scoping period was granted.

On December 30, 1999, the State of Idaho filed its first suit against the United States Forest Service for failure to provide meaningful opportunity to participate in the process as required by the National Environmental Protection Act ("NEPA") and the National Forest Management Act ("NFMA"). On January 21, 2001, the Forest Service filed a Motion to Dismiss the State's Complaint pursuant to Fed. R. Civ. P. 12(b)(1) arguing that the Court lacked subject matter jurisdiction because the case was not ripe for review since the agency had not taken any final agency action. On February 18, 2000, the Court granted the Forest Service's Motion finding no "final agency action" and after finding that the exceptions to the final agency action requirement were not applicable.<sup>3</sup> State of Idaho, et al., v. United States Forest Service, CV99-611-N-EJL, February 18, 2000, Memorandum Decision and Order.

In early May, 2000, the Forest Service released its 700-page DEIS, together with its proposed rule ("Proposed Rule"). 65 Fed. Reg. 30,276.<sup>4</sup> Sixty-nine days were allowed for comments.

<sup>2</sup> In a letter to Forest Service staff dated October 28, 1999, Forest Service Chief Michael Dombeck instructed his staff to accelerate NEPA procedures, authorizing them to "take whatever executive actions are necessary" to complete the DEIS by March 2000, warning that "[w]e cannot afford to waste a single day. Letter from Michael Dombeck, Chief, USDA Forest Service, to Forest Service staff (Oct. 28, 1999) (cited in companion case Kootenai Tribe of Idaho et al. v. Glickman, et al., CV 01-10, Docket No. 24, Neumeyer Aff., Ex. C, State of Idaho Comments, at 1.).

<sup>3</sup> Specifically, this Court noted that it was unable to find a single case wherein a challenge to the scoping process was considered ripe for judicial review. State of Idaho, et al., v. United States Forest Service, CV99-611-N-EJL, February 18, 2000, Memorandum Decision and Order at 6.

<sup>4</sup> The Proposed Rule purposed to regulate 54.3 million acres of "Inventoried Roadless Areas" and declared that at least 43 million acres of land would be immediately subject to prohibitions on road construction upon issuance of the Final Rule. 65 Fed. Reg. 30,276, 30,288.

Despite substantial public reaction, the Forest Service again denied all requests for extensions of time. Docket No. 20 at 7.

On November 13, 2000, the Forest Service published its final EIS ("FEIS").<sup>5</sup> *Id.* And on January 5, 2001, the Forest Service released the Final Rule and Record of Decision that would implement the Roadless Initiative on May 12, 2001.<sup>6</sup> Docket No. 16, *Winston Aff.*, Ex. A; 66 Fed. Reg. 3244-273, 36 C.F.R. § 294. The Final Rule adopted the FEIS's expansion of regulated areas that were not included in the DEIS and, unlike the proposal in the DEIS, applied immediately to the Tongas National Forest.

On January 9, 2001, Plaintiffs filed the present action seeking declaratory judgment and injunctive relief against the Federal Government for violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Administrative Procedures Act (APA).<sup>7</sup> On March 7, 2001, Plaintiffs filed the present Motion for Preliminary Injunction (Docket No. 15).

---

Moreover, the Proposed Rule provided for regulation of millions of additional acres of non-inventoried, unidentified "uncrowded areas where conservation of roadless characteristics may be desirable." 65 Fed. Reg. 30,277, 30,288. Finally, the Proposed Rule subjected the Inventoried Roadless Areas in the Tongas National Forest to these same processes as part of the five year review of the April 1999 Tongas Land and Resource Management Plan. 65 Fed. Reg. 30,288.

<sup>5</sup> It is undisputed that the FEIS differed from the DEIS in several aspects. First, the FEIS broadened the scope of the Prohibition Rule to apply to all inventoried roadless areas, not just the uncrowded portions of inventoried roadless areas. See Docket No. 2, *Strack Aff.*, Ex. 19a, at XI. Second, it altered the preferred alternative, choosing Prohibition Alternative 3, which prohibits road construction, road reconstruction, and timber harvest except for stewardship purposes. See Docket No. 20 at 7. Third, the FEIS eliminated all analysis relating to the Procedural Rule. See Docket No. 2, *Strack Aff.*, Ex. 19a, at XI. Instead, the Procedural Rule was incorporated in the final Forest Planning Regulations adopted on November 9, 2000. Finally, the size of the inventoried roadless areas changed -- the DEIS stated that Inventoried Roadless Areas totaled 54.3 million acres of land, the FEIS added an additional 4.2 million acres of Inventoried Roadless Areas to that total. Docket No. 20 at 7-8.

<sup>6</sup> On January 20, 2001, President Bush issued an order postponing by sixty (60) days the effective date of all of the Clinton Administration's 11th hour regulations and rules that had not yet been implemented. Pursuant to that order, Secretary Veneman postponed the Final Rule's effective date until May 12, 2001. See 66 Fed. Reg. 8899 (Jan. 29, 2001).

<sup>7</sup> Specifically, the State of Idaho and Governor Dirk Kempthorne seek an order from this Court declaring that the Final Rule violates NEPA and an injunction barring the implementation of the Final Rule and remanding the Final Rule to the Forest Service so that the Forest Service can comply with its obligations under NEPA. Docket No. 1 at 2.



### III. STANDARD OF REVIEW

Plaintiffs' claims are all governed by the Administrative Procedure Act (APA), which provides for limited judicial review of agency action. See 5 U.S.C. §§ 702, 706. See Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 376-78, 109 S. Ct. 1851, 1860-62 (1989); see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 2867 (1983); Friends of Clearwater v. Dombeck, 222 F.3d 552, 560 (9th Cir. 2000). Under the APA, the Court may overturn agency action only if the action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," or in excess of its statutory jurisdiction or authority. 5 U.S.C. § 706(2)(A), (C); Idaho Farm Bureau v. Babbitt, 58 F.3d 1392, 1401 (9th Cir. 1995). The standard of review is "highly deferential" and presumes an agency's action to be valid." Ethyl Corp. v. EPA, 541 F.2d 1, 34 (D.C. Cir. 1976). A court reviewing an APA challenge, therefore, begins with the "presumption to which administrative agencies are entitled - that they will act properly and according to law." FCC v. Schreiber, 381 U.S. 279, 289, 85 S. Ct. 1459, 1470 (1965).

Section 705 of Title 5 of the United States Code permits a reviewing Court to postpone the effective date of agency action pending conclusion of the review proceedings. The test to be applied for issuing such a stay or injunction pending judicial review is the same as that applied to a request for preliminary injunction.

In determining whether to award a preliminary injunction, the court must balance the plaintiff's likelihood of success against the relative hardship to the parties. See e.g., Walczak v. EPL Prolong, Inc., 198 F.3d 725, 731 (9th Cir. 1999); Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1118 (9th Cir. 1999). Specifically, Plaintiffs must demonstrate either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of the hardships tips in its favor. See Idaho Sporting Congress v. Alexander, 222 F.3d 562, 565 (9th Cir. 2000). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. Id.

### IV. ANALYSIS

Plaintiffs seek a preliminary injunction challenging the promulgation of the Roadless Rule as violative of NEPA, NFMA, and the APA. Intervenor Defendant Idaho Conservation League

(hereinafter referred to as "ICL") resists the issuance of a preliminary injunction arguing that, as a threshold matter, the Court lacks jurisdiction. ICL further resist the issuance of a preliminary injunction on the basis that Plaintiffs' challenges are meritless, and that enjoining the Roadless Rule would cause irreparable harm to the environment. The Federal Defendants take no position on the merits of the case but argue that agency rulemaking is entitled to substantial discretion and that injunctive relief is not necessary prior to May 12, 2001.

**1. The Court Has Jurisdiction Over Plaintiffs' Claims**

As a threshold matter, this Court must first address ICL's challenge to the jurisdiction of this Court. ICL first argues that Plaintiffs, having shown no concrete injury, lack standing, and the Court thus lacks subject matter jurisdiction. Docket No. 37 at 1-3. In addition, in determining jurisdiction, it is the obligation of the Court to raise ripeness issues sua sponte if not raised by the parties.

**1. Plaintiffs Have Standing**

The Intervenor contend that the Plaintiffs do not have standing to challenge the adequacy of the Government's environmental impact statement regarding the Roadless Rule. Docket No. 37 at 1-3.

To satisfy Article III's standing requirements, a Plaintiff must show:

(1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not "conjectural" or "hypothetical"; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Serv., 528 U.S. 167, 180-81, 120 S. Ct. 693, 704 (2000).

In addition to these constitutional requirements, a plaintiff bringing suit under the APA for a violation of NEPA must show that his alleged injury falls within the "zone of interests" that NEPA was designed to protect. Douglas County v. Babbitt, 48 F.3d 1495, 1499 (9<sup>th</sup> Cir. 1995). The Intervenor argue that Plaintiffs have met neither the constitutional nor prudential standing requirements.

**a. Injury in Fact**

The right claimed by Plaintiffs is, *inter alia*, the right to have the Forest Service analyze reasonable alternatives, conduct a meaningful notice and comment process, and adequately analyze

cumulative impacts, before making a decision affecting the environment, as required by NEPA.<sup>8</sup> Plaintiff complains that the Roadless Rule has denied the State and other interested persons the "hard look" NEPA compliance is designed to ensure with respect to the environmental impact of a proposed federal agency action. In Mumma, 956 F.2d at 1514,<sup>9</sup> the Ninth Circuit found this type of harm to be acknowledged by Congress and identified violations of NEPA's procedural requirements to be distinct and palpable harms - as opposed to abstract, conjectural or hypothetical.<sup>10</sup> That Court went on to find that, pursuant to NEPA and the NFMA, procedural violations must be deemed *immediate*, and not speculative. Id. at 1516.

Finally, the Mumma Court found that so long as plaintiffs can allege that the injury would be felt by individual members, as opposed to a diffuse, collective interest, personal injury is sufficient to confer standing. The State of Idaho, through the Idaho Department of Lands, is charged with 2,465,000 acres of state endowment trust land, approximately 200,000 acres of which is intermingled with or adjacent to national forest lands and approximately 11,000 acres of which is surrounded by lands designated by the United States Forest Service as inventoried roadless areas. Docket No. 16, Wiggling Aff. at ¶¶ 3-4. The State argues that it has a concrete interest in the management of these lands to protect forest health and secure maximum long term financial return and from the harm to these areas that would result if the Roadless Rule affected either reasonable

<sup>8</sup> The statutes sought to be enforced in this case, of course, are NEPA and the NFMA (via Section 10 of the APA). Section 10(a) of the APA provides that "a person . . . adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. In cases arising under the APA, the standing requirement has been read to mean that plaintiffs must show "the challenged action ha[s] caused them injury in fact" and that the injury is "to an interest arguably within the zone of interests to be protected or regulated by the statutes that the agencies were claimed to have violated." Idaho Conservation League v. Mumma, 956 F.2d 1508, 1514 n. 12 (9th Cir. 1992).

<sup>9</sup> In Mumma, the defendants asserted that the plaintiffs lacked standing to challenge a recommendation not to designate certain inventoried roadless areas as "wilderness areas" because the injuries asserted were not within the scope of NEPA, the injuries were too remote and speculative, and the plaintiffs could not establish that their personal interests were affected by the agency action.

<sup>10</sup> See also Trustees of Alaska v. Hodel, 806 F.2d 1378, 1380-82 (9th Cir. 1986) (holding that because "NEPA is essentially a procedural statute designed to ensure that environmental issues are given proper consideration in the decisionmaking process," injury alleged to have occurred as a result of violating this procedural right confers standing); Friends of the Earth v. United States Navy, 841 F.2d 927, 931 (9th Cir. 1988) (noting that the Ninth Circuit "has long recognized that failure to follow procedures designed to ensure that the environmental consequences of a project are adequately evaluated is a sufficient injury in fact to support standing").

road access across adjacent and surrounding national forest lands or withdrew active management from national forest lands. Id. at ¶¶ 5-6.

Based on the Ninth Circuit's holding in Mumma, and Plaintiffs' showing that they have a "sufficient geographical nexus to the site of the challenged project that [they] may be expected to suffer whatever environmental consequences this project may have," City of Davis v. Coleman, 521 F.2d 661, 671 (9th Cir. 1975).<sup>11</sup> Accordingly, the Court finds that Plaintiffs have sufficiently met the personal injury requirement set forth by the United States Supreme Court.

**b. Fairly Traceable and Likely to be Redressed**

ICL next argues that Plaintiffs have shown no causal connection between the Roadless Rule and their alleged injuries and that Plaintiffs cannot show that their injury will be redressed by a favorable decision of this Court.

In the instant case, the alleged injury - restricted access, wildfires, disease outbreaks, and insect infestation, resulting from national changes in active local management plans prohibiting road construction, reconstruction and/or timber harvesting, purportedly as result of statutory violations - would not have occurred *but for* the decision of the Forest Service in pushing the implementation of the Roadless Rule on a "fast track." In this respect, the fact that the alleged injury may never occur is irrelevant. The asserted injury is that environmental consequences might be overlooked and reasonable alternatives ignored as a result of the deficiencies in the FEIS and ROD. See Mumma, 956 F.2d at 1518. See also International Ladies Garment Workers' Union v. Donovan, 722 F.2d 795, 811-12 (D.C. Cir. 1983) ("the suggestion that effective enforcement of [the Act] will not have [effect] directly contravenes the congressional judgment underlying the Act"); Munoz-Mendoza v. Pierce, 711 F.2d 421, 428 (1st Cir. 1983).

Based on the Ninth Circuit's holding in Mumma, this Court finds that Plaintiffs have satisfied the three prongs necessary to confer standing.

**2. The Matter is Ripe for Judicial Review**

The parties have not raised the question of ripeness. However, the Court has been put in an unusual situation with this case and finds it necessary to address this issue. As previously noted, the Forest Service released the Final Rule and Record of Decision that would implement the Roadless

<sup>11</sup> See Douglas County, 48 F.3d at 1500 n. 5 (stating that the geographic nexus test is the same as the concrete interest test).

Initiative on January 5, 2001. Docket No. 16, Winston Aff., Ex. A; 66 Fed. Reg. 3244-273, 36 C.F.R. § 294. However, prior to its implementation, President Bush issued an order postponing the effective date of the rule by sixty (60) days. As a result of that order, Secretary Veneman postponed the Final Rule's effective date until May 12, 2001, pending full review of the rule. See 66 Fed. Reg. 8899 (Jan. 29, 2001). During the course of the instant litigation, the Government has taken no position on the merits of Plaintiffs case and has asked this Court to postpone ruling on the preliminary injunction until the new administration has had the opportunity for a full review and has the opportunity to inform the Court of its position on the preliminary injunction motion.

Ripeness is more than a mere procedural question; it is determinative of jurisdiction. If a claim is unripe, federal courts lack subject matter jurisdiction and the complaint must be dismissed. This deficiency must be raised sua sponte if not raised by the parties. Southern Pacific Transp. Co. v. City of Los Angeles, 922 F.2d 498, 502 (9th Cir.1990). The Supreme Court has noted that "a regulation is not ordinarily considered the type of agency action 'ripe' for judicial review under the APA until . . . its factual components [have been] fleshed out [] by some concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm them."

Plaintiffs are challenging the Roadless Rule, arguing that the rule-making process was completed in violation of, *inter alia*, NEPA. While the Government has presently withdrawn its position on the Roadless Rule, there is no dispute that the Final Rule and Record of Decision have been published in the Federal Register, and but for the present stay, would be in effect. Accordingly, waiting until the Government takes "some further position" on the Roadless Rule is not an adequate remedy. Therefore, this Court finds that the action is ripe for review.

## **2. Likelihood of Success on the Merits**

ICL argues that Plaintiffs have no likelihood of success on the merits for two reasons. First, ICL argues that the alleged NFMA violations are without merit because the Forest Service promulgated the Roadless Rule pursuant to its regulatory authority under the 1897 Organic Act and; accordingly, NFMA's forest planning requirements do not apply. Second, ICL argues that the alleged NEPA violations are without merit because the Roadless Rule did not require the preparation of an EIS.

### 1. Promulgation of the Roadless Rule

First, ICL argues that NFMA's planning requirements do not apply to the Roadless Rule because the Forest Service promulgated the Roadless Rule "pursuant to its regulatory authority under the 1897 Organic Act, 16 U.S.C. § 551." Docket No. 37 at 11-14. Plaintiffs argue that this is an unusual argument in light of the procedural history of this and related cases and in light of the 13 months spent developing the FEIS currently at issue here. Docket No. 36 at 3.

During oral argument, ICL suggested that the governmental agency had an option in determining what course it to follow - an EIS process or a rule-making process. Presumably, the Intervenor was suggesting that the "rule-making" process, could be undertaken pursuant to the Organic Act, and would not require the preparation of an EIS or compliance with NFMA. The Court finds no merit to this argument.

First, even if there is merit to ICL's argument, the Forest Service explicitly states its decision to "choose the EIS process" when it states its reliance upon NEPA as a source of authority for the Roadless Rule. See Docket No. 16, Wiggins Aff., Ex. A, 66 Fed. Reg. 3244 ("Preparation of the record of decision is required by the Council on Environmental Quality regulations (40 C.F.R. 1505.2) implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321)") (emphasis added). NEPA requires federal agencies to abide by certain procedural requirements in carrying out the planning process. One of these requirements is that an EIS be prepared under 36 C.F.R. § 219.10(b). See *Oregon Natural Res. Council v. Lowe*, 109 F.3d 521, 524 (9<sup>th</sup> Cir. 1997).

Furthermore, NFMA, 16 U.S.C. § 1600, et seq. and the Department of Agriculture's implementing regulations require the Forest Service to prepare an EIS for any addition, modification, removal or continuation of the decisions embodied in a forest plan.<sup>12</sup> There can be no dispute that promulgation of the Roadless Rule will add to, modify or remove decisions embodied in forest plans governing the management of the national forests. In fact, the Rule acknowledges its purpose to "stop" certain activities and to "supercede" existing forest plan management direction. See Docket No. 2, Strack Aff., Ex. 19A at ES-1; 66 Fed. Reg. 3250 (Jan. 12, 2001).

<sup>12</sup> See 36 C.F.R. §§ 219.10(b), 219.12(a) (2000); ~~superseded by~~ 36 C.F.R. § 219.9(d) (2001) ("The responsible official must . . . prepare an environmental impact statement to add, modify, remove, or continue in effect the decisions embodied in a [forest] plan").

Finally, while it is true that NFMA did not supercede § 551 of the Organic Act, the evidence suggests that the two are supposed to complement one another. *See e.g.*, Docket No. 16, Wiggins Aff., Ex. A, 66 Fed. Reg. 3250 (in response to questions regarding whether the rule would supersede forest plans, NFMA, land management planning regulations, and statutory authority, the Forest Service responded by noting that "[t]he use of rulemaking to address the conservation of inventoried roadless areas is consistent with the NFMA implementing regulations.") (emphasis added); *id.* at 3252 (in response to questions regarding authority to prohibit road construction through this rulemaking process, the Forest Service noted that NFMA reaffirmed multiple-use and sustained-yield as the guiding principles for land management planning of National Forest System lands" and indicated that NFMA "complement[s] the long-standing authority of the Secretary to regulate the occupancy and use of the National Forest System (16 U.S.C. 551)" (emphasis added). ICL's argument that the Forest Service can by-pass the NEPA process in implementing a rule affecting decisions embodied in local forest plans is novel and does not persuade this Court.

## 2. The Roadless Rule Required an EIS

Second, ICL argues that no EIS was required for the Roadless Rule. Docket No. 37 at 6-11.. Specifically, ICL argues that the Roadless Rule is not subject to NEPA and Plaintiffs' claims fail under Douglas County v. Babbitt, 48 F.3d 1495, 1505 (9th Cir. 1995), because the Roadless Rule does not commit resources to some affirmative human development of the environment, does not change existing environmental conditions, and does not alter the environmental status quo. Plaintiffs argue that the cases cited by the Intervenor are distinguishable and that the Roadless Rule is not a rule involving government inaction. Docket No. 36 at 3.

42 U.S.C. § 4332(c) requires all agencies of the federal government, "to the fullest extent possible," to comply with EIS requirements when they take "major federal actions significantly affecting the quality of the human environment." NFMA and the Department of Agriculture's implementing regulations require the Forest Service to prepare an EIS for any addition, modification, removal or continuation of a decision embodied in a forest plan. 36 C.F.R. §§ 219.10(b), 219.12(a) (2000); superseded by 36 C.F.R. § 219.9(d) (2001); Forest Service Handbook, Title 1909.15, § 20.6, see also Oregon Natural Res. Council, 109 F.3d at 524 ("In carrying out the planning process, the Forest Service is also required to abide by certain procedural requirements imposed by the NEPA. One of these is the requirement that an EIS be prepared . . . [u]nder 36 C.F.R. § 219.10(b).").

There is no doubt in the Court's mind that the instant case is distinguishable from those cases cited by ICL that stand for the proposition that NEPA procedures do not apply to federal actions that do nothing to alter the natural physical environment, conserve the environment, or prevent human interference with the environment.<sup>13</sup> Promulgation of the Roadless Rule will add to, modify and remove decisions embodied in forest plans governing the management of the national forests. In the third paragraph of the FEIS's executive summary, the Forest Service acknowledged that the blanket prohibition on road construction, reconstruction, and timber harvesting (subject to minor exceptions) in inventoried roadless areas departs significantly from nearly every local forest plan when it stated that "[t]he purpose of this action is to immediately stop activities that pose the greatest risks to the social and ecological values of the inventoried roadless areas." Docket No. 2, Strack Aff., Ex. 19A at ES-1 (emphasis added). The Forest Service further recognized its governmental "action" in the Record of Decision wherein it notes that the rule "supersede[s] existing forest plan management direction." 66 Fed. Reg. 3250 (Jan 12, 2001).

While it is true that the ultimate goal of the Roadless Rule is to "provide lasting protection for inventoried roadless areas within the National Forest System," *id.*, the Roadless Rule is not an action that does not alter the "environmental status quo." In fact, the Roadless Rule, in changing or limiting existing active management in the national forest, drastically alters the current status quo.

While the Court acknowledges the common sense principle that NEPA does not require an EIS every time the Government decides not to do something,<sup>14</sup> an action that serves to "leave nature alone" by preventing the enactment of land management plans that provide for road construction, reconstruction or timber harvesting, despite recommendations by local officials, will certainly have

<sup>13</sup> See *Burbank Anti-Noise Group v. Goldschmidt*, 623 F.2d 115, 116 (9th Cir. 1981) (federal loans for continued operation of airport does not trigger EIS); *Sierra Club v. F.E.R.C.*, 754 F.2d 1506, 1509 (9th Cir. 1985) (preliminary permit for hydro-dam does not trigger NEPA); *Upper Snake River v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990) (discretionary agency action that does not alter status quo does not trigger NEPA); *National Wildlife Fed'n v. Espy*, 45 F.3d 1337 (9th Cir. 1995) (transfer of land from federal to private ownership without change in land use not subject to NEPA); *Douglas County*, 48 F.3d at 1505 (protection of critical habitat for endangered species does not trigger NEPA requirements); *Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445, 1446 (9th Cir. 1996) (closure of bicycle trail does not trigger EIS); *North Coast Env'tl. Ctr. v. Glickman*, 136 F.3d 660, 669 (9th Cir. 1998) (conservation of rare timber stands does not require EIS).

<sup>14</sup> Section 102 (2)(c) of NEPA requires federal agencies to prepare an EIS for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332. The Council on Environmental Quality regulations implementing NEPA define the term "human environment" to mean "the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14.



a demonstrable impact on the physical environment - the world around us, so to speak - and is the very action upon which Congress intended NEPA to apply.<sup>15</sup> To find otherwise would be to allow the Government to "shunt aside" their responsibilities in the "bureaucratic shuffle" and "accomplish a goal without allowance of the procedure required by law. See Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla., 426 U.S. 776, 777, 96 S. Ct. 2430, 2433 (1976). Based on the foregoing, the Court finds ICL's argument without merit.

### 3. Plaintiffs' Procedural Challenges

Last, ICL argues that Plaintiffs have failed to demonstrate a likelihood of success on the merits because Plaintiffs' allegations of procedural violations are without merit. Specifically, Intervenor argue (1) that the public comment process was sufficient both in its scoping process and information dissemination; (2) that the Forest Service adequately analyzed reasonable alternatives, and (3) that the FEIS adequately discussed mitigation options. Docket No. 37 at 14-18. Plaintiffs argue that ICL's comments do not rectify the inadequacy of the FEIS. Docket No. 36 at 4.

The Ninth Circuit employs a "rule of reason" that asks whether an EIS contains a "reasonably thorough discussion of the significant aspects of the probable environmental consequences." Oregon Envtl. Council v. Kunzman, 817 F.2d at 484, 492 (9th Cir. 1987). A reviewing judge must make "a pragmatic judgment whether the EIS's form, content and preparation foster both informed decision-making and informed public participation. . . . Once satisfied that a proposing agency has taken a 'hard look' at a decision's environmental consequences, the review is at an end." Block, 690 F.2d at 761.

#### a. Public-Comment Process

Intervenor submit that the Forest Service's failure to grant extensions of time is not sufficient to justify relief sought by the State and that the FEIS contained the basic information necessary to assess the environmental impacts of the proposed action. Plaintiffs argue that "[w]hile it is true the agency did not respond to requests for additional time, the significance of that nonresponse for present purposes lies in its reflecting on an administrative predetermination entirely incompatible with conducting the objective, thoroughgoing EIS process required under NEPA."

<sup>15</sup> In Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 772, 103 S. Ct. 1556, 1560 (1983), the United States Supreme Court held that Congress intended NEPA to apply only where a federal action will have a demonstrable impact on the physical environment, "the world around us, so to speak."

Docket No. 36 at 5. Plaintiffs further submit that while ICL trivializes the necessity of certain information, the gravamen of their claim is that there was insufficient information to adequately participate in the comment process. *Id.*

The Forest Service is required to "involve the public in preparing and implementing their NEPA procedures," 40 C.F.R. § 1506.6, and invite the participation of affected state and local governments, as well as Indian Tribes. 40 C.F.R. § 1501.7(a)(1). This requires agencies to notify the public of a rulemaking, allow an opportunity to comment meaningfully on the proposed rule, and consider these comments. 5 U.S.C. § 553(b)-(c).

It appears from this record that the message disseminated during the development of the EIS was perceived by the public to be, at best, confusing and, at worst, inadequate.<sup>16</sup> Plaintiffs currently reflect concerns regarding, *inter alia*, identification of the inventoried roadless areas,<sup>17</sup> the inadequacy of information presented during the scoping process,<sup>18</sup> and the inadequacy of the public comment periods.<sup>19</sup>

The 45 day requirement for public comment under NEPA is statutorily contemplated as a minimum time frame to be set apart for meaningful disclosure. At this point, the evidence is that the Forest Service did not, and in fact could not, provide meaningful disclosure as descriptions and maps of the areas to be impacted by the rule were unavailable<sup>20</sup> and Forest Service representatives

<sup>16</sup> See e.g., this Court's analysis in companion case *Kootenai Tribe of Idaho et al. v. Glickman, et al.*, CV 01-10, in its April 5, 2001, Memorandum Decision and Order at § IV.B.1.b.

<sup>17</sup> See Docket No. 20 at 13 ("The reader of the FEIS cannot even identify with any certainty the specific lands within Idaho that will be subject to the new prohibitions . . . [the maps] do not identify each individual [inventoried roadless area] and they do not provide basic information such as acreage, elevation, forest cover, or the location of the [inventoried roadless areas] in relation to existing classified and unclassified roads.")

<sup>18</sup> See *id.* at 14 ("[T]he lack of maps and other information that could only be found in scattered forest planning documents effectively prohibited the State and others from meaningful participation in the NEPA process.")

<sup>19</sup> See *id.* at 12 ("Not only did the Forest Service ignore the pleas for additional time, it refused to even explain why additional time could not be granted.")

<sup>20</sup> State maps of the potentially regulated areas were not made available until January 18, 2000, nearly a month after the NEPA scoping process and after the public comment period had ended.

were ill-prepared to answer the questions and concerns of the general public.<sup>21</sup> Neither the number of meetings nor the volumes of comments are instructive by themselves if the evidence suggests that the decision making process was used to rationalize or justify decisions already made. NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.

The Court previously admonished the parties that time could not be of the essence on something of this magnitude and the action taken strongly suggests that this was a political decision pre-determined in its outcome. The Court acknowledges that the roadless issues involve many different well intentioned views but this only strengthens the argument that the best interests of the country and environment need to be given due consideration.

The FEIS is approximately 700 pages in length and is applicable to two percent (2%) of the land mass of the United States - twenty-eight (28%) of National Forest System lands. One million six hundred thousand comments were submitted in response to the roadless proposal. In the arguments before this Court, it was pointed out that all of the public meetings in Idaho occurred within 12 business days of the end of the first 60-day comment period. It was further pointed out that many of the comments were received within the last week of the time given and no responses were provided. The Court cannot fathom how such representations can support a finding that the Forest Service gave the public's concerns due consideration. In fact, this is strong evidence that because of the hurried nature of this process the Forest Service was not well informed enough to present a coherent proposal or meaningful dialogue and that the end result was pre-determined. Justice hurried on a proposal of this magnitude is justice denied.

Based on the foregoing, the Court conclusively finds that the comment period was grossly inadequate and thus deprived the public of any meaningful dialogue or input into the process - an obvious violation of NEPA.

---

<sup>21</sup> Such ill-preparation does not surprise the Court given the fact that similar, although much smaller federal actions, have taken time frames of up to six years to complete. For example, compare the Columbia Basin Ecosystem Management Project, a project of approximately the same size as this, from initiation to the final EIS, six years. Here, about twelve months. The Boone National Forest salvage sale, one and one-half years in scoping alone. The Black Hills Forest Plan revision, a project to apply to 1.2 million acres, from initiation to final EIS, six years, six months.

b. **Range of Alternatives**

ICL next dismisses the Plaintiffs' concern over the lack of any FEIS "action" alternative not entailing a total prohibition on road construction or reconstruction in inventoried roadless areas. Docket No. 37 at 16-17. Plaintiffs argue that the Forest Service pre-determined the outcome of the alternative analysis by failing to consider a broader range of alternatives. Docket No. 36 at 6-7.

The alternative section is "the heart of the environmental impact statement," 40 C.F.R. § 1502.14; hence, "[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate." Citizens for a Better Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985). And, while the practicalities of the requirement are difficult to define, NEPA requires all agencies of the Federal Government, to the fullest extent possible, to "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). The Ninth Circuit has instructed district courts, in determining whether a particular EIS has met this demand, to ascertain (1) whether the federal agency has sufficiently detailed information to make its decision in light of potential environmental consequences and (2) whether the federal agency has provided the public with information on the environmental impact of the proposed action and encouraged public participation in the development of that information. See e.g., Mumma, 956 F.2d at 1520; Kunzman, 817 F.2d at 492; Citizens for a Better Henderson, 768 F.2d at 1056. As a result, an agency must look at every reasonable alternative, with the range dictated by the "nature and scope of the proposed action," Block, 690 F.2d at 761, and sufficient to permit a reasoned choice and informed decision making. See Save Lake Washington v. Frank, 641 F.2d 1330, 1334 (9th Cir. 1981).

Plaintiffs' contention is that Defendants failed to satisfy this NEPA requirement because the FEIS considers only three action alternatives - all of which ban road construction and reconstruction, and a single "no action alternative" - which was included as a required point of reference rather than a seriously considered alternative. Plaintiffs argue that the alternatives predetermined the outcome of the alternative analysis and served to justify a decision already made rather than assess the environmental impact of proposed agency actions. Docket No. 20 at 20-24. ICL argued that the Forest Service studied a range of reasonable alternatives in light of the stated purpose of the project.

It appears to the Court that absent the elements directed solely at the Tongas National Forest and various procedural elements, which were ultimately moved into a separate rule and not included in the FEIS, the DEIS actually only examined three action alternatives. Each of three alternatives banned road construction and reconstruction in inventoried roadless areas and only differed as to the level of restriction imposed on timber harvesting. The Court recognizes that an agency need not evaluate alternatives that are inconsistent with policy objectives, see Seattle Audubon Soc'y v. Moseley, 80 F.3d 1401, 1404 (9th Cir. 1996), however, there is no evidence before the Court why the Forest Service failed to consider alternatives that were consistent with the stated purpose of the rule - "to prohibit activities that pose the greatest risk to the social and ecological values of inventoried roadless areas" - but did not include a total prohibition on road construction. Based on a failure to even consider other alternatives, it is unclear from the record whether less prohibitive restrictions could have fulfilled the goal of protecting the environmental integrity of roadless areas while avoiding adverse effects on forest health resulting from lack of access for forest health and management treatments.

In Block, the Ninth Circuit criticized the Forest Service for ending the decisional process inquiry at "the beginning" by "uncritically assum[ing] that a substantial portion of the RARE II areas should [contain a ban on road building] and consider[ing] only those alternatives with that result." Id. 690 F.2d at 767. Because an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative would accomplish the goals of the agency action, see City of Carmel-by-the-Sea v. United States Dep't of Transp., 123 F.3d 1142, 1155 (9th Cir.1997), the Court finds it likely that Plaintiffs would succeed on the merits of their claim that the Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

**c. Mitigation Options**

Finally, ICL argues that the Forest Service provided a full discussion of unavoidable adverse impacts, as well as potential mitigation measures. Docket No. 37 at 17-18. Specifically, ICL argues that the FEIS includes over 65 pages discussing, in detail, the possible adverse impacts of the Roadless Rule on forest health and fuel management treatments. Id. at 18. Plaintiffs argue that while it is true that the FEIS identifies the negative consequences of designated alternatives, the FEIS fails to identify measures designed to minimize the impact of those consequences.

The duty to discuss cumulative impacts in an Environmental Impact Statement is mandatory. See 40 C.F.R. § 1502.16. Similarly, the duty to discuss ways to mitigate adverse environmental impacts with regard to *each* alternative, if not already part of analyzing the comparative environmental effect of the various alternatives, is mandatory. *Id.*; 40 C.F.R. § 1502.14.

The Forest Service recognized in the FEIS that "the Roadless Rule together with the other proposed and finalized rules and policies could have cumulative effects." FEIS, Vol. 1 at 3-396. Accordingly, the Forest Service was required to include a useful analysis of these projects. See Carmel-by-the-Sea, 123 F.3d at 1160 (holding that an EIS must include a "useful analysis of the cumulative impacts of past, present and future projects."). A cursory and general discussion of the potential impacts will not do. Conclusory remarks are similarly insufficient.

Furthermore, despite the arguments of ICL, the Court agrees with Plaintiffs that the portions of the FEIS cited by ICL recognize negative consequences of designed alternatives but do not identify measures designed to minimize the impact of the identified consequences.

Based on the foregoing, the Court finds it likely that Plaintiffs would succeed on the merits of their claim that the Forest Service's failure to adequately analyze the cumulative impacts and mitigation measures of its proposal violates NEPA.<sup>22</sup>

### 3. Possibility of Irreparable Injury

Having previously found that Plaintiffs have demonstrated a strong likelihood of success on the merits, under the Ninth Circuit's test for equitable relief Plaintiffs need only make a minimal showing of harm to justify an injunction. Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988).

Plaintiffs argue that both the merits and the balance of harms weigh strongly in favor of an injunction halting implementation of the Roadless Rule. Docket No. 20 at 30-32. The ICL

<sup>22</sup> Plaintiffs additionally argued that under Block, 690 F.2d 753, the Forest Service violated NEPA by failing to perform site-specific analysis. Docket No. 20 at 6. Intervenors argued that no-site specific analysis was required because the Roadless Rule made no "critical decisions" with regard to site-development and made no "irreversible and irretrievable commitment" of the availability of resources to a project at a particular site. Docket No. 55 at 11. It is not clear, at this time, whether the Roadless Rule is the type of concrete development proposal that warrants such detailed analysis or whether the detailed analysis should be deferred until a critical decision has been made to act on site development. However, based on this Court's previous finding that Plaintiffs have otherwise established a high likelihood of success of establishing a number of NEPA violations, the Court need not resolve this issue at this time.

Intervenors argue that issuance of an injunction will do more environmental harm than good and that Plaintiffs' harms are illusory. Docket No. 37 at 4-6. The Court finds, however, there is merit in the wisdom of the First Circuit Court of Appeals analysis that the purpose of NEPA "is to require consideration of environmental factors before project momentum is irresistible, before options are closed, and before agency commitments are set in concrete." Massachusetts v. Watt, 716 F.2d 946, 953 (1st Cir. 1983).

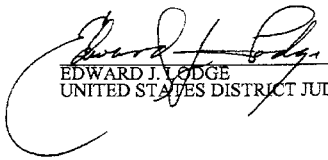
Nevertheless, after reviewing the record and hearing oral argument on the motion, the Court is of the opinion that a decision as to whether or not there has been irreparable injury is arguably premature. At the hearing on this motion, counsel for the Government *committed* to the Court that the Federal Government would provide a status report concerning the ongoing review by the new administration and Department of Agriculture to the Court by May 4, 2001. Such report may obviously affect both the process and the substance of the roadless rule. The Court is therefore going to reserve its ruling on whether or not a preliminary injunction should issue until on or after May 4, 2001, so it can determine what, if any, actions taken by the Government bear on the issue of irreparable injury.

V. **ORDER**

Based on the foregoing, and being fully advised in the premises,

The Court hereby **RESERVES ITS RULING** on Plaintiffs' Motion for Preliminary Injunction (Docket No. 15) pending the issuance of the Government's status report on May 4, 2001.

Dated this 5<sup>th</sup> day of April, 2001.

  
EDWARD J. LODGE  
UNITED STATES DISTRICT JUDGE

United States District Court,  
for the  
District of Idaho  
April 5, 2001

cv .

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 2:01-cv-00011

I certify that a copy of the attached document was mailed to the following named persons:

Matthew J McKeown, Esq.  
OFFICE OF ATTORNEY GENERAL  
Natural Resources Division  
PO Box 83720  
Boise, ID 83720-0010

Steven W Strack, Esq.  
OFFICE OF ATTORNEY GENERAL  
Natural Resources Division  
PO Box 83720  
Boise, ID 83720-0010

James D Carlson, Esq.  
OFFICE OF ATTORNEY GENERAL  
Civil Litigation Division  
PO Box 83720  
Boise, ID 83720-0010

John C Cruden, Esq.  
US DEPT OF JUSTICE  
Environment & Natural Resources Division  
PO Box 663  
Washington, DC 20004

Andrea L Berlowe, Esq.  
US DEPT OF JUSTICE  
Environment & Natural Resources Division  
General Litigation Section  
PO Box 663  
Washington, DC 20044-0663

John W Watts, Esq.  
US DEPT OF JUSTICE  
Environment and Natural Resources  
General Litigation Section  
PO Box 663  
Washington, DC 20044-0663

D Marc Haws, Esq.  
US ATTORNEY'S OFFICE  
Box 32



Boise, ID 83707

Douglas L Honnoid, Esq.  
EARTHJUSTICE LEGAL DEFENSE FUND  
209 S Wilson St  
Bozeman, MT 59715

Timothy J Preso, Esq.  
EARTHJUSTICE LEGAL DEFENSE FUND  
209 S Wilson St  
Bozeman, MT 59715

Sanjay Narayan, Esq.  
EARTHJUSTICE LEGAL DEFENSE FUND  
209 S Wilson St  
Bozeman, MT 59715

Nathaniel S.W. Lawrence, Esq.  
NATURAL RESOURCES DEFENSE COUNCIL  
3723 Holiday Dr SE  
Olympia, WA 98501

Laurence J Lucas, Esq.  
LAW OFFICES OF LAURENCE J LUCAS  
PO Box 1342  
Boise, ID 83701

Cameron S. Burke, Clerk

Date: April 5, 2001

BY: Carol Vaughn  
(Deputy Clerk)

U.S. COURTS  
01 MAY 10 PM 12:52  
REC'D FILED *Wave*  
CAMERON S. BURKE,  
CLERK, IDAHO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

STATE OF IDAHO, ex rel.; DIRK KEMPTHORNE, Governor; PETE T. CENARRUSA, Secretary of State; ALAN G. LANCE, Attorney General; J.D. WILLIAMS, State Controller; MARILYN HOWARD, Superintendent of Public Instruction, as the State Board of Land Commissioners; and WINSTON WIGGINS, Acting Director, Idaho Department of Lands,

and,

GOVERNOR DIRK KEMPTHORNE, in his capacity of Chief Executive of the State of Idaho and President of the Idaho Board of Land Commissioners,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, and MICHAEL P. DOMBECK, Chief United States Forest Service

Defendants,

and,

IDAHO CONSERVATION LEAGUE, IDAHO RIVERS UNITED, SIERRA CLUB, THE WILDERNESS SOCIETY, OREGON NATURAL RESOURCES COUNCIL, PACIFIC RIVERS COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, and DEFENDERS OF WILDLIFE,

Defendant-Intervenors.

Case No. CV01-11-N-EJL  
ORDER

Pending before the Court in the above entitled matter is Plaintiffs'<sup>1</sup> Motion for Preliminary Injunction. Docket No. 15. Having reviewed all briefing submitted, as well as other pertinent documents in the Court's file, having heard oral arguments, and having received the Government's status report on May 4, 2001 the Court issues the following order.<sup>2</sup>

#### I. STANDARD OF REVIEW

Having previously found that Plaintiffs had demonstrated a strong likelihood of success on the merits, the Ninth Circuit requires only that Plaintiffs make a minimal showing of harm to justify an injunction. Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988); See also Idaho Sporting Congress v. Alexander, 222 F.3d 562, 565 (9th Cir. 2000) (holding that the test is a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases).

#### II. ANALYSIS

Plaintiffs argue that the possibility of irreparable injury has been adequately demonstrated by the Government's own admission that the United States Department of Agriculture (USDA) shares Plaintiffs' "concerns about the potential for irreparable harm in the long-term under the current rule." Docket No. 48 at 3 (quoting Docket No. 47, Status Report, at 4). Alternatively, Plaintiffs argue that the Roadless Rule poses serious risks of irreparable harm to the National Forests and adjoining lands because the Roadless Rule will effectively prevent active forest management on the overwhelming majority of inventoried roadless areas within Idaho. Such restrictions will prevent local officials from accessing the vital tools necessary to prevent the spread of disease, insect infestations, and catastrophic wildfires. Id. at 4-5. The Federal Defendants argue that the USDA's

<sup>1</sup> Plaintiffs are individually identified as the State of Idaho; *ex rel.* Dirk Kempthorne, Governor, Pete T. Cenarrusa, Secretary of State, Alan G. Lance, Attorney General, J.D. Williams, State Controller, Marilyn Howard, Superintendent of Public Instruction, as Board of Land Commissioners; Winston Wiggins, Acting Director, Idaho Department of Lands; and, Governor Dirk Kempthorne, in his capacity as Chief Executive of the State of Idaho and resident of the Idaho Board of Land Commissioners.

<sup>2</sup> A detailed description of the full factual and procedural background is contained in the Court's prior Order dated April 5, 2001 and will not be repeated herein except to note that the Court, in its April 5, 2001 Order, found a strong likelihood of success on the merits but reserved its ruling after opining that a decision as to whether or not there had been irreparable injury was arguably premature. Docket No. 41 at 19.

stated commitment to address procedural concerns associated with the Roadless Rule with notice and comment on proposed amendments should alleviate the Plaintiffs' asserted need for a preliminary injunction.

The Court reserved putting its ruling into effect on April 20, 2001 only because the Government committed to the Court that the report due out May 4, 2001 may affect both the process and the substance of the rule and thereby moot the issues before the Court. This has not happened. In fact, the Government's vague commitment to propose amendments to address, *inter alia*, identified flaws in the EIS process suggests that the requisite "hard look" was not taken when originally preparing the EIS.<sup>3</sup> Furthermore, the Government's status report does not provide any explanation as to why the information to be obtained by virtue of the proposed amendments cannot be obtained prior to placing the Roadless Rule into effect. In short, the information currently provided by the Federal Government in its status report leaves the Court with the firm impression that, absent the implementation of the proposed amendments, there is a substantial possibility that the Roadless Rule will result in irreparable harm to the National Forests.

As previously noted, Plaintiffs need only make a minimal showing of harm to justify an injunction. *Marcos*, 862 F.2d at 1362. Here, the Federal Government has conceded that without the proposed rulemaking amending the Roadless Rule there is a potential for long-term irreparable harm. *See* Docket No. 47, Status Report, at 4. In addition, Plaintiffs have shown that the Roadless Rule poses serious risks to the National Forests and adjoining lands by restricting active management activities that have already been planned and precluding Forest Service officials from considering certain management techniques in planning future management activities. There is neither a "date certain" on the proposed amendments to the Roadless Rule nor any guarantee that the proposed amendments can or will cure the defects identified by the Court and acknowledged to exist by the Federal Government. Accordingly, the Court finds that Plaintiffs have made the minimal showing of irreparable harm and will order that the injunction issue.

---

<sup>3</sup> *See* Docket No. 47, Status Report, at 2-3 stating that "States, Tribes, local communities and this Court have voiced significant concerns about the process through which the Rule was promulgated. After a review of the Rule and administrative record, the USDA shares many of these concerns. . . . Consequently, the USDA intends to initiate an additional public process that will seek to address the issues raised by the Court and to examine possible modifications to the Rule to augment local participation while seeking to maintain the roadless area values and characteristics which the current Rule protects with restrictions on timber harvests and road building."

### III. CONCLUSION

While the Court recognizes the tremendous responsibility the USDA has in addressing the issues before them on the Roadless Initiative, the possibility of proposed amendments at some time in the future does not insure the public confidence that NEPA was intended to provide. A band-aid approach to something this controversial may mask or obscure the symptoms for political purposes but does not address the "hard look" analysis for a cure as required by NEPA before environmentally altering actions are put into effect.

By issuing the Preliminary Injunction the Court is not precluding or even proposing that the USDA not go forward with their study concerning the proposed amendments because the ultimate responsibility lies with the Government and/or its agencies and not with the Court. To allow the current rule to go into effect, however, ignores the reality stated in the Court's previous order that once something of this magnitude is set in motion, momentum is irresistible, options are closed and agency commitments, if not set in concrete, will be the subject of litigation for years to come.

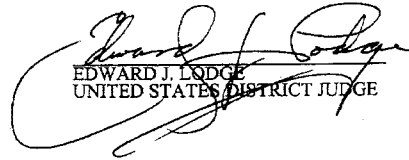
### IV. ORDER

Based on the foregoing, and being fully advised in the premises,

**IT IS HEREBY ORDERED** that Plaintiffs' Motions for Preliminary Injunction (Docket No. 15) is **GRANTED**. The Forest Service is **HEREBY ENJOINED** from implementing all aspects of the Roadless Area Conservation Rule, including (1) the final rule published at 66 Fed. Reg. 3244 (January 12, 2001), and (2) that portion of the Roadless Area Conservation Rule that was published November 9, 2000, at 65 Fed. Reg. 67,514, as part of the "National Forest System Land Resource Management Planning: Final Rule;" and designated as 36 C.F.R. § 219.9(b)(8).

The parties are reminded that a joint Litigation Plan must be filed in this matter on or before **June 11, 2001** and that a telephone scheduling conference has been set for **June 21, 2001 at 10:00 a.m.** mountain standard time, for the purpose of confirming the deadlines proposed by the parties in the Litigation Plan and to set the matter for trial.

Dated this 10<sup>th</sup> day of May, 2001.

  
EDWARD J. LODGE  
UNITED STATES DISTRICT JUDGE

# FAX TRANSMISSION

UNITED STATES DISTRICT COURT

Edward J. Lodge  
District Judge

550 West Fort St. MSC 040  
Boise, ID 83724  
208-334-9270

Nancy Baskin  
Staff Attorney

Diane McCoy  
Secretary

Fax: 208-334-9229

Tad Blank  
Staff Attorney

Peggy Satterfield  
Court Reporter

Vicky Hedrick  
Staff Attorney

To:  
Andrea Berlowe  
U.S. Department of Justice  
Environmental and Natural Resources Division  
General Litigation Section  
P.O. Box 663  
Washington, DC 20044-0663  
Fax No.: 202-514-0557

Honorable John Ashcroft  
Main Justice Building Rm. 511  
950 Pennsylvania Avenue N. W.  
Washington, DC 20530-0001  
Fax No. : 202-514-0557

United States Attorney  
P.O. Box 32  
Boise, ID 83707  
Fax No.: 208-334-1414

Laird Lucas  
P.O. Box 1342  
Boise, ID 83701-1342  
Fax No.: 208-342-8286

Steve Strack  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010  
Fax No.: 208-334-2690

Douglas Honnold  
EarthJustice Legal Defense Fund  
209 S. Wilson St.  
Bozeman, MT 59715  
Fax No.: 406-586-9695

Nathaniel S.W. Lawrence  
Natural Resources Defense Council  
3723 Holiday Dr. SE  
Olympia, WA 98501  
Fax No.: 360-570-9310

*faxed 5/10/01 / Kate Vaughn*

WASHINGTON LEGAL FOUNDATION  
2009 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON, D. C. 20036  
202 588-0302

April 25, 2001

U.S. Senator Larry E. Craig  
Chairman, Subcommittee on Forests and  
Land Management of the Senate Committee  
on Energy and Natural Resources  
U.S. Senate  
Washington, D.C. 20510-6150

Dear Mr. Chairman:

This letter is in response to your letter of April 3, 2001, requesting the Washington Legal Foundation (WLF) to survey and analyze "(1) the Clinton Administration's record in court on defending or abandoning the resource management decisions of previous administrations; as well as (2) cases where the Clinton Administration was called upon to defend its own resource management decisions." Your inquiry was prompted by unfounded criticism with respect to the Bush Administration's handling of the Roadless Rule issue in the courts.

We appreciate the opportunity to be of assistance to you and the committee. WLF is a non-profit public interest law and policy center that promotes principles of free enterprise and private property rights through litigation, the administrative process, and civic communications. WLF does not lobby for or against pending legislation.

As you properly noted in your letter, WLF has been actively involved in several resource management issues, such as the Roadless Rule issue. That rule would needlessly lock up approximately 58 million acres of our national forests, and as you are no doubt aware, the federal court in Idaho recently granted a motion to preliminarily enjoin enforcement of the rule because of the flawed rulemaking process in that proceeding. State of Idaho v. U.S. Forest Service, No. CV01-11-N-EJL (D. Id. Apr. 5, 2001). WLF has recently filed a formal petition with the Department of Agriculture to repeal the Roadless Rule, a copy of which is enclosed for your information.

Based on our review of reported decisions, it appears that the Clinton Administration on at least 13 occasions refused to defend resource management decisions of its predecessors, choosing to accept an injunction or remand from a U.S. district court rather than defend those decisions in a U.S. court of appeals. On at least 28 other occasions, the Clinton Administration refused to defend its own resource management decisions in a court of appeals after receiving an injunction or remand from a U.S. district court. On these 41 occasions the Clinton Administration chose to abandon rather than defend timber sales, grazing allotments, mining approvals and wildlife management decisions that were carefully

made by professional resource managers.

The Clinton Administration's defense effort in the Supreme Court was even worse. Apart from the district court losses that it refused to defend, the Clinton Administration lost over 20 resource management cases in U.S. courts of appeals after winning in the district court. More than half of these losses were in the Ninth Circuit court of appeals, the appellate court with the highest reversal rate (over 90%) in the Supreme Court. Yet in its eight years in office, the Clinton Administration asked the Supreme Court to review an adverse resource management decision by a court of appeals just once.<sup>1</sup>

**I. 13 RESOURCE MANAGEMENT DECISIONS MADE BY  
PRIOR ADMINISTRATIONS AND THEN ABANDONED  
BY CLINTON ADMINISTRATION; NO APPEAL OF U.S.  
DISTRICT COURT INJUNCTION OR REMAND ORDER**

1. Defenders of Wildlife v. Babbitt, 958 F. Supp. 670 (D.D.C. 1997). The court overturned Fish and Wildlife Service (FWS) decision not to list Canada lynx under Endangered Species Act (ESA). On March 11, 1993, the new FWS regional director asked FWS national director to rescind prior administration's finding that listing was not justified.
2. Oregon Natural Desert Association v. Green, 953 F. Supp. 1133 (D. Or. 1997). The court enjoined Bureau of Land Management (BLM) plan for eastern Oregon river for violations of Wild and Scenic Rivers Act and National Environmental Policy Act (NEPA).
3. Southwest Center for Biological Diversity v. Babbitt, 926 F. Supp. 920 (D. Ariz. 1996). The court overturned FWS decision not to list northern goshawk west of 100<sup>th</sup> meridian under ESA.
4. Greater Gila Biodiversity Project v. Forest Service, 926 F. Supp. 914 (D. Ariz. 1994). The court enjoined Forest Service timber sale on Apache-Sitgreaves National Forest pending NEPA compliance.
5. Friends of the Bitterroot, Inc. v. U.S. Forest Service, 900 F. Supp. 1368 (D. Mon. 1995). The court remanded Forest Service timber sale to the agency to correct NEPA violation in 1990 environmental impact statement (EIS).
6. Carlton v. Babbitt, 900 F. Supp. 526 (D.D.C. 1995). The court overturned FWS decision not to move grizzly bears from threatened to endangered under ESA. On

---

<sup>1</sup>Thomas v. Pacific Rivers Council, 514 U.S. 1082 (1995) (petition for writ of certiorari was denied).



remand, the agency again decided that there was no justification to reclassify grizzly bear. The district court again ruled against agency and remanded matter to agency for a second time. Carlton v. Babbitt, 26 F. Supp. 2d 102 (D.D.C. 1998),

7. Shoshone-Paiute Tribe v. United States, 889 F. Supp. 1297 (D. Id. 1994). The court enjoined Air Force training range development for NEPA violations in 1992 EIS.
8. Ayers v. Espy, 873 F. Supp. 455 (D. Col. 1994). The court enjoined Forest Service timber sale approved in 1992 on Arapaho and Roosevelt National Forests pending NEPA and National Forest Management Act (NFMA) compliance. The government's motion for reconsideration was denied.
9. Anacostia Watershed Society v. Babbitt, 871 F. Supp. 475 (D.D.C. 1993). The court enjoined transfer of portions of Anacostia Park, a national park, to local government for development for children's park, pending preparation of EIS or environmental assessment (EA). Plaintiff's motion for clarification was denied. 875 F. Supp. 1 (D.D.C. 1995).
10. Hells Canyon Preservation Council v. Richmond, 841 F. Supp. 1039 (D. Or. 1993). The court ordered the Forest Service to issue final regulations for Hells Canyon National Recreation Area.
11. Alpine Lakes Protection Society v. U.S. Forest Service, 838 F. Supp. 478 (W.D. Wash. 1993). The court enjoined Forest Service road access permits to private timber company pending NEPA compliance.
12. Sierra Club v. Lujan, 1993 WL 151353 (W.D. Tex. 1993). The court ordered FWS to impose minimum streamflows on San Antonio water source to remedy ESA violations.
13. National Wildlife Federation v. Babbitt, 1993 WL 304008 (D.D.C. 1993). The court remanded BLM coal leasing regulations pending new EIS.

**II. 28 CLINTON ADMINISTRATION RESOURCE  
MANAGEMENT DECISIONS LATER ABANDONED BY  
CLINTON ADMINISTRATION; NO APPEAL OF U.S.  
DISTRICT COURT INJUNCTION OR REMAND ORDER**

1. Greenpeace Foundation v. Mineta, 122 F. Supp. 2d 1123 (D. Ha. 2000). The court enjoined National Marine Fisheries Service (NMFS) approval of Hawaiian lobster fishery pending ESA and NEPA compliance on monk seals.
2. Wilderness Society v. Bosworth, 118 F. Supp. 2d 1082 (D. Mon. 2000). The court

enjoined Forest Service timber sale in Clearwater National Forest for NEPA and NFMA violations.

3. Greenpeace v. NMFS, 106 F. Supp. 2d 1066 (W.D. Wash. 2000). The court enjoined fishing in critical habitat of endangered Stellar sea lion pending ESA compliance by NMFS.
4. Federation of Fly Fishers v. Daley, 2000 WL 33225295 (N.D. Cal. 2000). The court overturned decision by NMFS not to list steelhead as threatened under ESA.
5. Center for Biological Diversity v. Badgley, 2000 WL 1513812 (D. Or. 2000) The court ordered FWS to make 12-month ESA finding on yellow-billed cuckoo.
6. Siskiyou Regional Education Project v. Rose, 87 F. Supp. 2d 1074 (D. Or. 1999) The court enjoined BLM rule easing mining restrictions for NEPA violation.
7. Defenders of Wildlife v. Ballard, 73 F. Supp. 2d 1094 (D. Az. 1999). The court enjoined nationwide Corps of Engineers wetlands fill permits pending NEPA compliance on pygmy-owl.
8. Oregon Natural Resources Council v. U.S. Forest Service, 59 F. Supp. 2d 1085 (W.D. Wash. 1999) The court enjoined 35 Forest Service and BLM timber sales and all new sales pending compliance with survey and manage requirements of Northwest Forest Plan.
9. Alaska Center for the Environment v. West, 31 F. Supp. 2d 714 (D. Ak. 1998) The court enjoined nationwide Section 404 permit to fill wetlands for home construction pending further Clean Water Act analysis by Corps of Engineers.
10. Conservation Council for Hawai'i v. Babbitt, 24 F. Supp.2d 1074 (D. Ha. 1998). The court ordered FWS to publish 100 proposed critical habitat designations by November 30, 2000, and additional 145 by April 30, 2002.
11. Sierra Club v. United States, 23 F. Supp. 2d 1132 (N.D. Cal. 1998). The court enjoined housing construction in Yosemite National Park pending NEPA compliance by National Park Service.
12. National Wildlife Federation v. Cosgriffe, 21 F. Supp. 2d 1211 (D.Or. 1998). The court ordered BLM to prepare management plan under Wild and Scenic Rivers Act.
13. Kentucky Heartwood, Inc. v. Worthington, 20 F. Supp. 2d 1076 (E.D. Ky. 1998). The court enjoined all Forest Service timber sales on Daniel Boone National Forest pending ESA and NEPA compliance.

14. Sierra Club v. Babbitt, 15 F. Supp. 2d 1274 (S.D. Ala. 1998). The court set aside two FWS incidental take permits for housing projects pending additional ESA and NEPA review.
15. Oregon Natural Resources Council v. Daley, 6 F. Supp. 2d 1139 (D. Or.1998). The court set aside NMFS decision not to list coastal coho salmon as arbitrary and capricious and ordered new decision in 60 days.
16. Pacific Coast Federation of Fishermen's Associations v. National Marine Fisheries Service, No. 97-775R (W.D. Wash. 1998). The court enjoined 23 Forest Service and BLM timber sales in southwestern Oregon pending ESA compliance.
17. Save Our Springs v. Babbitt, 27 F.Supp.2d 739 (W.D. Tex. 1997). The court overturned FWS decision not to list Barton Springs salamander under ESA.
18. Friends of the Wild Swan v. FWS, 12 F. Supp. 2d 1121 (D.Or. 1997). The court ordered FWS to reconsider decision not to list bull trout under ESA.
19. Curry v. Forest Service, 988 F. Supp. 541 (W.D. Pa. 1997). The court enjoined Forest Service timber sales in Allegheny National Forest pending NEPA and NFMA compliance.
20. House v. Forest Service, 974 F. Supp. 1022 (E.D. Ky. 1997). The court enjoined Forest Service timber sales in Daniel Boone National Forest pending ESA compliance.
21. Restore: The North Woods v. U.S. Dept. of Agriculture, 968 F. Supp. 168 (D. Vt. 1997). The court enjoined Forest Service land exchange for ski resort expansion in Vermont pending NEPA compliance.
22. Friends of the Wild Swan v. FWS, 945 F.Supp.1388 (D. Or. 1996). The court overturned FWS decision that listing bull trout under ESA, although warranted, was precluded by higher-priority species. On remand, FWS listed bull trout only in certain geographical areas rather than throughout species' entire range. That decision was also overturned. Friends of the Wild Swan v. FWS, 12 F. Supp. 2d 1121 (D. Or. 1997).
23. Biodiversity Legal Foundation v. Babbitt, 943 F.Supp. 23 (D.D.C. 1996). The court overturned FWS decision not to list Alexander Archipelago wolf under ESA.
24. Southwest Center for Biological Diversity v. Babbitt, 939 F.Supp. 49 (D.D.C. 1996). The court overturned FWS decision not to list Queen Charlotte goshawk under ESA.
25. Klamath Tribes v. United States, 1996 WL 924509 (D. Or. 1996). The court

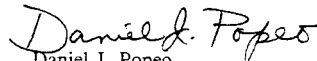
enjoined eight Forest Service timber sales within former Klamath reservation in Oregon for violations of tribal rights despite release language in 1995 Rescissions Act.


26. Sierra Club v. Martin, 71 F. Supp. 2d 1268 (N.D. Ga. 1996). The court enjoined Forest Service timber sales on Chattahoochee and Oconee National Forests pending NEPA and NFMA compliance.
27. Washington Trails Association v. Forest Service, 935 F. Supp. 1117 (W.D. Wash. 1996). The court enjoined Forest Service trail reconstruction project pending NEPA compliance.
28. Leavenworth Audubon Adopt-A-Forest Alpine Lakes Protection Society v. Ferraro, 881 F. Supp. 1482 (W.D. Wash. 1995). The court enjoined three Forest Service timber sales on Wenatchee National Forest prepared under Northwest Forest Plan pending NEPA and NFMA violations.

We hope that this information is of help to you and your committee. We would also like to express our appreciation to students enrolled in WLF's Economic Freedom Law Clinic at George Mason University School of Law for assisting in this research.

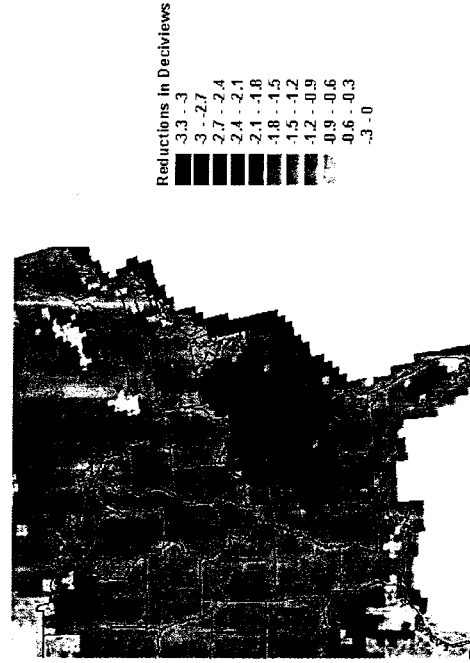
If we can be of any further assistance to you, please feel free to call on us.

Sincerely yours,

  
Daniel J. Popeo  
Chairman and General Counsel

  
Paul D. Kamenar  
Senior Executive Counsel

### Improvements in Annual Visibility in 2020 Under a Multipollutant Scenario Relative to the Base Case

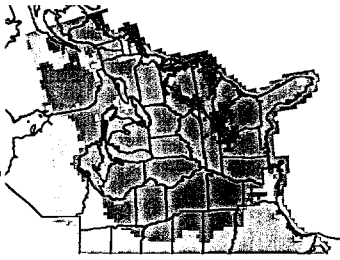


TC1

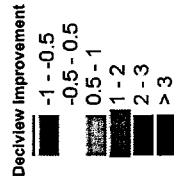
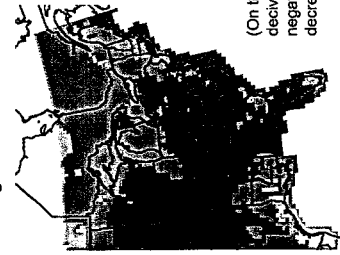
- This map depicts the changes in visibility expressed in deciviews\* from the Base Case (2020) to a Multi-pollutant Case
- Given that changes of one or two deciviews constitute noticeable improvements in visibility, it is notable that much of the East is projected to have improvements of two to three deciviews from the Base Case
- These improvements are estimated to be greatest along the Appalachians, including the Blue Ridge and Great Smoky Mountains - areas where visibility has been deteriorating.

# Visibility (2020)

Deciview Change 2020 Base Case vs. Clear Skies



Deciview Change 1996 vs. 2020 with Clear Skies



(On these maps, a positive change in deciviews is an improvement in visibility; negative change in deciviews is a decrease in visibility.)

- Clear Skies would improve visibility over much of the East and Midwest 1-2 deciviews beyond what is expected under the Base Case in 2020.
  - The greatest improvements (2-3 deciviews) are projected along the Appalachians, including the Blue Ridge and Great Smoky Mountains - areas where visibility has been deteriorating.
- Under Clear Skies and existing programs, visibility in a large portion of the East and Midwest would improve 2-3 deciviews from current levels.
  - Visibility along the southern Appalachian Mountains would improve more than 3 deciviews.
- Under Clear Skies, the Western Regional Air Partnership agreement will be honored and the emissions reductions are expected to take effect.
  - This will allow future growth in the West to occur without degrading visibility.
- The EPA is also considering other actions, such as the non-road diesel rule, that will help reduce visibility-impairing fine particle concentrations throughout the western and eastern U.S.

**Notes:**

- Title IV reduced over 3 million tons of SO<sub>2</sub> between 1990 and 1996 that are not captured by the improvements shown on the map because the base year for the analysis was 1996.
- Emissions from certain sources, such as mining and metals processing, are expected to increase in the future. These sources, which are not affected by Title IV or Clear Skies, contribute to increases in fine particle concentrations in certain areas (e.g. Northern Minnesota).

**Clean Air Act/New Source Review Enforcement Activity**

EPA's enforcement activities under the Clean Air Act to address New Source Review (NSR) violations continue to be vigorous. Beginning with investigations, of which we have over 100 under way, and concluding with a filed case or settlement, EPA aims to reduce harmful air pollution caused by refineries, power plants and other industrial processes, such as paper mills.<sup>1</sup>

Our current data shows that -- between January 2001 and March 2002 -- EPA made 115 information requests; issued 23 Notices of Violation; filed and settled 15 cases, concluding 7 of them (i.e., they were entered by the appropriate court); and engaged in numerous other enforcement activities such as depositions, motion practice and on-going settlement discussions -- all to enforce the Clean Air Act's NSR requirements.

Since the start of NSR initiative in 1997, EPA has, through settled cases alone, reduced nitrogen oxides (NOx) and sulfur dioxide (SO<sub>2</sub>) emissions by approximately 329,000 tons per year; ordered nearly \$3 billion in injunctive relief aimed to rectify the violations; required that nearly \$43 million be spent on environmental mitigation projects; and ordered over \$57 million in civil penalties to be paid.

Further pollutant reductions and reparations are expected from cases in which we have a settlement agreement in principle: a reduction in nitrogen oxides (NOx) and sulfur dioxide (SO<sub>2</sub>) emissions by approximately 591,000 tons per year; \$3 billion in injunctive relief; over \$35 million in environmental mitigation projects; and almost \$14 million in civil penalties.<sup>2</sup>

SO<sub>2</sub> and NOx are significant contributors to acid rain and fine particulates. NOx also contributes to the formation of ground level ozone, which is a component of smog. Fine particulate matter causes haze. All of these pollutants can cause severe respiratory problems and exacerbate cases of childhood asthma.

<sup>1</sup> These activities reflect EPA's approach to enforcement generally, which includes the following steps:

- Investigate possible violations by gathering information, e.g., through information requests, citizen complaints, inspections or other reports;
- Review collected information to determine compliance
- Issue "Notices of Violation" or other formal notification to the violator to alert them to the violations detected and give them an opportunity to correct those violations
- Enter into negotiations with the violator in an attempt to reach an agreed upon settlement to resolve the violations
- Proceed with formal enforcement by filing a case for litigation if no resolution of the violations could be achieved.

<sup>2</sup> Current data as of April 19, 2002.

**NSR §114 Information Requests and Notices of Violation  
Issued On or After January 20, 2001  
All Facilities**

<b>Addressee</b>	<b>Facility</b>	<b>Date</b>	<b>Filing</b>
<b>United Illuminating Company</b> 157 Church Street P. O. Box 1564 New Haven, CT 06506-0901 Mr. Nathaniel Woodson, CEO	Bridgeport Harbor, CT	02/09/2001	§114 request
<b>Wisvest - Connecticut, LLC</b> 12 Progressive Drive, 2 <sup>nd</sup> floor Shelton, CT 06484 Mr. Thomas D. Kirk, General Mgr.	Bridgeport Harbor, CT	02/09/2001	§114 request
<b>Public Service Co. of N.H.</b> 1000 Elm Street P.O. Box 330 Manchester, NH 03105-0330 Ms. Laurel Brown, Analyst- Envir.	Merrimack Station - Bow, NH Schiller Station - Portsmouth, NH	12/21/2000	§114 request
<b>Public Service Co. of N.H.</b> 1000 Elm Street P.O. Box 330 Manchester, NH 03105-0330 Mr. Gary A. Long, President	Merrimack Station - Bow, NH Schiller Station - Portsmouth, NH	12/11/2000	§114 request
<b>RE: PG&amp;E Generating</b> Adam Kahn, Esq. Foley, Hoag & Eliot LLP One Post Office Square Boston, MA 02109	Brayton Point - Somerset, MA Salem Harbor - Salem, MA	11/14/2000	§114 request
<b>PG&amp;E Generating</b> 7500 Old Georgetown Road Bethesda, MD 20814-6161 Mr. P. Chrisman Iribe, CEO & Pres.	Brayton Point - Somerset, MA Salem Harbor - Salem, MA	05/17/2000	§114 request
<b>PG&amp;E Generating</b> 7500 Old Georgetown Road Bethesda, MD 20814-6161 Mr. P. Chrisman Iribe, CEO & Pres.	Brayton Point - Somerset, MA Salem Harbor - Salem, MA		§114 request
<b>Wisconsin Energy Corporation</b> 231 West Michigan Street P.O. Box 2949 Milwaukee, WI 53201 Mr. Richard A. Abdo, CEO & Pres	Bridgeport Harbor, CT	05/17/2000	§114 request



Addressee	Facility	Date	Filing
<b>Allegheny Energy, Inc.</b> 800 Cabin Hill Drive Greensburg, PA 15601 Mr. Joe Kostik	Ten Electrical Generating Stations Operated by Three Subsidiary Companies - Monongahlea Power Company, West Penn Power Company, and Potomac Edison Company	06/20/02	§114 request
<b>Commonwealth Atlantic Limited Partnership</b> 2837 S. Military Highway Chesapeake, VA 23323 Mr. Frank Miller	Non-Regulated Utility Power Plant- Chesapeake, VA	06/11/02	§114 request
<b>PP&amp;L Electric Utilities Corporation</b> Two North Ninth Street Allentown, PA 18101 Mr. William F. Hecht, Chairman, Pres. and CEO	Martins Creek Electrical Generating Station - Martins Creek, PA	05/29/02	§114 request
<b>Virginia Electric and Power Company</b> P.O. Box 26666 Richmond, VA 23261 Mr. Eric Hurlocker, Assistant General Counsel	Chesterfield, Chesapeake, Yorktown, Possum Point, and BremsBluff Electrical Generating Stations - Commonwealth of Virginia	05/14/02	§114 request
<b>Pioneer Crossing Landfill F.R.&amp;S., Inc.</b> 727 Red Lane Road Birdsboro, PA 19508 Mr. Thomas O'Connor, Manager	Pioneer Crossing Landfill - Exeter Township, PA	05/02/02	§114 request
<b>Dupont Teijin Films</b> P. O. Box 411 Hopewell, VA 23860 Dr. Kevin T. Corby, Site Manager	Dupont Hopewell Plant - Hopewell, VA	03/29/02	§114 request
<b>Montgomery County Resource Recovery Facility (MCRRF)</b> 21204 Martinsville Road Dickerson, MD 20842 Mr. Art Balmer, Director	MCRRF Power Plant - Dickerson, MD	02/21/02	§114 request
<b>Capital Cement Company</b> South End Queen Street Martinsburg, WV Mr. Gary H. Gess, Environ. and Govern. Affairs Director	Portland Cement Plant - Martinsburg, WV	12/26/01	§114 request
<b>Foster Wheeler Mount Carmel Cogeneration Plant</b> P.O. Box 490 Marion Heights Road Marion Heights, PA 17832 Mr. Joseph Camerini, Plant Manager	Cogeneration Plant - Marion Heights, PA	11/30/01	§114 request

<b>Kimberly Clark Cogeneration Plant</b> Front Street and Avenue of the States Chester, PA 19013 Mr. Gary Baker, Environmental Coordin.	Cogeneration Plant - Chester, PA	11/20/01	§114 request
<b>John B. Rich Memorial Power Station</b> Gilberton Power Company (GPC) 50 Eleanor Avenue Frackville, PA 17931 Mr. David Martin, General Manager	Non-Utility Power Plant - Frackville, PA	10/15/01	§114 request
<b>PPG Industries, Natrium Plant</b> State Route #2 New Martinsville, WV 26155 Mr. Scott Pleskonko, Dir. Envirn. Health & Safety	Non-Utility Power Plant - New Martinsville, WV	10/02/01	§114 request
<b>Sun Oil Company</b> 3144 Passyunk Avenue Philadelphia, PA 19145 Mr. Eric V. Schneider, Environ. Manager	Petroleum Refinery - Philadelphia, PA	10/01/01	§114 request
<b>Nazareth III Portland Cement Plant</b> <b>Essroc Italcementi Group</b> 401 Prospect Street Nazareth, PA 18064 Mr. Fabio Rizzi, Plant Manager	Nazareth III Portland Cement Plant - Nazareth, PA	07/18/01	§114 request
<b>United Refining Company</b> 15 Bradley Street Warren, Pennsylvania 16365 Mr. David A. Gallogly, Asst. V. P.	Petroleum Refinery - Warren, PA	07/11/01	§114 request
<b>Kimberly-Clark Tissue Company</b> Front Street and Avenue of the States Chester, PA 19013 Mr. Gary Baker, Environmental Manager	Non Regulated Utility Power Plant - Chester, PA	06/27/01	§114 request
<b>Nazareth Plant I</b> <b>Essroc Italcementi Group</b> Route 248 & Easton Road Nazareth, PA 18064 Fabio Rizzi, Plant Manager	Nazareth Plant I Portland Cement Plant - Nazareth, PA	06/15/01	§114 request
<b>Brotech Corporation</b> 150 Monument Road Bala Cynwyd, PA 19004 Mr. Stephen Brodie, President	Ion Exchange Resin Manufacturing Facility - Philadelphia, PA	06/11/01	§114 request
<b>Grant Town Power Plant</b> Highway 17 Grant Town, WV 26574 Mr. Herb Thompson, Plant Manager	Non Regulated Utility Power Plant - Grant Town, WV	06/11/01	§114 request

<b>RE: Virginia Power Company McGuire Woods Attorneys at Law</b> 901 East Cary Street Richmond, VA 23219 Mr. Dowd, Attorney	Virginia Power Company's North Branch Power Station - EPA's Withdrawal of Section 114 Information Request	05/30/01	Withdrawal of §114 request
<b>Guardian Industries Corporation- Floreffe Plant</b> 1000 Glasshouse Road Jefferson Hills, PA 15025 Mr. Micheal Reed, Plant Manager	Floreffe Plant - Jefferson Hills, PA	05/24/01	§114 request
<b>Dominion Generation</b> North Branch Power Station 2000 Energy Way Gorman, WV 26720 Mr. Sean Fridley, Supervisor of Operations	Fluidized Bed Boiler - Gorman, WV	05/10/01	§114 request
<b>PPG Industries, Natrium Plant</b> State Route #2 New Martinsville, WV 26155 Mr. Richard L.Holliday, Plant Manager	Non-Utility Power Plant - New Martinsville, WV	05/08/01	§114 request
<b>Cogentrix Virginia Leasing Corporation</b> One Wild Duck Lane Portsmouth, VA 23703 Mr. Ron Varnadoe, Plant Manager	Cogentrix Virginia Leasing Facility, Portsmouth, VA	05/03/01	§114 request
<b>Foster Wheeler Mount Carmel Cogeneration Plant</b> P.O. Box 490 Marion Heights Road Marion Heights, PA 17832 Mr. Joseph Camerini, Plant Manager	Cogeneration Plant - Marion Heights, PA	05/03/01	§114 request
<b>North Branch Power Station</b> Rural Route 50/1, Energy Way Bayard, WV 26707 Mr. Norman Nichols, General Manager	Non-Utility Electric Power Plant - Bayard, WV	04/25/01	§114 request
<b>Essroc Cement Nazareth Plant III</b> 401 Prospect Street Nazareth, PA 18064 Mr. Mario Bracci, Plant Manager	Nazareth III Portland Cement Plant - Nazareth, PA	03/07/01	§114 request
<b>AES Warrior Run Cogeneration Facility</b> 11600 Mexico Farms Road, SE Cumberland, MD Mr. Dwayne Ingalls, Plant Manager	Fluidized Bed Boiler - Cumberland, MD	02/13/01	§114 request
<b>Foster Wheeler Mount Carmel, Inc.</b> P.O. Box 490 Marion Heights Road Marion Heights, PA 17832 Mr. Joseph Camerini, Plant Manager	Non-Utility Electric Power Plant - Marion Heights, PA	02/06/01	§114 request

<b>Genera Electric Transportation Systems (GETS)</b> 2901 East Lake Road, Bldg 9-2 Erie, PA 16531 Mr. William J. Yuskovic	Additional Followup Questions Post Inspection - Erie, PA	01/18/01	§114 request
<b>Slithe Energy Inc.</b> 1001 Broad Street Johnstown, PA 15907 Mr. Vincent Brisini, Manager	Keystone - Shawville - State College	04/18/00	§114 request
<b>Virginia Electric &amp; Power Company</b> P.O. Box 2666 Richmond, VA 23261 Mr. Eric Hurlocker, Asst. Regional Counsel	Mount Storm Station	02/24/99	§114 request
<b>Sunoco, Inc.</b> Ten Penn Center 1801 Market Street Philadelphia, PA 19103	Marcus Hook Petroleum Refinery - Marcus Hook, Pennsylvania	12/20/01	NOV

Addressee	Facility	Date	Filing
<b>Solutia, Inc.</b> P.O. Box 97 3000 Old Chemstrand Road Gonzalez, FL 32560-0097 Mr. Joseph Ochsner	Facility - Gonzalez, FL	05/02/02	§114 request
<b>Southern Company</b> 601 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004 Mr. Karl R. Moor, Vice President and Associate General Counsel	Gulf Power Company's Lansing Smith Coal Fired Power Plant	04/15/02	§114 request
<b>Southern Company</b> 601 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004 Mr. Karl R. Moor, Vice President and Associate General Counsel	Gulf Power Company's Crist Coal Fired Power Plant	04/15/02	§114 request
<b>Southern Company</b> 601 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004 Mr. Karl R. Moor, Vice President and Associate General Counsel	Georgia Power Company's Coal Fired Power Plants	04/15/02	§114 request
<b>Southern Company</b> 601 Pennsylvania Avenue, N.W. Suite 800 Washington, D.C. 20004 Mr. Karl R. Moor, Vice President and Associate General Counsel	Southern Company's Coal Fired Power Plants	04/15/02	§114 request

Addressee	Facility	Date	Filing
<b>Wisconsin Public Service Corporation</b> 700 N. Adams Street P.O. Box 19002 Green Bay, Wisconsin 54307 Mr. David W. Harpole, Asst. V.P.	JP Pulliam and Weston Stations	05/20/02	§114 request
<b>Consumers Energy Company</b> 212 N. Michigan Avenue Jackson, Michigan 49201 Mr. Ken Evans, Environ. Manager	Campbell, Cobb, Kam, and Weadock Stations	05/15/02	§114 request
<b>Sun Refining and Marketing Company</b> 1819 Woodville Road Oregon, Ohio 43697 Mr. Micheal J. Pollauf, Refinery Manager	Petroleum Refining Facility - Oregon, Ohio	05/10/02	§114 request
<b>Central Soya Company, Inc.</b> 1200 North Second Street Decatur, Indiana 46733 Mr. Doyle R. Smith, Plant Manager	Facility - Decatur, Indiana	04/01/02	§114 request
<b>Indiana Harbor Coke Company</b> Ispat Inland Steel Facility 3210 Watling Street Mail Code 2-990 East Chicago, Indiana 46312 George Bradley, Manager Health, Safety and Environ.	Facility - East Chicago, Indiana	04/01/02	§114 request
<b>Cemex</b> 16000 Bells Bay Road Charlevoix, Michigan 49720 Ms. Michele Buckler, Environ. Manager	Facility - Charlevoix, Michigan	03/22/02	§114 request
<b>United States Steel Corporation</b> Gary Works One North Broadway Gary, Indiana 46402 Mr. James Alexander, Manager Environ. Air Compliance	Facility - Gary, Indiana	03/22/02	§114 request
<b>National Steel Corporation</b> Great Lakes Operation 1 Quality Drive Ecorse, Michigan Dennis Gould, Manager Environ. Control	Facility - Ecorse, Michigan	01/23/02	§114 request

<b>Bunge Milling</b> 321 east North Street Box 571 Danville, Illinois 61834 Mr. James "Mickey" Lay	Facility - Danville, Illinois	01/17/02	§114 request
<b>Pottlatch Corporation</b> Bemidji Oxboard Plant 29647 US 2 Bemidji, Minnesota 56601 Mr. Mike Wagner, OSB Plant Manager	Bemidji Facility - Bemidji, Minnesota	01/08/02	§114 request
<b>Indeck Energy Services</b> 600 N. Buffalo Grove Road Buffalo Grove, Illinois 60089 Ms. Julie Brautigam, Environ, Manager	Indeck-Rockford Energy Center and Indeck-Rockford II Energy Center - Rockford, Illinois	12/26/01	§114 request
<b>General Motors Corporation</b> 12200 Lafayette Center Road Roanoke, IN 46783 Mr. George Kioultzopoulos, Environ. Manager	Facility - Jeffersonville, Roanoke, IN	12/19/01	§114 request
<b>Cargill, Inc.</b> 115 S. Euclid Street Bloomington, IL 61702 Mr. Larry Mikesh, Plant Engineer	Facility - Bloomington, IL	12/17/01	§114 request
<b>Stora Enso North America - Niagara Mill</b> 1101 Mill Street Niagara, Wisconsin 54151 Greg Maule, Mill Manager	Facility - Niagara, Wisconsin	12/17/01	§114 request
<b>Central Soya Company, Inc.</b> Routes 47 & 9 P.O. Box 112 Gibson City, Illinois 60936 Mr. Mark Sheppard, Senior Engineer	Facility - Gibson City, Illinois	11/14/01	§114 request
<b>International Paper Corporation</b> US Hwy 2 Quinnesec, Michigan 49876 Mr. Gener Peterson, Pulp Mill Manager	Kraft Pulp Mill Facility - Quinnesec, Michigan	10/25/01	§114 request
<b>Stora Enso North America - Kraft Division</b> 950 4 <sup>th</sup> Avenue North P.O. Box 8050 Wisconsin Rapids, Wisconsin 54495 James Weinbauer, Dir. Envir. Affairs	Facility - Niagara, Wisconsin Rapids, Wisconsin	10/05/01	§114 request

<b>Acme Steel Company Basic Oxygen Furnace</b> 13500 Perry Avenue Riverdale, Illinois 60627 Mr. David J. Holmberg, Dir. Environ. Services	Acme Steel Facilities - Riverdale, Illinois; Chicago, Illinois	09/24/01	§114 request
<b>Dixon-Marquette Cement Company</b> 1914 White Oak Lane Dixon, Illinois 61021 Mr. Neil DeRynck, Environ. Manager/Licensed Prof. Geologist	Portland Cement Plant and Quarry - Dixon, Illinois	09/18/01	§114 request
<b>Cargill, Inc.</b> 1502 Wabash Avenue Lafayette, IN 47902 Mr. John Zoss, Plant Manager	Facility - Lafayette, IN	09/10/01	§114 request
<b>International Mill Service, Inc.</b> U.S. Steel Gary Works 1 North Broadway Gary, Indiana 46401 Mr. E. A. Kaczmarek, Manager Safety/Environ.	Facility - Gary, Indiana	08/15/01	§114 request
<b>Grede Foundries, Inc.</b> P.O. Box 26499 9898 W. Bluemound Road Milwaukee, Wisconsin 53226 Mr. James White, Dir. Safety, Health, & Environ.	Five Facilities - New Castle Indiana; Kingsford, Michigan; St. Cloud, Minnesota; Milwaukee, Wisconsin; and Reedsburg, Wisconsin	06/21/01	§114 request
<b>Mead Paper Division</b> 7100 Country Road 426 Escanaba, Michigan 49829 Mr. Keith Van Scotter, V.P. Michigan Operations	Facility - Escanaba, Michigan	06/20/01	§114 request
<b>Dixon-Marquette Cement Company</b> 1914 White Oak Lane Dixon, Illinois 61021 Mr. Neil DeRynck, Environ. Manager/Licensed Prof. Geologist	Portland Cement Plant and Quarry - Dixon, Illinois	05/24/01	§114 request
<b>BP Chemicals, Inc.</b> Ft. Amanda Road P.O. Box 628 Lima, Ohio 45802 Mr. James W. Walpole, Plant Manger	Facility - Lima, Ohio	05/14/01	§114 request
<b>S.C. Johnson &amp; Son, Inc.</b> 8311 16 <sup>th</sup> Street Sturtevant, Wisconsin 53177 Mr. Mark Steinberg, Air Quality Manager	Facility - Sturtevant, Wisconsin	04/03/01	§114 request



<b>Central Coil Processing</b> 501 George Nelson Drive Portage, Indiana 46368 Mr. Roger Smith, General Manager	Facility - Portage, Indiana	03/16/01	§114 request
<b>Galvpro L.P.</b> 5134 Loop Road Jeffersonville, IN 47130 Mr. Steve Ellek, Responsible Official	Facility - Jeffersonville, IN	03/14/01	§114 request
<b>BethNova Tube</b> P.O. Box 1179 Jeffersonville, IN 47131 Mr. John Stockman, General Manager	Facility - Jeffersonville, IN	03/09/01	§114 request
<b>American Packaging Corporation</b> 850 West James Street Columbus, Wisconsin 53925 Mr. Micheal L. DuRoche, Vice President/General Manager	Facility - Columbus, Wisconsin	03/08/01	§114 request
<b>Minnesota Power, Inc.</b> P.O. Box 128 Cohasset, Minnesota 55721 Mr. Warren L. Candy, V.P. General Operations	Clay Boswell Syl Laskin Stations - Minnesota	03/01/01	§114 request
<b>Steel Dynamics, Inc.</b> 2601 County Road 700 East Columbia City, Indiana 46725 Mr. Richard Teets, Jr., V.P. and General Manager	Facility - Columbia City, Indiana	03/01/01	§114 request
<b>Thumb Electric Cooperative</b> 2231 Main Street Ubly, Michigan 48475-0157 Michael Krause, General Manager	Facility - Ubly, Michigan	03/01/01	§114 request
<b>Alliant Energy</b> 222 West Washington Avenue P.O. Box 192 Madison, Wisconsin 53701 Mr. Joe Shefchek, Managing Dir. Environ. Health and Safety	Columbia, Edgewater, Nelson Dewey, and Rock River	02/21/01	§114 request
<b>Northern Indiana Public Service Company</b> 801 East 86 <sup>th</sup> Avenue Merrillville, Indiana 46410 Mr. Arthur E. Smith, Jr., Principal Exec. & Counsel, Environ. Affairs	Mitchell, Michigan City, Bailly, R.M. Schahfer Stations - Indiana	02/08/01	§114 request
<b>Buckeye Egg Farm, L.P.</b> 11212 Croton Road P.O. Box 173 Croton, Ohio 43013 Mr. Bill Glass, Chief Operating Officer	Three Chicken Egg Production Facilities - Croton, Ohio (Croton Facility); Mt. Vickory, Ohio (Mt. Vickory Facility); Harpster, Ohio (Marseilles Facility)	01/19/01	§114 request

<b>Cargill, Inc.</b> 1502 Wabash Avenue Lafayette, IN 47902 Mr. John Zoss, Plant Manager	Facility - Lafayette, IN	05/02/02	NOV
<b>International Mill Service, Inc.</b> U.S. Steel Gary Works 1 North Broadway Gary, Indiana 46401 Mr. E. A. Kaczmarek, Manager Safety/Environ.	Facility - Gary, Indiana	01/10/02	NOV
<b>Sun Refining and Marketing Company and Sunoco, Inc.</b> 1819 Woodville Road Oregon, Ohio 43697 Mr. Micheal J. Pollauf, Refinery Manager	Petroleum Refining Facility - Oregon, Ohio	12/19/01	NOV
<b>Aztec Peroxides, Inc.</b> 555 Garden Street Elyria, Ohio 44035 Mr. James R. Swiezy, Plant Manager	Organic Peroxide Production Facility, Elyria, Ohio	09/26/01	NOV
<b>Steel Dynamics, Inc.</b> 4500 County Road 59 Butler, Indiana 46721 Mr. Barry A. Smith	Steel Mini Mill Facility - Butler, Indiana	09/26/01	NOV
<b>Johns Manville Plant #1</b> 6050 River Road or 7500 Dutch Road Waterville, Ohio 43566 Mr. Steven Shelt, Complex Environ. Spec.	Johns Manville Plant #1, Waterville, Ohio	05/10/01	NOV
<b>IMCO Recycling, Inc.</b> 5215 North O'Conner Boulevard Irving, TX 75039 Mr. Richard Kerr, President	Alchem Aluminum and IMCO Recycling Facilities - Coldwater, Michigan	04/27/01	NOV
<b>Steel Dynamics, Inc.</b> 2801 County Road 700 East Columbia City, Indiana 46725 Mr. Richard Teets, Jr., V.P. and General Manager Structural Steel Division	Facility - Columbia City, Indiana	02/15/01	NOV
<b>Buckeye Egg Farm, L.P.</b> 11212 Croton Road P.O. Box 173 Croton, OH 43013 Bill Glass, Chief Operating Officer	Three Chicken Egg Production Facilities - Croton, Ohio (Croton Facility); Mt. Vickory, Ohio (Mt. Vickory Facility); Harpster, Ohio (Marseilles Facility)	01/19/01	NOV
<b>CITGO Petroleum Corporation</b> Lemont Refinery 135 <sup>th</sup> Street and New Avenue Lemont, Illinois 60439 Mr. Claude Harmon, Environ. Manager	Lemont Petroleum Refinery - Lemont, Illinois	01/19/01	NOV

Addressee	Facility	Date	Filing
<b>Mesa Oil, Inc.</b> 20 Lucero Road Belen, New Mexico, 87002 Mr. Trenton Bock, Plant Operations Manager	Used Oil Processing Facility - Outside Belen, New Mexico	03/28/02	§114 request
<b>Orion Refining Corporation</b> P.O. Box 537 Norco, Louisiana 70079 Mr. Robert L. Gross, Environ. Health and Safety Manager	Petroleum Refinery - New Sarpy, Louisiana	02/02/01	§114 request
<b>Dominance Industries, Inc. (dba Pan Pacific Products)</b> Route 4, Box 371, Highway 3 Broken Bow, Oklahoma 74728 Mr. Edward D. McDonald, Plant Manager	Medium Density Fiberboard Plant - Broken Bow, Oklahoma		§114 request
<b>Alcoa, Inc.</b> P.O. Box 472 Rockdale, TX 76567 Mr. W.T. Eckert, Power and Mining Manager	Sandow Power Plant - Southwest of Rockdale, TX	01/09/02	NOV
<b>ExxonMobil Oil Corporation</b> 5959 Los Colinas Boulevard Irving, Texas 75039 Mr. Frank B. Sprow, V.P. Safety, Health, and Environ.	Petroleum Refinery - Beaumont, TX	12/20/01	NOV
<b>ExxonMobil Oil Corporation</b> 28000 Decker Drive Baytown, Texas 77522 Mr. James E. Murray, Environmental Coordinator	Petroleum Refinery - Baytown, TX	04/04/02	NOV
<b>Dominance Industries, Inc. (dba Pan Pacific Products)</b> Route 4, Box 371, Highway 3 Broken Bow, Oklahoma 74728 Mr. Edward D. McDonald, Plant Manager	Medium Density Fiberboard Plant - Broken Bow, Oklahoma	02/05/01	NOV
<b>ExxonMobil Oil Corporation</b> 5959 Los Colinas Boulevard Irving, Texas 75039 Mr. Lee R. Raymond Chairman and CEO	Petroleum Refineries- Baytown, TC, Beaumont, TX and Joilet, IL	08/20/02	NOV
<b>ExxonMobil Corporation</b> 800 Bell Street Houston, Texas 77002 Mr. M.W. Scoggins, Exec. V.P.	Petroleum Refinery - Baytown, TX	01/19/01	NOV

Addressee	Facility	Date	Filing
<b>Minnkota Power Cooperative, Inc</b> 1822 Mill Road Grand Forks, ND 58208	Milton R. Young Station North Dakota	06/17/02	NOV
<b>Xcel Energy</b> 4653 Table Mountain Drive Golden, CO 80403	Pawnee Station, Morgan County, CO Comanche Station, Pueblo County, CO	06/26/02	NOV
<b>The Corporation Company</b> 1675 Broadway Denver, Colorado 80202	Ignacio Gas Plant - Southern Ute Reservation, Colorado	07/27/01	§114 request

Addressee	Facility	Date	Filing
<b>Saint-Gobain Container, Inc.</b> 1509 South Macedonia Avenue Muncie, IN 43702 Mr. Bruce Cowgill, President	Madera Glass Company - Madera, California	05/23/02	§114 request
<b>Diversified Panel Systems, Inc.</b> 2345 Stratham Boulevard Oxnard, CA 93033 Mr. Richard C. Beil, Chief Exec. Officer	Expanded Polystyrene Foam Products Facility - Ventura County, California	03/29/02	§114 request
<b>Siemens Westinghouse Power Corporation</b> The Quadrangle 4400 North Alafaya Trail Orlando, Florida 32826 Mr. Randy Zwirn, Chief Exec. Officer	Turbine Manufacturing Facility - Orlando, Florida	12/03/01	§114 request
<b>Ball-Foster Glass Container Company</b> 1509 South Macedonia Avenue Muncie, IN 43702 Mr. Gilles F. Michel, President	Madera Glass Company - Madera, California	10/26/01	§114 request
<b>Sierra Pacific Industries</b> P.O. Box 496028 Redding, California 96049 Mr. Robert Ellery, Dir. of Energy Resources	Facility with Two Wellons Boilers - Lincoln, California	06/22/01	§114 request
<b>Meadowcraft, Inc.</b> 4700 Pinson Valley Parkway Birmingham, Alabama 35215 Mr. Timothy M. Le Roy, President	Facility - Somerton, Arizona	05/21/01	§114 request
<b>Guy Chaddock &amp; Co.</b> 2201 E. Brundage Lane Bakersfield, CA 93307 Mr. Guy Chaddock, Owner	Furniture Manufacturing Facility - Bakersfield, California	05/18/01	§114 request

<b>National Cement Company of California, Inc.</b> Highway 138 P.O. Box 1247 Lebec, California 93243 Mr. Byron McMichael, Manager	Portland Cement Plant - Lebec, California	05/01/01	§114 request
<b>Kerr-McGee Corporation</b> Kerr-McGee Center 123 Robert South Kerr Avenue Oklahoma City, OK 73102 Mr. Luke R. Corbett, Chief Exec. Officer	Inorganic Chemical Manufacturing Facility - Henderson, Nevada	03/19/01	§114 request
<b>Nevada Power Company</b> 6226 West Sahara Avenue P.O. Box 230 Las Vegas, Nevada 89151 Mr. Mark J. Sandoval, Dir. Southern Operations	Clark Station Electric Generating Facility - Las Vegas, Nevada	03/16/01	§114 request
<b>Calnev Pipe Line Company</b> 348 West Hospitality Lane Suite 100 P.O. Box 6346 San Bernardino, California 92412 Mr. David E. Wright, General Manager	Bulk Gasoline Terminal - Las Vegas, Nevada	01/12/01	§114 request
<b>National Cement Company of California, Inc.</b> 15821 Ventura Boulevard Suite 435 Encino, California 91436 Mr. Donald Unmacht, President	Portland Cement Plant - Lebec, California	03/29/02	NOV
<b>Guy Chaddock &amp; Co.</b> 2201 E. Brundage Lane Bakersfield, CA 93307 Mr. Guy Chaddock, Owner	Furniture Manufacturing Facility - Bakersfield, California	10/26/01	NOV
<b>Kerr-McGee Corporation</b> Kerr-McGee Center 123 Robert South Kerr Avenue Oklahoma City, OK 73102 Mr. Luke R. Corbett, Chief Exec. Officer	Inorganic Chemical Manufacturing Facility - Henderson, Nevada	09/28/01	NOV
<b>Diversified Panel Systems, Inc.</b> 2345 Stratham Boulevard Oxnard, CA 93033 Mr. Richard C. Beil, Chief Exec. Officer	Expanded Polystyrene Foam Products Facility - Ventura County, California	09/20/01	NOV

<b>Texaco Exploration and Production, Inc.</b> 2000 Westchester Avenue White Plains, New York 10650 Mr. C. P. Coralot, Jr., President	Crude Oil Production Wells at Kern River Oil Field and Midway-Sunset Oil Field - Kern County, California	06/12/01	NOV
--	--	----------	-----

Addressee	Facility	Date	Filing
<b>C.T. Corporation System</b> (Agent for Agrium U.S., Inc.) 801 West 10 <sup>th</sup> Street Suite 300 Juneau, Alaska 99801	Kenai Nitrogen Operations Facility, Kenai, Alaska	11/15/01	§114 request
<b>Boise Casade Corporation</b> 1111 West Jefferson Street Boise, Idaho 83728 Mr. George J. Harad, President	Boise Casade Plywood, Wood Products, Particle Board, and Mill Facilities - Emmet Idaho; Elgin, Oregon; La Grande, Oregon; Medford, Oregon; White City, Oregon; Kettle Falls, Washington; Florien, Louisiana; Oakdale, Louisiana	05/22/01	§114 request
<b>Kennecott Greens Creek Mining Company</b> Kennecott Holdings Corporation P.O. Box 32199 Juneau, Alaska 99803 Mr. Keith Marshal, General Manager	Metallic Mineral Mining and Processing Plant - Admiralty Island, Alaska	05/22/01	NOV
<b>Boise Casade Corporation</b> 1111 West Jefferson Street Boise, Idaho 83728 Mr. George J. Harad, President	Boise Casade Plywood, Wood Products, Particle Board, and Mill Facilities - Emmet Idaho; Elgin, Oregon; La Grande, Oregon; Medford, Oregon; White City, Oregon; Kettle Falls, Washington; Florien, Louisiana; Oakdale, Louisiana	03/23/01	NOV

Table 1  
2001-02 NSR SETTLEMENTS

COMPANY <i>Intervenor</i> & Facilities	ANNOUNCED*	CONCLUDED**	EMISSION REDUCTIONS Tons per Year	CONTROL COSTS	CIVIL PENALTIES	SEPS
Aristech <i>Ohio</i> 1 Chemical Plant	November 7, '01	April 23, '01			\$ 450 K	
Williams <i>Colorado</i> Gas Processing Plant	February 4, '01	April 23, '01			\$ 950 K	
BP - <i>Indiana</i> <i>Ohio</i> <i>Washington</i> 8 refineries	January 18, '01	August 31, '01	NOx - 18,300 SO <sub>2</sub> - 19,600 PM - TBD	\$600 M	\$10 M	
MOTIVA - <i>Louisiana</i> <i>Delaware</i> <i>NWAPCA(WA)</i> 9 refineries	March 22, '01	August 20, '01	NOx - 19,570 SO <sub>2</sub> - 51,120 PM - 1,300	\$400 M	\$9.5 M	\$5.5 M
MAP - <i>Louisiana</i> <i>Michigan</i> <i>Minnesota</i> 7 refineries	May 11, '01	August 30, '01	NOx - 8,000 SO <sub>2</sub> - 12,800 PM - 800	\$265 M	\$3.8 M	\$6.5 M

COMPANY Intervenor & # of Facilities	ANNOUNCED*	CONCLUDED**	EMISSION REDUCTIONS Tons per Year	CONTROL COSTS	CIVIL PENALTIES	SEPS
CLARK Illinois 1 refinery	July 12, '01	September 24, '01	NOx - 270 SO <sub>2</sub> - 4,700 PM - 630	\$20 M	\$2 M	\$1.15 M
Murphy Oil Wisconsin 1 refinery	January 24, '01	March 21, '01		\$ 12 M	\$ 5.5 M	
CONOCO - Colorado Louisiana Montana Oklahoma 4 refineries	December 20, '01	April 29, '02	NOx - 3,200 SO <sub>2</sub> - 4,000 PM - 400	\$110 M	\$1.5 M	\$5.1 M
NAVAJO & MONTANA REFINING - Montana New Mexico 2 refineries	December 20, '01	March 5, '02	NOx - 250 SO <sub>2</sub> - 2350 PM - 100	\$ 20 M	\$ 0.75 M	\$ 1.4 M
Gulf Oil Gasoline Terminal	October 15, '01				\$ 40 K	\$ 421 K
Olsonite Wood Coater	March 7, '01				\$ 255 K	
PSEG New Jersey 2 coal plants	January 24, '01		NOx -18,000 SO <sub>2</sub> - 36,000	\$ 337 M	\$ 1.4 M	6.0 M



COMPANY Intervenor & # of Facilities	ANNOUNCED*	CONCLUDED**	EMISSION REDUCTIONS Tons per Year	CONTROL COSTS	CIVIL PENALTIES	SEPS
Atofina 3 Chemical Plants	January 2, '01		VOC - 742 ODS - 720	\$ 10 M	\$ 300 K	
Boise Cascade 4 Wood Product Mfg. Plants	March 13, '01		VOC - 1,766 PM - 400	\$ 15 M	\$ 4.35 M	\$ 2.9M
Ferro Corporation Indiana Flame Retardant Mfg.	March 18, '01				\$ 3 M	\$ 844 K

• Consent Decrees were signed by all parties and lodged with the court by the date noted.

\*\* Consent Decrees were entered by the court on the date noted.

**NSR § 114 Information Requests and Notices of Violation:  
Issued Before January 20, 2001  
Coal-Fired Utility Power Plants and Refineries**

<b>Addressee</b>	<b>Facility</b>	<b>Date</b>	<b>Filing</b>
<b>Headquarters</b>			
American Electric Power Columbus, OH	Kanawha River, John Amos, Kammer and Clinch River	11/22/1999	§ 113 Notice of Violation
	Muskingum River, Cardinal, Conesville, Tanners Creek, Sporn and Mitchell WV	11/02/1999	§ 113 Notice of Violation
First Energy Corp. Edison Co., PA	W.H. Sammis	11/02/1999	§ 113 Notice of Violation
Cinergy Corp. Cincinnati, OH	Cayuga, Wabash River, Gallagher and Beckjord	11/02/1999	§ 113 Notice of Violation
Southern Indiana Gas & Electric Co. Evansville, IN	F.B. Culley	11/02/1999	§ 113 Notice of Violation
Illinois Power Co.	Baldwin	11/02/1999	§ 113 Notice of Violation
ExxonMobil Corp. Houston, TX	Joliet, Baton Rouge, Chalmette, Baytown, Beaumont, Billings and Torrance refineries		
		03/14/2000	§ 114 request
Conoco, Inc. Houston, TX	Westlake, Ponca City, Commerce City and Billings refineries	03/14/2000	§ 114 request
Citgo Petroleum Corp. Tulsa, OK	Savannah, LeMont, Lake Charles and Corpus Christi refineries		
		03/14/2000	§ 114 request
<i>TOSCO Corporation Stamford, CT</i>	<i>Bayway, Los Angeles, San Francisco and Ferndale refineries</i>	03/14/2000	§ 114 request
<i>Sunoco, Inc. Philadelphia, PA</i>	<i>Philadelphia, Marcus Hook, Toledo, Tulsa and Yabucoa refineries</i>	03/14/2000	§ 114 request
<i>Valero Energy Corporation San Antonio, TX</i>	<i>Paulsboro, Krotz Springs, Corpus Christi, Houston and Texas City refineries</i>	03/14/2000	§ 114 request
<i>BP Amoco Lisle, IL</i>	<i>Yorktown, Whiting, Toledo, Belle Chasse, Texas City, Mandan, Salt Lake City, Cherry Point and Carson refineries</i>	06/30/00	§ 114 request
<i>Premcor Refining St. Louis, MO</i>	<i>Lima and Port Arthur refineries</i>	12/08/2000	§ 114 request

Addressee	Facility	Date	Filing
<b>Region 1</b>			
PG&E Bethesda, MD	Brayton Point and Salem Harbor	10/06/2000	§ 114 request
		05/17/2000	§ 114 request
		01/06/00	§ 114 request
Public Service Co. of N.H. Manchester, NH	Merrimack and Schiller	12/11/2000	§ 114 request
Wisconsin Energy Corp. Milwaukee, WI	Bridgeport Harbor	05/17/2000	§ 114 request
Wisvest-Connecticut, LLC Shelton, CT		05/17/2000	§ 114 request
<b>Region 2</b>			
Caribbean Petroleum Refining L.P. San Juan, PR	Bayamon refinery	10/08/1999	§ 113 Notice of Violation
	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/06/1998	§ 114 request
	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request
Atlantic Electric Pleasantville, NJ	BL England	05/22/1999	§ 113 Notice of Violation
		06/16/2000	§ 114 request
Coastal Eagle Point Oil Co. Westville, NJ	Coastal Eagle Point refinery	08/07/1998	§ 114 request
Valero Refining Company Paulsboro, NJ	Paulsboro refinery	06/07/1999	§ 114 request
Phillips Puerto Rico Core Guayama, PR	Guayama refinery	01/22/1999	§ 113 Notice of Violation
	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request
Chevron USA Inc. Perth Amboy, NJ	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request
Citgo Asphalt Refining Co. Paulsboro, NJ	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request
Puerto Rico Sun Oil Yabuco, PR	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request

Addressee	Facility	Date	Filing
Tosco Refinery Co. Linden, NJ	Storage Vessels subject to NSPS subparts K, Ka, and Kb	08/07/1998	§ 114 request
	Bayway refinery	06/30/2000	§ 114 request
Public Service Electric & Gas Newark, NJ	Mercer	03/31/2000	§ 114 request
The AES Corp. Arlington, VA	Cayuga and Somerset	04/14/2000	§ 114 request
City of Vineland Vineland, NJ		03/31/2000	§ 114 request
New York State Electric & Gas Binghamton, NY	Kintigh and Milliken	04/14/2000	§ 114 request
Central Hudson Gas & Electric Corp. New York, NY	Danskammer	7/14/00	§ 114 request
		11/15/2000	§ 114 request
<b>Region 3</b>			
Sithe Energy Inc. Johnstown, PA	Keystone and Shawville	04/18/2000	§ 114 request
Virginia Electric & Power Richmond, VA	Mount Storm	02/24/1999	§ 114 request
		5/1/00	§ 113 Notice of Violation
American Electric Power Columbus, OH	John E. Amos. Kanawha River, Kammer and Clinch River	10/14/1999	§ 114 request
	Mitchell and Philip Sporn WV	04/22/1999	§ 114 request
	Muskingham River, Gavin, and Cardinal, OH; Philip Sporn and Mitchell, WV	02/04/1999	§ 114 request
	Philip Sporn and Mitchell	11/2/99	§ 113 Notice of Violation
United Refining Warren, PA	Warren refinery	10/19/00	§ 113 Notices of Violation
		06/24/98	
Ergon, Inc. Jackson, MS	Newell refinery	11/9/00	§ 114 request
Penzoil Houston, TX	Newell refinery	11/9/00	§ 114 request

<b>Addressee</b>	<b>Facility</b>	<b>Date</b>	<b>Filing</b>
<i>BP Amoco Lisle, IL</i>	<i>Trainer refinery</i>	<i>1/27/00</i>	<i>§ 114 request</i>
<i>Tosco Trainer, PA</i>		<i>1/14/00</i>	<i>§ 114 request</i>
<i>BP Amoco Yorktown, VA</i>	<i>Yorktown refinery</i>	<i>9/29/99</i>	<i>§ 114 request</i>
		<i>7/15/98</i>	<i>§ 114 request</i>
<i>Sunoco, Inc. Philadelphia, PA</i>	<i>Philadelphia refinery</i>	<i>1/14/00</i>	<i>§ 114 request</i>
<i>Southern Energy, Inc.</i>	<i>Potomac River, Chalk Point, Dickerson and Morgantown</i>	<i>1/10/01</i>	<i>§ 114 request</i>
<i>Reliant Energy Inc. Houston, TX</i>	<i>Seward, Portland and Titus</i>	<i>1/10/01</i>	<i>§ 114 request</i>
<i>Baltimore Gas and Electric Company Baltimore, MD</i>	<i>Brandon Shores, Crane and Wagner</i>	<i>8/3/00</i>	<i>§ 114 request</i>
<i>Allegheny Energy, Inc. Greensburg, PA</i>	<i>Albright, Fort Martin, Harrison, Rivesville, Willow Island, Pleasants, Armstrong, Hatfield's Ferry, Mitchell and RP Smith</i>	<i>8/3/00</i>	<i>§ 114 request</i>
<i>Cogentrix Portsmouth, VA</i>	<i>Portsmouth facility - not a coal-fired (utility) power plant</i>	<i>1/10/01</i>	<i>§ 114 request</i>
<i>International Paper Erie, PA</i>	<i>Erie Mill - not a coal-fired (utility) power plant</i>	<i>9/29/00</i>	<i>§ 114 request</i>
<i>General Electric Erie, PA</i>	<i>Erie Power station - not a coal-fired (utility) power plant</i>	<i>9/29/00</i>	<i>§ 114 request</i>
<i>AES Monaca, PA</i>	<i>Monaca station - not a coal-fired (utility) power plant</i>	<i>11/17/98</i>	<i>§ 114 request</i>
<i>Schuylkill Energy Shenandoah, PA</i>	<i>St. Nicholas Cogeneration plant - fluidized bed</i>	<i>10/19/99</i>	<i>§ 114 request</i>
		<i>7/21/99</i>	<i>§ 114 request</i>
<i>AES Cumberland, MD</i>	<i>Warrior Run Cogeneration facility - fluidized bed</i>	<i>9/21/00</i>	<i>§ 114 request</i>
<i>Foster Wheeler Mount Carmel, Inc. Marion Heights, PA</i>	<i>Mount Carmel facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Gilberton Power Frackville, PA</i>	<i>Rich Memorial station - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Tractebel Electric and Gas International McAdoo, PA</i>	<i>Kline Township Cogeneration facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>

<b>Addressee</b>	<b>Facility</b>	<b>Date</b>	<b>Filing</b>
<i>Panther Creek Energy Nesquehoning, PA</i>	<i>Panther Creek facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Ebensburg Power Ebensburg, PA</i>	<i>Ebensburg facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Northhampton Generating Company Northampton, PA</i>	<i>Northhampton facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Cambria CoGen Ebensburg, PA</i>	<i>Ebensburg facility - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Westwood Power Tremont, PA</i>	<i>WestWood station - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Piney Creek Clarion, PA</i>	<i>Piney Creek project - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Scrubgrass Generating Company Kennerdell, PA</i>	<i>fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Colver Power Colver, PA</i>	<i>Colver Power project - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<i>Wheeler Frackville Frackville, PA</i>	<i>Frackville station - fluidized bed (coal refuse)</i>	<i>8/17/00</i>	<i>§ 114 request</i>
<b>Region 4</b>			
Tampa Electric Co. Tampa, FL		11/02/1999	§ 113 Notice of Violation
	Big Bend and Gannon	04/29/1999	§ 114 request
		05/29/1998	§ 114 request
Tennessee Valley Authority Chattanooga, TN		03/09/2000	§ 113 Notice of Violation
	Allen, Bull Run, Colbert and Paradise	05/21/1999	§ 114 request
	Cumberland, Gallatin, John Sevier, Johnsonville, Shawnee, Widows Creek and Kingston	12/03/1999	§ 114 request
	Allen, Bull Run, Colbert, Cumberland Gallatin, John Sevier, Johnsonville, Kingston, Paradise, Shawnee and Widows Creek	02/26/1999	§ 114 request
Carolina Power and Light Raleigh, NC	HB Robinson, Asheville, Cape Fear, LV Sutton, Lee, Mayo, Roxboro, Weatherspoon	03/23/2000	§ 114 request

Addressee	Facility	Date	Filing
	HB Robinson, Asheville, Cape Fear, LV Sutton, Lee and Mayo	10/01/1999	§ 114 request
Louisville Gas and Electric Louisville, KY	Muldraugh	01/31/2000	§ 114 request
	Cane Run and Mill Creek	09/06/2000	§ 114 request
South Carolina Electric & Gas Co. Columbia, SC	Canadys, Waterec, Williams, McKeekin and Urquhart	07/18/2000	§ 114 request
South Carolina Public Service Authority Moncks Corner, SC	Granger, Winyah and Jefferies	07/15/2000	§ 114 request
Orlando Utilities Commission Orlando, FL	Stanton	08/25/2000	§ 114 request
East Kentucky Power Coop Winchester, KY	John Sherman Cooper, William C. Dale and Hugh L. Spurlock	08/25/2000	§ 114 request
Jacksonville Electric Authority Jacksonville, FL	St. John's River	08/25/2000	§ 114 request
Florida Power Corp. St. Petersburg, FL	Crystal River	08/25/2000	§ 114 request
Owensboro Municipal Utilities Owensboro, KY	Elmer Smith	09/06/2000	§ 114 request
Gainesville Regional Utilities Gainesville, FL	Deerhaven	09/07/2000	§ 114 request
Seminole Electric Coop Tampa, FL	Seminole	09/07/2000	§ 114 request
South Mississippi Electric Power Association Hattiesburg, MS	R.D. Morrow	09/08/2000	§ 114 request
Alabama Electric Coop Andalusia, AL	Charles R. Lowman	09/08/2000	§ 114 request
Western Kentucky Energy Corp. Henderson, KY	Coleman, Robert Reid and D.B. Wilson	09/11/2000	§ 114 request
Kentucky Utilities Company Lexington, KY	E.W. Brown, Ghent, Green River, Tyrone and Pineville	09/11/2000	§ 114 request
Southern Company Washington, D.C.		11/02/1999	§ 113 Notice of Violation

Addressee	Facility	Date	Filing
	Miller and Scherer	04/13/1999	§ 114 request
	Barry, Gaston, Gorgas, Green County, Bowen, Branch, Hammond, Mitchell, Wansley, Yates, Crist, Scholtz, Watson, Daniel, Watson 5 ECO, Kraft and Gaston	05/05/1999	§ 114 request
	Gadsden	01/14/2000	§ 114 request
	Daniel	01/14/2000	§ 114 request
Duke Energy Corp. Charlotte, NC		05/09/2000	§ 113 Notice of Violation
	W.S. Leen and Belews Creek, Buck, Cliffside, Dan River, GG Allen, Marshal and Riverbend	10/01/1999	§ 114 request
<i>Williams Refining, LLC Memphis, TN</i>	<i>Memphis, TN refinery</i>	<i>05/03/2000</i>	<i>§ 114 request</i>
<b>Region 5</b>			
Countrymark Cooperative Mount Vernon, IN	Mount Vernon refinery	03/25/1999	§ 113 Notice of Violation
CITGO Petroleum Corp.	Lemont refinery	03/17/1998	§ 113 Finding of Violation
		06/28/1999	§ 113 Finding of Violation
		01/19/2001	§ 113 Notice of Violation
		3/22/00	<i>See Attachment 5N</i>
Ashland Petroleum Co. Canton, OH	Canton refinery	05/19/1998	§ 113 Finding of Violation
	Detroit refinery	08/02/1999	§ 113 Finding of Violation
		07/15/1999	§ 113 Finding of Violation
		07/15/1999	§ 113 Notice of Violation
		12/30/1998	§ 113 Notice of Violation
Robinson refinery	08/02/1999	§ 113 Finding of Violation	



Addressee	Facility	Date	Filing
Murphy Oil USA, Inc. Superior, WI	Superior refinery	11/29/1998	§ 113 Finding of Violation
		07/31/1998	§ 113 Finding of Violation
		07/31/1998	§ 113 Notice of Violation
		09/29/2000	§ 113 Notice of Violation
		04/04/2000	§ 113 Notice of Violation
		11/29/1998	§ 113 Notice of Violation
Mobil Oil Corp. Joliet, IL	Joliet refinery	08/30/2000	§ 113 Notice of Violation
		08/30/2000	§ 113 Finding of Violation
		08/30/2000	§ 113 Finding of Violation
Illinois Power Co. Decatur, IL	Wood River, Hennepin and Vermilion	10/28/1999	§ 114 request
	Baldwin	01/14/2000	§ 113 Notice of Violation
	F.B. Culley	03/21/2000	§ 113 Notice of Violation
	<i>Warrick and A.B. Brown</i>	<i>01/19/2001</i>	<i>§ 114 request</i>
Wisconsin Electric Power Milwaukee, WI	Port Washington	07/31/1998	§ 113 Finding of Violation
	<i>Oak Creek, Pleasant Prairie, Port Washington, Valley and Presque Isle</i>	<i>12/12/2000</i>	<i>§ 114 request</i>
Cleveland Electric Cleveland, OH	Facility at South Marginal Drive Cleveland OH	07/19/1999	§ 114 request

Addressee	Facility	Date	Filing	
First Energy Corp. Akron, OH	Niles, Burger, Ashtabula, Avon Lake, Eastlake, Lake Shore, Bay Shore, and Acme	06/15/2000	§ 113 Finding of Violation	
		11/10/1999	§ 114 request	
	Avon Lake	05/21/1998	§ 113 Notice of Violation	
	W.H. Sammis	04/16/1999	§ 114 request	
		04/30/1999	§ 114 request	
	Eastlake	08/21/1998	§ 113 Notice of Violation	
01/18/2001		§ 114 request		
Indianapolis Power & Light Indianapolis, IN	Perry K	11/14/1997	§ 114 request	
	<i>Stout, Petersburg, and Pritchard</i>	07/19/2000	§ 114 request	
		11/06/2000	§ 114 request	
Northern Indiana Public Service Co. Merrillville, IN	Mitchell	01/31/1997	§ 114 request	
	<i>Mitchell, Michigan City, Bailly, and R.M. Schahfer</i>	07/19/2000	§ 114 request	
Indiana-Kentucky Electric Corp. Madison, IN	Clifty Creek	12/10/1997	§ 114 request	
American Electric Power Columbus, OH	Cardinal	11/30/1999	§ 113 Notice of Violation	
		Tanners Creek	06/18/1998	§ 113 Notice of Violation
			06/18/1998	§ 114 request
		07/26/1999	§ 114 request	
	Muskingum River	12/01/1999	§ 113 Notice of Violation	
		04/16/1999	§ 114 request	
	Gavin	08/31/2000	§ 113 Notice of Violation	
		01/17/2001	§ 114 request	
8/29/00		§ 114 request		
Conesville	10/12/1999	§ 114 request		

Addressee	Facility	Date	Filing
	Muskingum River, Cardinal, Conesville, and Picway	10/28/1999	§ 114 request
Cinergy Corp. Cincinnati, OH	W.C. Beckjord	06/23/2000	§ 113 Notice of Violation
		06/23/2000	§ 113 Finding of Violation
		12/01/1999	§ 113 Notice of Violation
		12/01/1999	§ 113 Finding of Violation
		07/08/1999	§ 114 request
		10/03/1997	§ 114 request
	Gibson and Miami Fort	06/28/2000	§ 113 Notice of Violation
	Cayuga	07/09/1999	§ 114 request
	Gallagher and Wabash River	10/12/1999	§ 114 request
	Miami Fort and Edwardsport	11/12/1999	§ 114 request
	<i>Miami Fort</i>	03/30/2000	§ 114 request
Dayton Power & Light Co. Dayton, OH	J.M. Stuart	06/30/2000	§ 113 Notice of Violation
		10/14/1999	§ 114 request
		03/20/2000	§ 114 request
	Killen, Stuart and Hutchings	07/29/1999	§ 114 request
	Killen	10/26/1999	§ 114 request
	<i>Killen and Hutchings</i>	10/14/1999	§ 114 request
Detroit Edison Co. Detroit, MI	Connors Creek	08/26/1998	§ 113 Finding of Violation
		08/26/1998	§ 113 Notice of Violation
		06/12/1998	§ 114 request
		10/09/1998	§ 114 request
	Monroe, St. Clair, River Rouge, Belle River, Marysville and Trenton Channel	11/18/1999	§ 114 request

<b>Addressee</b>	<b>Facility</b>	<b>Date</b>	<b>Filing</b>
<i>Alliant Energy Madison, WI</i>	<i>Columbia, Edgewater, Nelson Dewey, and Rock River</i>	<i>12/07/2000</i>	<i>§ 114 request</i>
<i>Consumers Energy Jackson, MI</i>	<i>Campbell, Karn, Weadcock, Cobb, and Whiting</i>	<i>07/19/2000</i>	<i>§ 114 request</i>
<i>Minnesota Power, Inc. Cohasset, MN</i>	<i>Clay Boswell, Syl Laskin and M.L. Hibbard</i>	<i>12/22/2000</i>	<i>§ 114 request</i>
<i>Northern States Power Minneapolis, MN</i>	<i>Allen S. King, Black Dog, High Bridge, Riverside, Minnesota Valley and Sherburne</i>	<i>12/22/2000</i>	<i>§ 114 request</i>
<i>Wisconsin Public Service Green Bay, WI</i>	<i>JP Pulliam and Weston</i>	<i>12/12/2000</i>	<i>§ 114 request</i>
<b>Region 6</b>			
<i>ExxonMobil Corp. Houston, TX</i>	<i>Baytown refinery</i>	<i>01/19/2001</i>	<i>§ 113 Notice of Violation</i>
<i>CITGO Petroleum Corp. Tulsa, OK</i>	<i>Lake Charles and Corpus Christi refineries</i>	<i>01/19/2001</i>	<i>§ 113 Notice of Violation</i>
	<i>Lake Charles refinery</i>	<i>07/31/1998</i>	<i>§ 114 request</i>
<i>Lyondell-Citgo Refining Co Houston, TX</i>	<i>Houston refinery</i>	<i>01/18/2001</i>	<i>§ 113 Notice of Violation</i>
<i>Phillips Petroleum Company Bartlesville, OK</i>	<i>Borger and Sweeny refineries</i>	<i>03/13/2000</i>	<i>§ 114 request</i>
	<i>Borger refinery</i>	<i>06/25/1999</i>	<i>§ 113 Notice of Violation</i>
<i>Arcadia Refining Co. Dallas, TX</i>	<i>Lisbon refinery</i>	<i>05/08/1998</i>	<i>§ 114 request</i>
<i>Conoco, Inc. Westlake, LA.</i>	<i>Westlake refinery</i>	<i>07/28/1998</i>	<i>§ 114 request</i>
<i>Marathon Ashland Finley, OH</i>	<i>Garyville and Texas City refineries</i>	<i>03/13/2000</i>	<i>§ 114 request</i>
<i>Murphy Oil USA Inc. New Orleans, LA</i>	<i>Mereux, refinery</i>	<i>03/13/2000</i>	<i>§ 114 request</i>
<i>American Petrofina Inc. Plano, TX</i>	<i>Big Spring and Port Arthur refineries</i>	<i>03/13/2000</i>	<i>§ 114 request</i>
<i>Equiva Services, LLC Houston, TX</i>	<i>Convent, Norco and Port Arthur refineries</i>	<i>03/13/2000</i>	<i>§ 114 request</i>
		<i>01/08/2001</i>	<i>§ 114 request</i>
<b>Region 7</b>			

Addressee	Facility	Date	Filing
Empire District Electric Co. Joplin, MO	State Line Power Plant	07/13/2000	§ 114 request
Texaco Refining Topeka, KS	Unit No. B-3401	05/05/1998	§ 113 Notice of Violation
National Coop Refinery McPherson, KS	McPherson refinery	07/14/1999	§ 114 request
		01/05/2000	See Attachment 5M
<b>Region 8</b>			
Excel Energy Pueblo, CO	Comanche	12/28/2000	§ 114 request
Minnkota Power Cooperative, Inc. Grand Forks, ND	Milton R. Young	09/29/2000	§ 114 request
PacifiCorp Helper, UT	Castle Gate	12/28/2000	§ 114 request
	Huntington Canyon	12/28/2000	§ 114 request
	Dave Johnson	12/28/2000	§ 114 request
	Naughton	12/28/2000	§ 114 request
	<i>PacifiCorp Naughton, Jim Bridger, and Dave Johnston</i>	07/24/1998	§ 114 request
PPL Montana, LLC Billings, MT	Corette	12/28/2000	§ 114 request
Public Service Company of Colorado Brush, CO	Pawnee	12/28/2000	§ 114 request
Otter Tail Power Co. Fergus Falls, SD	Big Stone	12/28/2000	§ 114 request
Basin Electric Stanton, ND	Leland Olds	12/28/2000	§ 114 request
Cenex Helena, MT	Laurel refinery	12/28/2000	§ 114 request
Wyoming Refinery Co. Newcastle, WY	Newcastle refinery	11/10/1999	§ 114 request
Sinclair Refining Co. Cheyenne, WY	Sinclair refinery	12/15/2000	§ 114 request
Montana Refining Company Great Falls, MT		07/23/1999	See Attachment 5O
Phillips Petroleum Company Bartlesville, OK	Woods Cross refinery	04/20/2000	§ 114 request

Addressee	Facility	Date	Filing
		02/27/1998	§ 113 Notice of Violation
<b>Region 9</b>			
Phillips Petroleum Co. Woods Cross, UT	Woods Cross alkylolation unit	03/15/2000	§ 114 request
ExxonMobil Corp. Fairfax, VA	Torrance, CA, alkylolation unit	03/15/2000	§ 114 request
CENCO Refining Co. Santa Fe Springs, CA	Santa Fe Springs refinery	05/17/2000	§ 113 Notice of Violation
		06/22/1999	§ 114 request
		02/23/1999	§ 114 request
Tucson Electric Power Co. Tucson, AZ	Irvington and Springerville	07/06/2000	§ 114 request
Arizona Public Service Co. Joseph City, AZ	Cholla	07/06/2000	§ 114 request
Nevada Power Reno, NV	North Valmy	07/06/2000	§ 114 request
	Reid Gardner	06/27/2000	§ 114 request
Coronado Generation Station St. Johns, AZ	Coronado	06/27/2000	§ 114 request
Arizona Electric Coop Cochise, AZ	Apache	07/06/2000	§ 114 request
Southern California Edison Rosemead, CA	Mohave	05/14/1999	§ 114 request
		02/19/1998	§ 114 request
Arizona Public Service Co. Fruitland, NM	Four Corners	06/27/2000	§ 114 request
Arco Products Carson, CA	Carson, CA refinery	4/15/98	§ 113 Notice of Violation
Chevron Products Kapolei, HI	Kapolei, HI refinery	7/27/98	§ 114 request
		9/10/98	§ 114 request
		1/29/99	§ 114 request
<b>Region 10</b>			
Nome Joint Utility System Nome, Alaska	Snake River Power Plant, Nome AK	08/30/1999	§ 114 request

## Clean Air Act § 114 Information Requests: Vendors

Addressee	Facility	Date	Filing
<b>Issued by Headquarters</b>			
ABB In. Windsor, CT	Vendor (Boiler maker)	5/14/98	§ 114 request
Babcock & Wilcox Barberton, OH	Vendor (Boiler maker)	5/14/98	§ 114 request
Foster Wheeler Corp. Clinton, NJ	Vendor (Boiler maker)	5/14/98	§ 114 request
DB Riley Inc. Worcester, MA	Vendor (Boiler maker)	5/14/98	§ 114 request
<b>Region 3</b>			
Akzo Nobel Catalyst Houston, TX	Vendor (catalyst)	12/20/99	§ 114 request
Intercat, Inc. Se Girt, NJ	Vendor (catalyst)	12/20/99	§ 114 request
Engelhard Corp. Iselin, NJ	Vendor (catalyst)	12/20/99	§ 114 request
Grace Davison Columbia, MD	Vendor (catalyst)	12/17/99	§ 114 request

Christine Whitman  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Dear Ms. Whitman:

I resign today from the Environmental Protection Agency after twelve years of service, the last five as Director of the Office of Regulatory Enforcement. I am grateful for the opportunities I have been given, and leave with a deep admiration for the men and women of EPA who dedicate their lives to protecting the environment and the public health. Their faith in the Agency's mission is an inspiring example to those who still believe that government should stand for the public interest.

But I cannot leave without sharing my frustration about the fate of our enforcement actions against power companies that have violated the Clean Air Act. Between November of 1999 and December of 2000, EPA filed lawsuits against 9 power companies for expanding their plants, without obtaining New Source Review permits and the up to date pollution controls required by law. The companies named in our lawsuits emit an incredible 5.0 million tons of sulfur dioxide every year (a quarter of the emissions in the entire country) as well as 2 million tons of nitrogen oxide.

As the scale of pollution from these coal-fired smokestacks is immense, so is the damage to public health. Data supplied to the Senate Environment Committee by EPA last year estimate the annual health bill from 7 million tons of SO<sub>2</sub> and NO<sub>2</sub>: more than 10,800 premature deaths; at least 5,400 incidents of chronic bronchitis; more than 5,100 hospital emergency visits; and over 1.5 million lost work days. Add to that severe damage to our natural resources, as acid rain attacks soils and plants, and deposits nitrogen in the Chesapeake Bay and other critical bodies of water.

Fifteen months ago, it looked as though our lawsuits were going to shrink these dismal statistics, when EPA publicly announced agreements with Cinergy and Vepco to reduce Sox and Nox emissions by a combined 750,000 tons per year. Settlements already lodged with two other companies – TECO and PSE&G – will eventually take another quarter million tons of Nox and



Sox out of the air annually. If we get similar results from the 9 companies with filed complaints, we are on track to reduce both pollutants by a combined 4.8 million tons per year. And that does not count the hundreds of thousands of additional tons that can be obtained from other companies with whom we have been negotiating.

Yet today, we seem about to snatch defeat from the jaws of victory. We are in the 9<sup>th</sup> month of a "90 day review" to reexamine the law, and fighting a White House that seems determined to weaken the rules we are trying to enforce. It is hard to know which is worse, the endless delay or the repeated leaks by energy industry lobbyists of draft rule changes that would undermine lawsuits already filed. At their heart, these proposals would turn narrow exemptions into larger loopholes that would allow old "grandfathered" plants to be continually rebuilt (and emissions to increase) without modern pollution controls.

Our negotiating position is weakened further by the Administration's budget proposal to cut the civil enforcement program by more than 200 staff positions below the 2001 level. Already, we are unable to fill key staff positions, not only in air enforcement, but in other critical programs, and the proposed budget cuts would leave us desperately short of the resources needed to deal with the large, sophisticated corporate defendants we face. And it is completely unrealistic to expect underfunded state environmental programs, facing their own budget cuts, to take up the slack.

It is no longer possible to pretend that the ongoing debate with the White House and Department of Energy is not affecting our ability to negotiate settlements. Cinergy and Vepco have refused to sign the consent decrees they agreed to 15 months ago, hedging their bets while waiting for the Administration's Clean Air Act reform proposals. Other companies with whom we were close to settlement have walked away from the table. The momentum we obtained with agreements announced earlier has stopped, and we have filed no new lawsuits against utility companies since this Administration took office. We obviously cannot settle cases with defendants who think we are still rewriting the law.

The arguments against sustaining our enforcement actions don't hold up to scrutiny.

Were the complaints filed by the U.S. government based on conflicting or changing interpretations? The Justice Department doesn't think so. Its review of our enforcement actions found EPA's interpretation of the law to be reasonable and consistent. While the Justice Department has gamely insisted it will continue to prosecute existing cases, the confusion over where EPA is going with New Source Review has made settlement almost impossible, and protracted litigation inevitable.

What about the energy crisis? It stubbornly refuses to materialize, as experts predict a glut of power plants in some areas of the U.S. In any case, our settlements are flexible enough to provide for cleaner air while protecting consumers from rate shock.

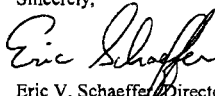
The relative costs and benefits? EPA's regulatory impact analyses, reviewed by OMB, quantify health and environmental benefits of \$7,300 per ton of SO<sub>2</sub> reduced at a cost of less than \$1,000 per ton. These cases should be supported by anyone who thinks cost-benefit analysis is a serious tool for decision-making, not a political game.

Is the law too complicated to understand? Most of the projects our cases targeted involved big expansion projects that pushed emission increases many times over the limits allowed by law.

Should we try to fix the problem by passing a new law? Assuming the Administration's bill survives a legislative odyssey in today's evenly divided Congress, it will send us right back where we started with new rules to write, which will then be delayed by industry challenges, and with fewer emissions reductions than we can get by enforcing today's law.

I believe you share the concerns I have expressed, and wish you well in your efforts to persuade the Administration to put our enforcement actions back on course. Teddy Roosevelt, a Republican and our greatest environmental President, said, "Compliance with the law is demanded as a right, not asked as a favor." By showing that powerful utility interests are not exempt from that principle, you will prove to EPA's staff that their faith in the Agency's mission is not in vain. And you will leave the American public with an environmental victory that will be felt for generations to come.

Sincerely,



Eric V. Schaeffer, Director  
Office of Regulatory Enforcement

# REWRITING THE RULES

The Bush Administration's  
Unseen Assault on the Environment



# REWRITING THE RULES

*The Bush Administration's Unseen  
Assault on the Environment*

*Principal Authors*

Robert Perks  
Wesley Warren  
Gregory Wetstone

*Contributing Authors*

Chuck Clusen  
Geoffrey Fettus  
Rich Kassel  
Karen Garrison  
David Goldstein  
Nathaniel Lawrence  
Amy Mall  
Daniel Rosenberg  
Bradford Sewell  
Melanie Shepherdson  
Nancy Stoner  
Johanna Wald  
John Walke



THE EARTH'S BEST DEFENSE  
Natural Resources Defense Council  
January 2002

---

**ACKNOWLEDGMENTS**

The Natural Resources Defense Council (NRDC) would like to acknowledge the Kirsch Foundation for their generous support, as well as our 500,000 members, without whom none of our work would be possible.

---

**ABOUT NRDC**

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

*Electronic Assembly*

Tyler Dillavou

*Cover Design*

Jenkins &amp; Page

*NRDC Reports Manager*

Emily Cousins

*NRDC Director of Communications*

Alan Metrick

*NRDC President*

John Adams

*NRDC Executive Director*

Frances Beinecke

Copyright 2002 by the Natural Resources Defense Council

For additional copies of this report, send \$7.50 plus \$3.50 shipping and handling to NRDC Publications Department, 40 West 20<sup>th</sup> Street, New York, NY 10011. California residents must add 7.25% sales tax. Please make checks payable to NRDC in U.S. dollars. Visit us on the World Wide Web at [www.nrdc.org](http://www.nrdc.org)

This report is printed on 100% recycled paper with 60% post-consumer content.

Natural Resources Defense Council

January 2002

## TABLE OF CONTENTS

<b>Executive Summary</b>	<b>v</b>
<hr/>	
<b>Chapter 1: Casualties Of War</b>	<b>1</b>
Wetlands Protection: Rotten at the Corps	1
Everglades Restoration: Watered Down	2
Federal Contractors: Irresponsible Policy	3
Roadless Areas: Cutting Protection	3
Forest Management: Timber!	3
Yucca Mountain: Nuclear Fallout	4
Snowmobiles: Born to be Wild?	5
Public Lands: Open for Business	5
National Monuments: Monumental Changes	6
Wetlands: New Net Loss	7
Mining Policy: Getting the Shaft	7
Air Quality in Houston: We Have a Problem	8
<hr/>	
<b>Chapter 2: On The Chopping Block</b>	<b>9</b>
New Source Review: Same Old Story	9
Factory Farms: Covering to Industry	10
Mining Proposals: No Reservations	10
Off-Road Vehicles: On the Wrong Track	10
Radioactive Recycling: Buyer Beware	11
Impaired Waters: Down and Dirty	11
Air Quality in National Parks: A Hazy Forecast	12
Diesel Pollution: All Choked Up	12
Air Conditioner Standards: The Big Chill	12
Everglades Mining: Limestone Cowboys	13
Sewage Rules: About to Be Flushed?	13
Isolated Wetlands: Not Gone, and Not Forgotten	14
Hawaiian Marine Reserve: Offshore, but Not Off-Limits	14
Environmental Funding: Cashing Out	14

---

<b>Chapter 3: Regulatory Overkill</b>	<b>16</b>
Centralizing Power	16
Slanting Science	17
Flunking the Cost-Benefit Test	18
The OMB Hit List	19

---

<b>Appendix I: The Bush Environmental Record</b>	<b>22</b>
--	-----------

---

<b>Appendix II: The Card Memo—Targeting Regulations</b>	<b>37</b>
---	-----------

---

<b>Appendix III: Environmental Rules—Getting Carded</b>	<b>39</b>
---	-----------

## EXECUTIVE SUMMARY

The landmark environmental laws passed since 1970 are collectively among the most popular and successful laws ever enacted. These laws, and the regulatory safeguards they spawned, have profoundly improved the quality of life in America, reducing smog in our cities, stemming the flood of sewage and toxins into our waterways, reducing lead in our children's blood, rescuing the bald eagle and the gray whale from the brink of extinction, revolutionizing hazardous waste disposal, cleaning our coastlines, protecting our wetlands, and preserving many of our remaining unspoiled forests and wild lands.

Today, however, America's environmental safeguards face the gravest challenge since the assaults of the Newt Gingrich Congress of 1995, and perhaps ever. As documented in detail in this report, the threat this time is not from a congressional drive to weaken the laws. What we confront today is more insidious—and potentially more dangerous: a Bush administration effort to quietly subvert the federal agency rules that translate congressional mandates into specific regulations. This is the vital process that gives life to environmental laws. Even if the statutes themselves remain unchanged, federal agencies would render them mere words on paper, irrelevant to what polluters and developers do in the real world.

The examples documented in this report span the spectrum of the nation's most important environmental protections, ranging from clean air and clean water to forest and wetlands protection. What's more, the Bush administration offensive documented in this report includes not only independent actions by the Environmental Protection Agency (EPA), the Interior Department, the Army Corps of Engineers, and other agencies, but also a highly centralized effort coordinated by the White House Office of Management and Budget (OMB) to identify and target environmental regulations that industry finds most objectionable.

It is not news that the Bush administration has an anti-environmental tilt. It was evident within weeks after the president took office, and polls indicated Americans overwhelmingly disapproved, particularly of the administration's positions on arsenic in drinking water, drilling in the Arctic National Wildlife Refuge, and carbon dioxide pollution from power plants.

Following the September 11 terrorist attacks, however, the Bush administration quietly intensified its assault on environmental protections. It was able to do this partly because there is a growing critical mass of presidential appointees at key federal agencies who are actively pursuing an anti-environment agenda. Perhaps more important, administration officials have been emboldened by the president's surge in popularity, and are more confident they can eviscerate environmental safeguards when the news media and the public are focused on the war on terrorism to the exclusion of anything else.

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

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

*Following the September 11 terrorist attacks, the Bush administration quietly intensified its assault on environmental protections.*



equipment when they expand or modernize their facilities. Coupled with the strict standards for new industrial facilities and power plants, this “new source review” requirement is intended to ensure long-term air quality improvement as older pollution sources are rebuilt or replaced. The EPA is expected to create new loopholes in this crucial air quality program. These changes would allow hundreds of the nation’s oldest and dirtiest facilities to dramatically increase air pollution, resulting in more premature deaths, more respiratory problems, more urban smog, more acidified lakes and rivers, and more haze in our national parks and wilderness areas.

**Wetlands.** For more than a decade, the cornerstone of America’s approach to wetlands protection has been a policy that calls for “no net loss” of wetlands—a policy that originated with the first Bush administration. With no public notice or opportunity for comment, the U.S. Army Corps of Engineers moved to effectively reverse this long-standing policy by issuing a new “guidance” on wetlands mitigation. These weaker standards would mean the loss of tens of thousands of acres of wetlands that provide flood protection, clean water, and fish and wildlife habitat. The stunning reversal of the “no net loss” policy is only one component of a broader Bush administration effort to diminish wetlands protection. Despite the president’s Earth Day pledge to preserve these vital resources, his administration supported relaxing a key provision of the Clean Water Act—the nationwide permit program—that regulates development and industrial activity in streams and wetlands. The Corps loosened the permit standards, making it easier for developers and mining companies to destroy more streams and wetlands.

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

**Raw Sewage in America’s Waters.** Sewage containing bacteria, viruses, fecal matter, and other wastes is responsible each year for beach closures, fish kills, shellfish-bed closures, and human gastrointestinal and respiratory illnesses. According to the EPA, there were 40,000 discharges of untreated sewage into water bodies, basements, playgrounds and other areas in 2000. Before the Bush administration took office, the EPA issued long-overdue rules minimizing raw sewage discharges into waterways, and requiring public notification of sewage overflows. Despite an established set of procedures to prevent sewage spills, and the importance of warning citizens about sewage hazards, the proposed rules were caught up in the regulatory freeze ordered by the Bush administration last January. A year later, the administration still has not issued the final sewage overflow rules. Technically, they remain under “internal review” at the EPA, but in practice they are languishing in regulatory limbo.

**The OMB’s Centralized Assault.** The full-scale regulatory retreat at federal environmental agencies is only part of the story. Over the long term, the most telling

indication of this administration's intentions is the role played by the OMB. The Bush administration has given unprecedented new power to the OMB to gut existing environmental rules and bottle up new ones indefinitely. And the OMB has carried this effort a step further by reaching out to polluters and their champions on Capital Hill to develop a hit list of environmental safeguards they plan to weaken (see page 20). The list provides a roadmap of upcoming regulatory battles. It includes safe drinking water standards, controls on toxins, Clean Air Act requirements, water pollution limits, pollution from factory farms, and forest planning regulations.

As evidenced by the media attention given to the Enron scandal, the political climate is starting to change, and public scrutiny is turning once again to domestic issues—including the environment. When it comes to the environment, there is ample documentation to show that public concern is steadfast. Indeed, poll after poll confirms that the overwhelming majority of Americans, regardless of political affiliation, favor strengthening rather than weakening environmental safeguards. And they vote that way. As the legislators who lost their seats in the wake of the anti-environmental onslaught of the 104<sup>th</sup> Congress can attest, the public will exact a political cost from those who try to weaken landmark environmental programs.

The Bush administration would do well to learn from history and re-evaluate the wisdom of its anti-environment course. It is time we moved beyond the seemingly unending battle over attempts to weaken popular environmental laws, and work to build on the host of successful environmental programs to address such pressing challenges as global warming and urban sprawl.

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

*It is time we moved beyond the seemingly unending battle over attempts to weaken popular environmental laws, and work to address pressing challenges.*

## CHAPTER 1

## CASUALTIES OF WAR

In an interview at his Texas ranch last August, President Bush tried to defend his environmental record. "My administration's made a lot of very thoughtful and environmentally sensitive decisions," he complained, "but you get no credit for it." Not only was the president not getting any credit, he was getting hammered in the press and in opinion polls for his distinctly anti-environment bent. A few weeks later, however, the tragic events of September 11 changed everything, especially the level of media attention to the administration's environmental policies. With the eyes of the American public and press focused on the war on terrorism, the Bush administration moved to undermine longstanding environmental protections with little, if any, public scrutiny.

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

---

**WETLANDS PROTECTION: ROTTEN AT THE CORPS**

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

In an apparent "bait and switch," the Bush administration broke its pledge by weakening a key program under the Clean Water Act designed to protect the nation's wetlands. The original nationwide permit program, established by Congress nearly 25 years ago, allows the Corps to issue "general" permits for activities that discharge fill or dredged material into wetlands or streams only if those projects have "minimal adverse effects" on the environment. The agency awards more than 80,000 permits every year. Unlike "individual" permits for more destructive activities, general permits do not require public notice or comment, and they undergo much less stringent review, if any, by the Corps.

On January 14, 2002, the White House signed off on a controversial plan by the U.S. Army Corps of Engineers to relax the nationwide permit rules. While the EPA had

formally opposed the Corps' plan for these reasons, Interior Secretary Norton never submitted comments written by the U.S. Fish and Wildlife Service—Interior's key biological agency—that were even more critical of the plan. In an October 15 memo, the Fish and Wildlife Service argued that the Corps did not have "sufficient scientific basis to claim" that the new expedited permits will "cause only minimal impact on the nation's natural resources." In fact, the agency predicted the Corps' changes would cause "tremendous destruction of aquatic and terrestrial habitat."

John Studt, chief of the Corps' regulatory program, characterized the permit revisions as minor bureaucratic changes that would improve, not weaken, environmental protection. Studt is the official who viewed speeding up the wetland permitting process as a patriotic way of spurring "economy development and moving money into the economy" following the September 11 terrorist attacks. "The harder we work to expedite issuance of permits," he wrote in an email message to staff on September 21, "the more we serve the Nation by moving the economy forward."

---

#### **EVERGLADES RESTORATION: WATERED DOWN**

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

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

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

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

While the Corps could change its plan in response to additional public comment, the agency has ignored substantial input from environmental groups for more than a year, and environmentalists don't expect any help from the Interior Department either. Last year, Interior Secretary Gale Norton shut down the federal Office of Everglades Restoration in South Florida and reassigned the federal official in charge of the project.

---

**FEDERAL CONTRACTORS: IRRESPONSIBLE POLICY**

Government agencies no longer will deny federal contracts to businesses that violate environmental law thanks to the Bush administration's December 28 decision to repeal the contractor responsibility rule enacted under Clinton. The original regulation prohibited government agencies from awarding contracts worth more than \$100,000 to companies that violate federal laws, including those that protect the environment, public health, consumers and working families. Proponents of the rule had argued that companies that repeatedly violate such laws should be barred from doing business with the very entity responsible for enforcing those laws—the U.S. government. The Bush administration apparently thinks otherwise.

---

**ROADLESS AREAS: CUTTING PROTECTION**

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

The Tongass National Forest, the world's largest remaining temperate rainforest, will be the most profoundly impacted by the new directives. The Tongass spans 500 awe-inspiring miles of Alaska's coast and is home to towering groves of ancient trees, the world's largest concentrations of grizzly bears and bald eagles, and wild rivers that teem with salmon. Despite the Bush administration's claims that it wants to protect wild forests, the Forest Service is planning more than a dozen timber sales in roadless areas throughout the Tongass that will cover hundreds of thousands of acres.

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

---

**FOREST MANAGEMENT: TIMBER!**

On December 17, Agriculture Undersecretary Mark Rey—a former timber lobbyist and architect of the infamous 1995 salvage rider—opened a new line of attack on the public's

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

right to participate in decision making about public forests. Rey dispensed with the congressionally-mandated administrative-appeals process in approving the Forest Service's controversial plan to salvage trees burned in a fire in a 46,000-acre area of Montana's Bitterroot Valley. Normally, the public would have had the opportunity to call for the Forest Service to modify or cancel this plan by presenting evidence and giving testimony. Rey had the backing of Forest Service Chief Dale Bosworth, but a federal judge blocked the logging plan. By shutting out the public, the judge said, the agency had elected "to take the law into its own hands."

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

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

---

#### **YUCCA MOUNTAIN: NUCLEAR FALLOUT**

With no clear scientific consensus and after several decades and billions of dollars spent studying the issue, the Bush administration recently made critical decisions regarding the problem of highly radioactive nuclear waste. In mid-December, Energy Secretary Abraham issued new site-suitability guidelines that dropped a key requirement: the government must prove Yucca Mountain's underground rock formations would prevent radioactive contamination of the environment. The department instead plans to rely on "engineered waste packages" (cylindrical casks in a series of tunnels) that it says will adequately contain the highly radioactive waste. The administration's new relaxed guidelines are an attempt to meet the EPA's standards—which are weak and inadequate as it is. NRDC is challenging the EPA's standards in the United States Court of Appeals for the D.C. Circuit.

In issuing these new site-suitability guidelines, Energy Secretary Abraham ignored the advice of the GAO. The GAO had recently issued a report raising serious questions about whether the project could be successfully implemented as conceived. The GAO had urged the Bush administration in early December to postpone indefinitely a decision on licensing the site as the sole repository for a substantial part of the nation's high-level radioactive waste.

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

---

#### **SNOWMOBILES: BORN TO BE WILD?**

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

On December 10, the National Park Service (NPS) acknowledged that the snowmobile phase-out would not begin in Yellowstone and Grand Teton during the winter of 2002-03, as scheduled. Park officials cited the need to complete the draft supplemental environmental impact statements by February, and then allow for a 120-day public comment period.

On November 29, the NPS reversed a snowmobile ban in Minnesota's Voyageurs National Park, reopening 4,667 acres of lake surface to snowmobiles after an internal study "found no link between human and wolf activity in those areas." This reversed the agency's 1992 moratorium, which had been justified by evidence that recreational activity in lake bays interfered with the ability of wolves to hunt and reproduce. Park officials had cited biological studies confirming that gray wolves in Voyageurs had higher stress levels than those in more remote parks. Snowmobile proponents had filed a lawsuit over the ban, but a federal appeals court ruled that the NPS was authorized to close portions of the park to protect the wolf population. In lifting this moratorium, the NPS now denies that snowmobiles cause the wolves stress.

---

#### **PUBLIC LANDS: OPEN FOR BUSINESS**

While Congress continued to debate national energy policy, the Interior Department's Bureau of Land Management (BLM) quietly approved 12 leases for oil and gas

development in southern Utah's Redrock canyon lands. The BLM action threatens some of Utah's most beautiful and environmentally sensitive areas while ignoring the common-sense alternative of extracting oil and gas from existing, producing fields.

In what amounts to the first battle over implementation of the Bush administration's ill-conceived national energy policy, NRDC filed a lawsuit to stop the agency from implementing its plan. The lawsuit, filed in federal district court in Washington on December 6, alleges that the BLM disregarded one of the nation's most basic environmental legal requirements: conducting an environmental review (as required by the National Environmental Policy Act (NEPA)) before issuing the leases for oil and gas exploration and development.

Under the Bush administration, the BLM has downplayed its role in protecting resources and is actively scouring public lands for oil and gas lease opportunities, regardless of the legality or environmental consequences. The agency has officially directed its staff not only to look for opportunities to exploit public lands for development as outlined in the president's energy plan, but also to streamline the environmental review process as much as possible.

According to the BLM, this streamlining effort will include "expediting" the process of approving drilling permits, strengthening its ability to meet the demand of federal coal sales, as well as "looking for opportunities" to improve and streamline the NEPA management process for "all energy proposals." The agency's goal of expediting energy production for all public lands clearly means weakening environmental protections.

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

---

#### **NATIONAL MONUMENTS: MONUMENTAL CHANGES**

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

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



**WETLANDS: NEW NET LOSS**

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

The Corps' controversial policy reversal came on the heels of growing criticism for its failure to ensure that mitigation efforts are actually working. A National Research Council report released June 2001 found that the Corps lacked the data to demonstrate the success of current mitigation projects. This followed a May study by the General Accounting Office that documented widespread failure by the Corps to ensure that lost wetlands are being replaced. Recent Corps assessments confirm that there are problems with its mitigation program.

**MINING POLICY: GETTING THE SHAFT**

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

Mining companies and their trade associations contributed millions of dollars to President Bush's campaign, which may explain the administration's favorable treatment of the industry. On December 26, the Forest Service approved a controversial mining proposal in a wilderness area in northwest Montana. The Rock Creek Mine, located on the edge of the Cabinet Mountain Wilderness Area in the Kootenai National Forest, would extract copper and silver ore, posing a significant threat to waterways and an isolated population of grizzly bears. Also in December, Interior Secretary Gale Norton overturned her agency's rejection of a Canadian conglomerate's proposal to locate a major open-pit gold mine in an area of the southern California desert. The area is of great cultural and religious importance to the Quechan Indian nation. Former Interior Secretary Bruce Babbitt had denied permission to dig the mine because of the devastating impact it would have on the rich archeological resources of the 1,571-acre Indian Pass site.

In an action with more far-reaching consequences, Secretary Norton issued new final hard rock mining regulations in late October that reverse more stringent environmental restrictions on mining for gold, silver, copper, and other metals on federal lands. Under

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

the new rules, which took effect on December 31, the Interior Department no longer has the authority to deny a permit for a proposed mine on the ground that it would result in "substantial irreparable harm" to the environment or to historic and cultural resources. The new rules also limit corporate liability for irresponsible mining practices, undermining regulatory provisions that required strong pollution cleanup standards for safeguarding ground and surface water.

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

---

#### **AIR QUALITY IN HOUSTON: WE HAVE A PROBLEM**

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

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

## CHAPTER 2

## ON THE CHOPPING BLOCK

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

---

**NEW SOURCE REVIEW: SAME OLD STORY**

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

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

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

President Bush ordered the EPA to launch a 90-day “study” of the new source review program and the Justice Department to review the 51 lawsuits pending against industry. Both agencies missed a mid-August deadline to deliver a report to the president. On January 15, 2002, the Justice Department concluded that the government was justified in suing the polluting power plants, and Attorney General John Ashcroft vowed to continue

to “vigorously” pursue those cases. But Justice Department officials admit that potential settlements of new source review cases will reflect the Bush administration’s changes to the program. These changes will likely weaken today’s air pollution protections and reward violators that are resisting settlement discussions until the law is relaxed in their favor.

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

---

#### **FACTORY FARMS: COWERING TO INDUSTRY**

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

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

---

#### **MINING PROPOSALS: NO RESERVATIONS**

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

---

#### **OFF-ROAD VEHICLES: ON THE WRONG TRACK**

The Clean Air Act requires the EPA to protect air quality, public health, and the environment from dirt bike, snowmobiles, and other off-road vehicle pollution. On September 14, the agency proposed standards that would “encourage” manufacturers to switch to more efficient engines beginning in 2006, which would ostensibly reduce harmful emissions. But the EPA refused to require cleaner, readily available engines and clean-up devices for off-road vehicles.

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

---

**RADIOACTIVE RECYCLING: BUYER BEWARE**

The Bush administration is considering overturning a ban on recycling radioactive metal from government nuclear installations. On August 28, the Department of Energy launched a 12- to 18-month study on the environmental and health risks of recycling waste from decommissioned nuclear plants and weapons facilities into scrap metal. The scrap metal presumably would be used to make various products, ranging from lawn chairs to zippers.

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

---

**IMPAIRED WATERS: DOWN AND DIRTY**

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

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

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

NRDC and other environment groups are concerned that this will be the EPA's first step in weakening the entire TMDL program. The agency is considering revisions that

would weaken its oversight of state administration of the program, and enable states to ignore polluted waters.

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

---

#### **AIR QUALITY IN NATIONAL PARKS: A HAZY FORECAST**

On May 29, the Environmental Protection Agency affirmed a Clinton-era rule to clean up hazy skies over national parks and wilderness areas by cutting pollution from coal-fired power plants, oil refineries, and other industrial facilities. The agency's 1999 regional haze rule would require owners of these facilities to retrofit them with the latest pollution-control technology. However, on July 26, the EPA Administrator Whitman proposed replacing several of the government's toughest air pollution programs with a single approach favored by the electric power industry. The agency would then scrap the new haze rule in favor of a pollution-credit trading program, leaving our national parks clouded over by pollution.

---

#### **DIESEL POLLUTION: ALL CHOKED UP**

On February 28, EPA Administrator Christie Todd Whitman affirmed a Clinton-era rule to reduce sulfur levels in diesel fuel 97 percent in mid-2006, leading to 90 percent reductions in asthma-inducing particulate soot and 95 percent reductions in smog-forming nitrogen oxides by 2007. Cutting these truck and bus emissions would save more than 8,300 American lives and prevent nearly 800,000 asthma attacks and other respiratory problems each year. This new diesel rule would be the most significant step to cut vehicle pollution since the government forced refineries to remove lead from gasoline.

Almost immediately after the diesel announcement, the oil industry began lobbying the White House to give it another opportunity to weaken the rule. The industry filed suit last fall in federal court to block the rule, and the case is scheduled to begin on February 26, 2002. While the EPA and the Bush administration are defending the rule in court, they may still try to weaken the rule. On August 1, for example, EPA officials informed the Senate that the agency would convene an "independent panel" to re-examine the rule as it moves toward implementation. This unprecedented move allows industry yet another opportunity to delay the rule. At a minimum, the lack of details about the nature of the panel's work and its membership have environmentalists, state officials, and others concerned that this panel will have a chilling effect on the government's research and development efforts to meet the new emission and fuel standards.

---

#### **AIR CONDITIONER STANDARDS: THE BIG CHILL**

After delaying implementation of new energy-efficiency standards for residential central air conditioners, the Department of Energy announced in April that it intended to substantially weaken the standard from a Seasonal Energy Efficiency Ratio (SEER) 13 to SEER 12. The final rule calling for a SEER 13 standard, published on January 22, 2001,

mandated a 30 percent increase in energy efficiency. This standard would cut some 9 million tons of global warming pollution annually, improve electric system reliability, save consumers and businesses more than \$50 billion through 2030, and avoid the need to build 200 new power plants.

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

Though the EPA has announced its support for the SEER 13 air conditioner standard, the Department of Energy is expected to finalize the SEER 12 standard in the next few weeks.

---

#### **EVERGLADES MINING: LIMESTONE COWBOYS**

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

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

---

#### **SEWAGE RULES: ABOUT TO BE FLUSHED?**

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

greatest risk from exposure to sewage. The proposed rules remain under "internal review" by the administration.

---

**ISOLATED WETLANDS: NOT GONE, AND NOT FORGOTTEN**

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

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

---

**HAWAIIAN MARINE RESERVE: OFFSHORE, BUT NOT OFF-LIMITS**

Although less than 1 percent of our nation's oceans are federally protected, the Bush administration is reviewing an executive order issued during the Clinton administration that created the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve. This 1200-mile long, 84-million acre preserve is the most pristine coral reef ecosystem in the United States, and the largest marine protected area after the Great Barrier Reef. The reserve is home to 14 million migratory seabirds, 7,000 marine species, including endangered Hawaiian monk seals, leatherback and hawksbill sea turtles, and threatened green sea turtles.

The Clinton order restricts both commercial and recreational fishing and sets aside 5 percent of the reserve as a "no take" zone prohibiting fishing and coral removal. The order also bans oil, gas, and mineral exploration and development.

The fishing industry is pressuring the Bush administration to gut these protections. The administration is expected to reopen the public comment process, possibly weakening fishing safeguards and lifting the ban on coral mining.

---

**ENVIRONMENTAL FUNDING: CASHING OUT**

The OMB previewed its fiscal year 2003 budget on November 28 when the OMB Director Mitch Daniels said the Bush administration intended to shift its budgetary emphasis toward defense and security spending at the expense of other priorities like the



environment. That statement suggests the Bush administration plans to use the war on terrorism as an excuse for cutting environmental funding next year and probably for years to come. The reality is that the \$1.35 trillion tax cut enacted before the September 11 tragedy had already eviscerated the \$127 billion surplus for fiscal year 2001 and beyond. Indeed, the administration mostly covered the cost of responding to the terrorist attack in the FY 2001 budget by adding \$40 billion in supplemental funding.

The administration's post-September 11 hostility toward environmental spending is nothing new. President Bush's first budget proposed slashing overall spending for environmental and natural resources agencies by \$2.3 billion (7.2 percent) in fiscal year 2002. Specific cuts included nearly \$500 million from the EPA, nearly \$400 million from the Interior Department, and nearly \$500 million from the Forest Service. The administration also wanted to slash the Department of Energy's budget by roughly \$450 million, cutting clean energy and environmental cleanup programs. Fortunately, Congress restored most of the funding.

## CHAPTER 3

## REGULATORY OVERKILL

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

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

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

**CENTRALIZING POWER**

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

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

The selection of John Graham as director of the OMB's Office of Information and Regulatory Affairs (OIRA) was, in itself, a controversial act. Graham's conformation debate was divisive, with his critics charging that his record as the head of an industry-backed think-tank showed that he was likely to use his position to bend the regulatory process into a more industry-friendly shape. So far his actions have supported the views of his critics.

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

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

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

---

#### SLANTING SCIENCE

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

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

The OMB also recently issued new guidance on how federal agencies can use information. This guidance affects both the kind of information agencies can use in their

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

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

---

#### FLUNKING THE COST-BENEFIT TEST

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

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

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

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

The impact of cost-benefit analysis discounting can be significant. For example, Robert Hahn of the American Enterprise Institute-Brookings Joint Center has used discounting of future lives to argue that the old arsenic standard of 50 parts per billion

may be too strict and should be weakened. (Hahn and Graham have a long association, including working together at Harvard.) As it turns out, the new 10 ppb arsenic in tap water standard is one of the rules on the OMB hit list and could be weakened during implementation. Other cases in which discounting could have a major impact include controls on toxic chemicals, radiation standards, dioxin limits, and pesticides in food.

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

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

---

#### THE OMB HIT LIST

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

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

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

All of the rules selected for further review by the OMB were targeted by industry trade associations or the Mercatus Center, represented by Wendy Gramm, the former head of OIRA under the Reagan administration. The Mercatus Center, which made numerous suggestions for reducing pollution controls on some of the greatest sources of air and water pollution, is itself a conservative think-tank heavily funded by industry donors.

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

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

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

<b>Rule</b>	<b>EPA: Mixture and Derived From Rule for Toxics</b>
<b>Source</b>	American Chemistry Council
<b>Impact of change</b>	Lessens restrictions on management of hazardous waste
<b>Rule</b>	<b>EPA: Notice of Substantial Risks from Toxics</b>
<b>Source</b>	American Petroleum Institute
<b>Impact of change</b>	Shields handlers of toxics substances from reporting on potential threats
<b>Rule</b>	<b>EPA: Air Quality Economic Incentive Program Guidance</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Allows potential increases in pollution, particularly in minority areas
<b>Rule</b>	<b>Forest Service: Roadless Area Conservation Rule</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Allows costly and ecologically destructive road construction in national forests
<b>Rule</b>	<b>Forest Service: Forest Planning Rules</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Prevents the mandatory use of updated forests management practices
<b>Rule</b>	<b>DOI: Hard Rock Mining Regulations</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Removes oversight on operation of the most environmentally damaging mines
<b>Rule</b>	<b>DOI: Regulations on Snowmobiles in National Parks</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Weakens limits on environmental effects of snowmobiles in national parks
<b>Rule</b>	<b>DOE: Central Air Conditioner and Heat Pump Energy Conservation Rule</b>
<b>Source</b>	Mercatus Center
<b>Impact of change</b>	Increases wasted energy and air pollution from residential energy devices

## APPENDIX I:

## THE BUSH ENVIRONMENTAL RECORD

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

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



DATE	ISSUE	ADMINISTRATIVE ACTION
February 20, 2001	National Monuments	Interior Secretary Gale Norton announces that the administration will try to adjust the boundaries of the 22 new national monuments designated by President Clinton, and will consider allowing commercial activities on these lands.
March 7, 2001	Endangered Species	The Fish and Wildlife Service and National Marine Fisheries Service withdraw supplemental biological opinion, issued in January 2001, which called for protecting nine endangered species of salmon, steelhead, and bull trout in the Columbia and Snake River basins. The administration will also halt other activities that could both protect salmon and generate electricity on the Columbia and Snake Rivers.
March 13, 2001	Air Quality	President Bush retreats from campaign promise to regulate carbon dioxide pollution—the chief contributor to global warming—from power plants. The president claims that CO <sub>2</sub> is not considered a pollutant under the Clean Air Act. (Section 103(g) of the act includes emissions of CO <sub>2</sub> from power plants in a list of air pollutants that Congress directed the EPA to include in pollution prevention programs.)
March 13, 2001	Energy	President Bush announces that the administration will consider allowing drilling for oil and gas on all public lands—including all national monuments and treasured wilderness areas in the West—as part of his new energy policy.
March 16, 2001	Roadless Rule	After delaying and weakening the landmark rule protecting 58 million acres of wild national forest lands from logging, road building, and coal, oil, and gas leasing, the administration decides not to defend the regulation in court.
March 21, 2001	Mining	The administration delays new hard rock mining regulations that would allow the federal government to prohibit new mine sites on federal land; enforce standards preventing mining contaminants from reaching waterways; and require companies to protect water quality, pay for cleanup, and restore public lands ruined by mining activities. The mining law has not been substantially updated since 1872.

DATE	ISSUE	ADMINISTRATIVE ACTION
March 28, 2001	Global Warming	EPA Administrator Christie Todd Whitman announces that the administration will not support ratification of the Kyoto Protocol. This announcement came just weeks after the world's eight largest industrialized nations issued a declaration that they would strive to reach an agreement on the treaty.
April 9, 2001	Endangered Species	In his budget, President Bush calls for a provision to relax requirements for endangered or threatened species listings under the Endangered Species Act. The budget includes no funding to implement court orders brought by citizen suits under the act, severely restricting the ability of citizens and environmental organizations to bring related suits against the government.
April 9, 2001	Environmental Funding	President Bush unveils his fiscal year 2002 budget, slashing overall spending for environmental and natural resources agencies by \$2.3 billion. Specific cuts include nearly \$500 million from the EPA (including an 8 percent cut in enforcement staff), nearly \$400 million from the Department of Interior, and nearly \$500 million from the Forest Service.
April 16, 2002	Endangered Species	U.S. Fish and Wildlife Service proposes an exemption for a boat manufacturer to conduct high-speed tests in a federal refuge for Florida manatees. The proposed exemption continues the trend of failure to comply with a legal agreement to increase manatee protection signed in January 2001, and will likely lead to a record number of boat-caused manatee deaths in 2002.
April 23, 2001	Snow-mobiles in National Parks	Though Interior Secretary Norton allows a Clinton-era final rule banning snowmobile use in Yellowstone and Grant Teton National Parks to temporarily remain in effect, the administration compromises an out-of-court settlement to a lawsuit filed by snowmobile proponents, and may weaken the rule as early as February 2002.
April 25, 2001	Endangered Species	The Interior Department shelves a compromise plan to reintroduce grizzly bears into federal wildlands in Idaho and Montana. There are only about 1,200 grizzlies left in the lower 48 states, where they have been driven from 98 percent of their original range.

DATE	ISSUE	ADMINISTRATIVE ACTION
April 26, 2001	Water Quality	The EPA shifts 180-degrees to support a proposed Florida rule that undermines the Clean Water Act's total maximum daily load (TMDL) program by changing the way in which "impaired" (polluted) bodies of water are identified and listed. Florida's rule would effectively "de-list" a number of polluted streams, rivers, and lakes, and, in those instances, would exempt the state from federal mandates to cleanup water pollution.
April 30, 2001	Energy	Vice President Cheney promotes the need for more domestic oil, gas, and coal supply, denouncing efforts to reduce fuel demand through energy efficiency or increasing our reliance on renewable energy sources.
May 4, 2001	Roadless Rule	The administration launches a "sneak attack" on the Roadless Area Conservation Plan, ceding federal authority over national forests to local officials. In public statements and court filings, the administration makes it plain that its long-term intent is to allow individual national forests to opt out of the roadless rule on a case-by-case basis, on the authority of each forest's officials.
May 10, 2001	Energy	Department of Energy officials reject NRDC's Freedom of Information Act (FOIA) request for documents about individuals involved in formulating the administration's energy policy.
May 12, 2001	Endangered Species	The administration reneges on a November 2000 agreement to increase protection of desert tortoises in three Southern California counties. Under Interior Secretary Norton, the BLM has failed to remove cattle from a half-million Mojave Desert acres covered by the agreement, prompting a federal judge to sharply criticize the administration for violating "the letter, the spirit, and everything about the whole process."
May 17, 2001	National Forests	Agriculture Secretary Veneman suspends Forest Service regulations that guide the development of management plans for national forests.

DATE	ISSUE	ADMINISTRATIVE ACTION
May 17, 2001	Energy	The administration's energy plan offers a smorgasbord of incentives for the energy industry, emphasizing the need to increase domestic fossil-fuel supplies and renewing a commitment to nuclear power. Dwarfed by large federal subsidies to energy companies are limited incentives for energy efficiency and renewable energy.
May 22, 2001	Arsenic in Water	The administration suspends the new standard for arsenic in tap water and right-to-know requirements. The EPA also suspends the January 2001 arsenic rule's right-to-know measures, which would require water utilities to inform their consumers about arsenic levels in their water.
May 31, 2001	National Parks	President Bush pledges improvements to infrastructure and maintenance of national parks, but draws funding for the projects away from other important park programs such as wildlife and wildlands preservation, and air and water quality.
June 5, 2001	Oil Drilling/ Mining	Secretary of Interior Norton announces plans to move ahead with drilling in the Outer Continental Shelf off the coasts of Florida and California despite opposition from the governors of both states, and suggests the boundaries of some protected public lands may be "redrawn" to allow drilling and mining.
June 6, 2001	Nuclear Waste	The EPA announces final radiation standards for Yucca Mountain nuclear waste repository that rely on dilution—instead of containment—of radioactive material to a specific standard for drinking water exposure. Site approval at Yucca Mountain, the only location being considered for storage of the nation's nuclear waste, is essential for President Bush's efforts to revive the nuclear power industry.
June 15, 2001	Mining	After political pressure surrounding the removal of Clinton-era protections, the BLM upholds only the "non-controversial" portion of hard rock mining rules. Now that the BLM has acted on some of the rules, the administration can try to weaken the rest of the new rules, including provisions that specifically protect environmental and cultural resources.
June 18, 2001	Energy	Vice President Cheney announces to General Motors executives that the Bush administration has no plans to pursue higher fuel efficiency standards.

DATE	ISSUE	ADMINISTRATIVE ACTION
June 28, 2001	Energy	President Bush boasts that he will earmark \$85.7 million in research grants for energy efficiency, but this funding level would still be lower than the amount approved so far by either the House or the Senate in 2001, and by the Congress in 2000. His proposed budget in fact cuts overall federal research into energy efficiency by nearly 30 percent, or \$180 million.
July 2, 2001	Oil Drilling	The administration offers new oil leases for offshore drilling in the eastern Gulf of Mexico, posing an unacceptable and unnecessary risk to Florida's waters and beaches. Offshore oil and gas development causes substantial environmental damage, including oil spills, destruction of coastal wetlands, water pollution from the waste products of drilling operations, and air pollution.
July 12, 2001	Global Warming	The administration's new "Federal Climate Change Expenditures Report to Congress" indicates that U.S. assistance to developing countries to help curb global warming has been cut nearly 25 percent—from \$165 million to \$124 million. The administration has also reduced critical energy assistance projects by 32 percent and eliminated two programs designed to promote transfer of energy efficiency and renewable technologies.
July 13, 2001	Global Warming	President Bush outlines a global warming agenda that calls for more studies and rejects the idea of binding pollution cuts. Meanwhile his agenda offers nothing to control the emissions responsible for the problem.
July 17, 2001	National Monuments	The administration backs legislation (H.R. 2114, Rep. Simpson) that would weaken presidential authority to create new national monuments through the Antiquities Act. This act allows for the protection of federal lands, such as the 800,000-acre Grand Canyon National Monument, from sale or development.

DATE	ISSUE	ADMINISTRATIVE ACTION
July 23, 2001	Endangered Species	Interior Secretary Norton recommends that the Justice Department not appeal an Idaho court's ruling that denies water rights critical to the integrity of the Deer Flat National Wildlife Refuge on the Snake River. If the decision goes unchallenged, it would present a rare instance in which the federal government opted not to defend its water rights.
July 26, 2001	Global Warming	EPA Administrator Whitman says the administration is no longer interested in attempting to reopen international discussions on global warming.
July 26, 2001	Air Quality	The EPA plans to scrap air pollution regulations for power plants in favor of an approach endorsed by the electric industry. Rules limiting emissions from power plants and reducing hazy skies over national parks would be dumped and replaced with a pollution-credit trading program.
August 2, 2001	Endangered Species	The administration abandons a plan for major flow changes in the Missouri River, despite public acknowledgement by the Corps of Engineers that its present management of the river violates the Endangered Species Act. The U.S. Fish and Wildlife Service ruled earlier that such changes are necessary to prevent the extinction of endangered fish and birds. In December, the Corps agreed that a spring rise is necessary to save the river's pallid sturgeon, piping plovers, and least terns.
August 8, 2001	Wetlands	In a stunning reversal of President Bush's Earth Day pledge to preserve wetlands, the Corps of Engineers proposed relaxing a series of year-old rules designed to protect streams and other wetlands. The EPA, Fish and Wildlife Service, and other federal environmental agencies oppose the move, which would overturn stringent nationwide permits regulating certain development and industrial activities in sensitive watersheds.
August 12, 2001	National Forests	The Forest Service grants Chief Bosworth authority to review road building and timber sale projects in roadless areas, removing protections for the most pristine and largest roadless national forests.

DATE	ISSUE	ADMINISTRATIVE ACTION
August 14, 2001	Air Quality	The EPA postpones a report on the new-source-review program in an effort to delay and weaken federal air quality standards on power plants implemented by the Clinton administration. The Justice Department had previously used these tougher enforcement rules—requiring utilities and refineries to install pollution curbs when they modernize their facilities—to sue dozens of older coal-fired plants for violating federal air pollution limits.
August 17, 2001	Oil Drilling	The administration appeals a federal judge's decision to ban drilling off California's coast. On June 22, U.S. District Judge Claudia Wilken ruled that the federal Minerals Management Service (MMS) illegally extended 36 undeveloped oil leases off the central California coast because it failed to comply with the Coastal Zone Management Act and the National Environmental Policy Act.
August 22, 2001	Roadless Rule	The Forest Service announces an interim directive that greenlights road building and logging in the Tongass rainforest and other national forests. The administration has abandoned the original Roadless Area Conservation Rule issued during the Clinton administration, which halted road building and virtually all logging in 58.5 million acres of roadless areas in national forests.
August 27, 2001	Endangered Species	Interior Secretary Norton reneges on an agreement to protect the endangered desert tortoise. As a result, the BLM has announced that it will not comply with the original court-imposed September 7 deadline to remove cattle from the endangered habitat until the new round of negotiations are completed.
August 28, 2001	Nuclear Waste	President Bush considers lifting a moratorium on radioactive recycling. The Department of Energy will spend the next 12 to 18 months studying the environmental and health risks of recycling waste from decommissioned nuclear plants and weapons facilities into scrap metal for use in consumer products.

DATE	ISSUE	ADMINISTRATIVE ACTION
September 7, 2001	Environmental Enforcement	In a reversal of one of President Bush's campaign promises, the EPA proposes ending the longstanding practice of holding federal government operations accountable to the same environmental standards as private industry. These comments clash with Bush's earlier statements in which he denounced federal facilities as the nation's worst polluters and pledged to hold them accountable.
September 20, 2001	Roadless Rule	Forest Service proposes to increase its use of so-called categorical exclusions, a method of avoiding environmental analyses and eliminating the public's opportunity to comment on and file administrative appeals of certain agency projects.
September 21, 2001	Wetlands	The Corps of Engineers' staff is directed to expedite wetland development permits as a way of spurring "economic development and moving money into the economy" following the attacks on the World Trade Center and the Pentagon.
September 24, 2001	Regulatory Review	The OMB advises federal agencies it will supercede traditional reliance on agency expertise and employ its own "science-based" tools, including cost-benefit analyses and extensive peer reviews, to evaluate proposed regulations. Substituting cost-benefit analysis for agency analysis is a marked departure for the rulemaking process.
September 26, 2001	Regulatory Review	OMB regulatory chief John Graham invites industry to identify regulations that businesses find overly burdensome. According to a news report, the lobbyists produce a list of 57 rules dealing with health, safety, and the environment. Later, based on comments from conservative think tanks and trade associations, the OMB adopts a "hit list" of major regulations to possibly weaken.
October 1, 2001	National Forests	A report by the GAO finds "serious accounting and financial reporting deficiencies" with Forest Service timber sale calculations. According to Taxpayers for Common Sense, a fiscal watchdog group, the agency's massive financial mismanagement resulted in timber sale losses exceeding \$400 million in 1998—more than triple the amount disclosed by the agency.



DATE	ISSUE	ADMINISTRATIVE ACTION
October 2, 2001	Mining	Forest Service Chief Bosworth asks Interior Secretary Norton to lift a two-year moratorium on new mining activities covering 1.15 million acres of federal land in southern Oregon, including a 700,000-acre area formerly under consideration for national monument status.
October 12, 2001	Right-to-Know	Attorney General John Ashcroft issues a memo to federal agencies urging them to resist Freedom of Information Act (FOIA) requests made by American citizens. Passed in 1974 in the wake of the Watergate scandal, FOIA allows ordinary citizens to hold the government accountable by requesting and scrutinizing public documents and records.
October 15, 2001	Wetlands	Interior Secretary Norton blocks the U.S. Fish and Wildlife Service from submitting negative comments to the Corps of Engineers about the Corps' proposal to relax a series of wetlands protection rules. Saying the Corps' plan had "no scientific basis," the Fish and Wildlife Service warned that the proposed changes to permitting rules for development would result in widespread environmental destruction. Norton prevented the release of the service's findings. As a result, the Corps fails to consider formal input from Interior's key biological agency.
October 25, 2001	Mining	Interior Secretary Norton announces new hard rock mining regulations that reverse more stringent environmental restrictions on mining for gold, silver, copper, and other metals on federal lands. Of the nearly 50,000 public comments received regarding the proposal, more than 47,000 opposed weakening the nation's mining regulations.
November 2, 2001	Wetlands	The Corps of Engineers issues a new policy on "mitigation" for destroyed wetlands, essentially ignoring a national goal of "no net loss" of wetlands established during the first Bush administration. The Corps issues its new policy without any public notice or coordination with other federal agencies that share responsibility for wetlands protection.

DATE	ISSUE	ADMINISTRATIVE ACTION
November 6, 2001	Everglades	Claiming a reduction in "bureaucratic overhead," Interior Secretary Norton closes an Interior Department field office in south Florida, which had been established to coordinate work on a 40-year, multibillion recovery plan for the Everglades, the most ambitious ecosystem restoration project in U.S. history.
November 27, 2001	Salvage Logging	Forest Service Chief Bosworth skirts the appeals process by asking his superiors in the Agricultural Department to approve a controversial salvage-logging plan for 46,000 acres that burned in Montana's Bitterroot Valley last year, forcing a long court battle with environmental groups.
November 28, 2001	Environmental Funding	The OMB previews its fiscal year 2003 budget, indicating the likelihood of dramatic reductions in environmental spending and other secondary priorities. However, environment and energy programs under Energy, Interior, and other spending bills actually make up a very small portion of the federal budget.
November 28, 2001	Pesticides	The EPA considers ending a ban on accepting data from studies that intentionally dose human volunteers with toxic pesticides. Testing on human patients has been widely condemned as unethical and unscientific, and violates federal rules and international agreements, including the Nuremberg Code adopted after World War II.
November 29, 2001	Snow-mobiles in National Parks	The NPS reverses a snowmobile ban in Minnesota's Voyageurs National Park after a new study claims "no link between human and wolf activities in the area," reopening 4,667 acres of pristine lake surface.
December 3, 2001	Endangered Species	The Corps of Engineers decides not to restore the migration patterns of endangered salmon by breaching four lower Snake River dams. The four dams—Ice Harbor, Lower Monumental, Little Goose, and Lower Granite—have been blamed for obstructing salmon migration to the Pacific Ocean, causing the extinction of native populations or their listing for protection under the Endangers Species Act.

DATE	ISSUE	ADMINISTRATIVE ACTION
December 10, 2001	Mining	Interior Secretary Norton reverses her agency's previous denial of a Canadian company's proposal to locate a major open-pit gold mine in an area of the Southern California desert that is of great cultural and religious importance to the Quechan Indian Nation. Former Interior Secretary Babbitt had denied the mine because of the devastating impacts it would have on the resources of the 1,571-acre Indian Pass site, which includes some 55 archaeological sites eligible for the National Register of Historic Places and sacred trails.
December 10, 2001	Snow-mobiles in National Parks	After delaying a Clinton rule that would gradually phase out snowmobiles in national parks, the NPS admits the ban will not be implemented in Yellowstone and Grand Teton.
December 14, 2001	Nuclear Waste	The Department of Energy says the government no longer must prove that Yucca Mountain's underground rock formations would prevent radioactive contamination of the environment. Several critics have alleged that under DOE's changed site-suitability rules that no longer rely on geological barriers, the nuclear waste repository could be placed just as easily in the basement of DOE headquarters as in the desert 90 miles northwest of Las Vegas.
December 14, 2001	Roadless Rule	The Forest Service guts protections for roadless areas, particularly those in the Tongass National Forest. The changes also lift mandatory environmental impact reviews, allowing regional forest officials leeway to dispense with environmental and public reviews.
December 28, 2001	Everglades	The Corps of Engineers proposes a program for restoring the damaged South Florida Everglades ecosystem, but it lacks substantial details, including specific requirements and assurances that Congress required as necessary to ensure the success of the landmark project.
December 28, 2001	Contractor Responsibility	Businesses with poor environmental track records no longer will be denied federal contracts, following the administration's final decision to repeal the contractor responsibility rule.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 8, 2002	Nuclear Testing	The Bush administration indicates that the United States needs to be ready to resume nuclear weapons testing. The Nuclear Posture Review calls for speeding up preparations at the government's Nevada test site just in case. Since taking office, President Bush has said that he would maintain a moratorium on underground nuclear testing imposed by his father in 1992 and upheld by President Clinton.
January 10, 2002	Oil Drilling	The Bush administration tries to strip the right of the state of California to review proposals for oil drilling off its coast by appealing a federal district judge's ruling (June 22, 2001) that the federal Minerals Management Service (MMS) illegally extended 36 undeveloped oil leases off the state's central coast. The judge ruled that California was improperly denied a voice in deciding the fate of the leases.
January 10, 2002	Nuclear Waste	Citing "sound science" and "compelling national interest" in the wake of the September 11 terrorist attacks, Energy Secretary Abraham recommends that President Bush approve Yucca Mountain in the Nevada desert as the nation's repository for nuclear waste.
January 14, 2002	Oil Drilling/ National Parks	The NPS concludes that expanding oil drilling in the Big Cypress National Preserve would not harm the environment. The NPS will allow a company to drill nearly 15,000 holes in a 41-square mile grid, detonate charges of dynamite 25 feet underground in each of them to seismically search for oil, drill a 11,800-foot exploratory well, and build a 7.5-mile access road. A few days later, the Bush administration backtracks in the face of intense public criticism over the drilling decision. Interior Secretary Norton announces that the government will explore the possibility of acquiring the mineral rights to prevent expanded drilling in the preserve.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 14, 2002	Wetlands	The Corps of Engineers, with approval from the White House, weakens rules designed to protect thousands of streams, swamps, and other wetlands from destruction through the Clean Water Act. Despite opposition to the changes from two other federal environmental agencies, the Corps finalized its plan to make it easier for developers, mining companies, and others to qualify for permits to dredge and fill wetlands. The relaxed rules roll back several restrictions imposed by the Clinton administration and appear to contradict President Bush's pledge to protect the nation's wetlands.
January 16, 2002	Air Quality	The EPA plans to delay for one year a requirement that coal-fueled power plants reduce smog-causing pollution that often drifts from the Midwest and Ohio Valley into the Northeast. EPA Administrator Whitman notifies 70 members of Congress that she will seek court approval to postpone a requirement that utilities cut their pollutants significantly by May 2003.
January 17, 2002	Arctic Drilling	The Interior Department reverses its position and declares that improvements in oil-drilling technology will allow adequate protection of polar bears, despite two studies that show polar bears will be adversely affected by oil drilling in the Arctic National Wildlife Refuge.
January 18, 2002	Energy	The Bush administration fails to require light trucks to meet stricter fuel efficiency standards, saying after six months of study that it did not have enough time to evaluate a report by the National Academy of Sciences that recommended higher fuel efficiency standards.
January 18, 2002	Endangered Species	Despite a contrary study, the U.S. Fish and Wildlife Service concludes that logging does not significantly affect the spotted owl, and reopens national forests in the Northwest to timber sales.
January 21, 2002	Drilling in National Monuments	The BLM gives preliminary approval to a company to drill eight natural gas wells on already leased federal land on the eastern end of the Upper Missouri River Breaks National Monument in Montana. The national monument lands comprise 47,000 acres along a 149-mile stretch of the Missouri River.

DATE	ISSUE	ADMINISTRATIVE ACTION
January 21, 2002	Wildlife Refuges	Interior Secretary Norton proposes an 18 percent funding increase (\$56.5 million) for the national wildlife refuge system, primarily to cover maintenance and renovation costs rather than wildlife programs.
January 22, 2002	Logging	The U.S. Forest Service files an appeal in federal court to overturn a ruling that halted salvage logging on thousands of acres of burned timber in Montana's Bitterroot National Forest, claiming that cutting and removing dead trees helps improve forest health. On January 1, a federal judge issued a court order barring the agency from "salvage" logging about 46,000 acres, because the agency had illegally approved the plan by bypassing the usual public appeals process.
January 24, 2002	Oil Drilling	The BLM plans to allow oil exploration on the Dome Plateau, a scenic 36-square-mile area near Arches National Park in southern Utah's Redrock Canyon Country. The project involves crisscrossing the landscape with nearly 50 miles of cable and heavy-duty trucks to conduct seismic testing.
February 4, 2002	EPA Budget	President Bush releases a fiscal year 2003 federal budget that eliminates the EPA's budget for graduate student research in the environmental sciences. Funding for the EPA Star grant program, which provides highly motivated doctoral students with three years of funding to pursue environmental research, amounts to little more than a tenth of one percent of the EPA's total budget.
February 4, 2002	Budget	President Bush unveils his fiscal year 2003 budget request, proposing billions of dollars in subsidies for energy companies while slashing overall spending for environment and natural resources departments by \$1 billion. Hardest hit would be energy-efficiency and water-resource programs.
February 4, 2002	National Forests	President Bush requests \$404 million in subsidies to support timber sales on national forests in the fiscal year 2003 budget request.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 5, 2002	Snow-mobiles in National Parks	National park officials delay implementation of a plan to gradually phase out snowmobiles in Yellowstone and Grand Teton National Parks by the winter of 2003–04 for at least another year. The decision is based on a new study ordered by the Bush administration after the snowmobile industry filed a lawsuit to overturn the ban.
February 6, 2002	Environmental Enforcement	The Bush administration reveals new forest management plans that could elevate the role of industry at the expense of environmental review and public participation. The president's fiscal year 2003 budget contains a provision for so-called charter forests—a new category of federal forestland that would be managed locally, raising concerns for enforcement of federal environmental regulations.
February 7, 2002	Endangered Species	Claiming success for the administration's Everglades restoration plan, the White House announces that legal protections for five endangered species in Florida's Everglades may be reduced. Biologists dispute the plan's responsibility for the relative well being of the five species and voice concern for their premature down-listing under the Endangered Species Act.
February 11, 2002	Motorized Vehicles in Wilderness	Environmental groups file a lawsuit against the National Park Service after the agency authorized motorized-vehicle tours in Georgia's Cumberland Island Wilderness. The Wilderness Act prohibits the use of motorized vehicles in wilderness areas except in rare cases such as emergencies. The tours also appear to violate the law's limits on commercial use of wilderness areas.
February 14, 2002	Global Warming	President Bush announces a plan to address global warming that allows greenhouse-gas-emissions growth to continue unabated.
February 14, 2002	Air Quality	President Bush announces new targets for three pollutants—mercury, sulfur dioxide, and nitrogen oxide—from power plants that would delay by up to 10 years emission cuts now required under the Clean Air Act.

DATE	ISSUE	ADMINISTRATIVE ACTION
February 15, 2002	Nuclear Waste	Citing energy, homeland, and national security, President Bush endorses Energy Secretary Abraham's recommendation to store 77,000 tons of high-level nuclear waste in an underground facility in Yucca Mountain, 100 miles northwest of Las Vegas, Nevada. Opponents of the plan believe that the proposed facility would not adequately protect the public and the environment from radiation contamination.
February 15, 2002	Endangered Species	The Bush administration asks a federal judge to allow the U.S. Fish and Wildlife Service to lift protections on more than a half-a-million acres in Southern California while it conducts a two-year reevaluation of economic analysis of up to 10 "critical habitat" designations. Critical habitat is a category of protected land in which development and other uses can be limited or barred to ensure the survival of imperiled plants and animals.
February 15, 2002	Mining on Public Lands	The U.S. Forest Service gives preliminary approval for lead mining exploration—involving the drilling of hundreds of holes—in Missouri's Mark Twain National Forest. Critics worry that the porous limestone in southeastern Missouri could lead to massive water pollution.
February 19, 2002	Snow-mobiles in National Parks	The Bush administration offers three alternatives to an outright ban of the vehicles in Yellowstone and Grand Teton National Parks. The National Park reopens the public comment process for the fifth time.
February 21, 2002	Endangered Species	The U.S. Army Corps of Engineers issues its final recommendation on four dams on the lower Snake River, opposing breaching the dams. Environmentalists and scientists blame the four dams for the demise of the Snake River salmon and claim that new Corps projects to mitigate the dams' effect will do little to help the salmon recover.



DATE	ISSUE	ADMINISTRATIVE ACTION
February 23, 2002	Superfund	Even though the federal Superfund program is facing serious budget issues, the Bush administration announces it will not reinstate the "polluter pays" tax that was part of the original program. The fund has dwindled from a high of \$3.8 billion in 1996 to a projected \$28 million next year. The Bush administration favors placing the financial burden of the massive cleanup program squarely on the shoulders of American taxpayers, forcing the government to cut the overall number of sites it has designated for cleanup.
February 26, 2002	Air Quality	The EPA's top air official, Jeffrey Holmstead, acknowledges to state regulators that President Bush's recently announced plan to cut utility emissions of three pollutants is insufficient to help the Northeast meet federal Clean Air Act standards.
February 27, 2002	Endangered Species	The U.S. Bureau of Reclamation releases the biological assessment for its Klamath Basin operating plan that, over the next decade, cuts water to endangered fish in favor of agricultural interests. Contrary to federal endangered species protections, the plan could push coho salmon and two types of sucker fish toward extinction.
March 5, 2002	Water Quality	A U.S. Forest Service internal memo states that road construction near streams in national forests does not require Clean Water Act permits.
March 6, 2002	Arctic Drilling	News reports reveal that U.S. Fish and Wildlife Service employees in Alaska were instructed not to discuss issues related to drilling in the Arctic National Wildlife Refuge. Drilling opponents claim the action was intended to stifle dissenting opinions within the service.
March 7, 2002	Enforcement	In an unprecedented statement that undercut her own enforcement staff, EPA Administrator Christie Todd Whitman tells a senate committee that, were she their attorney, she would not advise utility polluters to settle ongoing Clean Air Act enforcement cases. After a storm of criticism, the Administrator publicly re-affirmed her support for enforcement of the Clean Air Act.

## APPENDIX II:

## THE CARD MEMO—TARGETING REGULATIONS

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

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

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

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

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

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

January 20, 2001

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

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

SUBJECT: Regulatory Review Plan

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

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency or other urgent situations relating to health and safety, send no proposed or final regulation to the Office of the Federal Register (the "OFR") unless and until a department or agency head appointed by the President after noon on January 20, 2001, reviews and approves the regulatory action. The department or agency head may delegate this power of review and approval to any other person so appointed by the President, consistent with applicable law.
2. With respect to regulations that have been sent to the OFR but not published in the Federal Register, withdraw them from OFR for review and approval as described in paragraph 1, subject to exception as described in paragraph 1. This withdrawal must be conducted consistent with the OFR procedures.
3. With respect to regulations that have been published in the OFR but have not taken effect, temporarily postpone the effective date of the regulations for 60 days, subject to exception as described in paragraph 1.
4. Exclude from the requested actions in paragraphs 1-3 any regulations promulgated pursuant to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.

APPENDIX III:  
**GETTING CARDED**

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

Rule	Agency	Background	Pending Law Suits	Current Status (Jan. 2002)
Limits on Arsenic in Drinking Water	EPA	<i>Published:</i> 66 Fed. Reg. 6976 (Jan 22, 2001) <i>Effective Date:</i> 3/23/01; postponed to 5/22/01, 66 Fed. Reg. 16134 (March 23, 2001); postponed to 2/22/02, 66 Fed. Reg. 28342 (May 22, 2001)	<i>National Mining Assoc. et al. v. EPA</i> , No. 01-1109 (D.C. Cir.); NRDC has intervened; on 6/28/01, NRDC sued EPA challenging the suspension of the rule ( <i>NRDC v. Whitman</i> , No. 01-1291 (D.C. Cir.))	<b>Rule retained</b> (October 21, 2001) but could be threatened during implementation despite NAS study finding extremely high risk even under retained rule. Environmental groups and industry have pending lawsuits.
Wild Forest Protections (Roadless)	Agriculture/ Forest Service	<i>Published:</i> 66 Fed. Reg. 3243-73 (Jan. 12, 2001) <i>Effective Date:</i> 3/13/01; postponed to 5/12/01, 66 Fed. Reg. 8899 (February 5, 2001)	<i>State of Idaho et al. v. USFS</i> , CV01-11-N-EJL (D. Idaho); cases also pending before district court in Alaska, Utah, and the District of Columbia; NRDC has intervened in the ID and AK cases. Most cases stayed pending outcome of ID case.	<b>Rule being threatened.</b> Enjoined by ID federal district judge (May 5, 2001), interim directives issued (66 Fed. Reg. 35918 (July 10, 2001)). No proposed changes yet issued.
National Forest Planning Regulations	Agriculture/ Forest Service	<i>Published:</i> 65 Fed. Reg. 67513 (Nov 9, 2000) <i>Effective Date:</i> 11/9/00; postponed to 5/9/02	<i>Citizens for Better Forestry v. USFS</i> , CV: C010728 (N.D. Calif.); <i>American Forest &amp; Paper Assoc. v. Veneman</i> , No. 01-00871 (D. D.C.) (challenging "roadless" policy, road management policy, and planning regulations).	<b>Rule being threatened.</b> Lawsuit stayed pending outcome of ID roadless case (see previous entry). No draft revision issued; expected in March 2002.
Diesel Engine Standards—Clean Air	EPA	<i>Published:</i> 66 Fed. Reg. 5002 (Jan 18, 2001) <i>Effective Date:</i> 3/19/01	<i>National Petrochemical &amp; Refiners Assoc. v. EPA</i> , No. 01-1052 (D.C. Cir.); NRDC has intervened; the case is being briefed, with NRDC's brief due in December and oral argument in February 2002.	<b>Favorable rule retained.</b> Became effective on March 19, 2001. However, the EPA has convened a panel to review the rule and could consider changes to weaken it.

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

Rule	Agency	Background	Pending Law Suits	Current Status (Jan. 2002)
Right-to-Know Reporting on Lead	EPA	Published: 66 Fed. Reg. 4500 (Jan 17, 2001) Effective Date: 2/16/01; Postponed to 4/17/01, 66 Fed. Reg. 10585 (February 16, 2001)	---	Favorable rule retained. Took effect April 17, 2001.
Chemical Accident Data	EPA	Published: (Draft) 66 Fed. Reg. 4021 (January 17, 2001)	---	Favorable rule withdrawn. 66 Fed. Reg. 15254 (March 16, 2001). Awaiting EPA proposal.
Clean Air in the Parks (BART)	EPA	Published: Proposed rule sent to the OMB, but not published in Fed Reg. Effective Date: Frozen indefinitely by Card memo	---	Favorable rule retained. The EPA issued a proposal generally consistent with Clinton proposed rule (7/20/01). However, the EPA is currently considering new air quality program that could supercede or undermine these protections.
Limits on Ocean Discharges (Marine Water Quality Std.)	EPA	Published: 66 Fed. Reg. 7259 (January 22, 2001) Effective Date: 2/21/01; Postponed to 4/22/01, 66 Fed. Reg. 8366 (January 31, 2001).	---	Indefinitely delayed, pending new proposal by the EPA.
Essential Fish Habitat	Commerce/ NMFS	Published: Final rule sent to the OMB, but not published in Fed. Reg.	---	Favorable rule adopted after delay. New proposal released January 17, 2002.

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



**THE BUSH ADMINISTRATION'S  
ENVIRONMENTAL RECORD**

***A YEAR OF ACCOMPLISHMENTS***



**MARCH 7, 2002**

**THE BUSH ADMINISTRATION'S ENVIRONMENTAL RECORD:  
A YEAR OF ACCOMPLISHMENTS**

*"America and the world share this common goal: We must foster economic growth in ways that protect our environment. We must encourage growth that will provide a better life for citizens, while protecting the land, the water, and the air that sustain life."*

– President George W. Bush, February 14, 2002

President Bush has articulated a vision for environmental protection that focuses on results: Cleaner air, water, and land, and healthier people and ecosystems. To achieve these goals, we need a strong and growing economy. Our environmental policies thus recognize the importance of a robust economy, which provides the public and private resources needed to make new investments in environmental conservation. The President sees these goals as complementary, rather than competing – strong economic growth and strong environmental protection can and must go hand-in-hand.

The President's approach recognizes that environmental stewardship is not always best directed from Washington, D.C., but should also include significant participation by states and local communities. We need to employ the best science and data to inform our environmental decision making. Our policies should encourage innovation and the development and use of new, cleaner technologies. And we should continue to build on America's ethic of stewardship and personal responsibility through education and volunteer opportunities and in our daily lives.

In his first year, President Bush made significant progress toward achieving each of these goals.

**Brownfields Cleanup – Bringing New Life to Abandoned Sites in Our Cities and Towns:**

Fulfilling an important campaign commitment, President Bush signed historic legislation that will result in more cleanup and redevelopment of contaminated industrial sites, "brownfields" – improving the environment, protecting public health, creating jobs, and revitalizing communities. The President's '03 budget proposal provides \$200 million – twice the '02 level of funding – for EPA's brownfields program, \$171 million of which is for grants for states and local communities.

**Clear Skies – A Clean Air Act for the 21<sup>st</sup> Century:** President Bush's initiative would dramatically improve air quality by cutting power plants' emissions of three critical pollutants by 70 percent – more than any other presidential clean air initiative. This historic legislative proposal would bring clean air to American communities faster, more reliably, and more effectively than the current Clean Air Act.

**Safe, Secure Drinking Water Supplies and Wastewater Facilities:** President Bush worked to ensure that our drinking water and wastewater facilities remained safe from terrorist attack, and obtained additional funds from Congress to assist communities in their water protection efforts.

**Farm Bill – Helping America's Farmers Conserve Their Lands:** President Bush is working with the congressional conference committee to ensure that America has a forward-looking and global farm policy that enhances conservation and environmental stewardship with substantial funding and effective programs.

**Energy Bill – Promoting Clean, Affordable, Reliable Energy for America:** President Bush has prepared the first national energy policy in years, and is working with Congress to pass legislation that will promote affordable, reliable, and clean energy that is essential to America's security, environmental quality, and economic growth.

**Land Conservation – Working in Partnership with States:** President Bush has pushed to fully fund the Land and Water Conservation Fund, and worked successfully with Congress to significantly increase its funding in FY'02. The LWCF provides funding for important land conservation programs, including landowner incentives. President Bush has also used the LWCF to increase support in FY'02 for partnerships for cooperative conservation, and has requested \$100 million in FY'03 funding for a new Cooperative Conservation Initiative.

**National Parks – Eliminating the Maintenance Backlog:** President Bush has pushed for funding to improve our management of our National Parks. His FY'03 budget includes \$665 million for National Parks, including \$18 million in new funding for the National Parks Natural Resource Challenge to monitor "vital signs" of resource conditions in our parks.

**National Wildlife Refuges – A Century of Conservation:** President Bush is asking Congress for a substantial increase of \$57 million – to \$376 million – in funding for our National Wildlife Refuges, as we prepare for the 100<sup>th</sup> anniversary of the Refuge system next year.

**Global Environment – A Realistic, Growth-Oriented Approach to Climate Change:** The President has committed America to a new strategy to meet the challenge of long-term global climate change by reducing the greenhouse gas intensity of our economy by 18 percent over the next 10 years. This goal is supported by a broad range of domestic and international climate change initiatives, including \$4.5 billion in FY'03 funding for climate change, as well as \$178 million (up 76 percent) for the Global Environment Facility and \$50 million to help conserve tropical forests through programs like debt-for-nature swaps.

**Budget:** President Bush's \$44.4 billion FY'03 environment and natural resources budget request is the highest ever – \$1.4 billion, or 3 percent, higher than FY'02 enacted. The President's budget proposal provides \$4.1 billion, the highest level ever for EPA's operating program, and provides the highest level ever for EPA state program grants, \$1.2 billion. A chart on the budget is attached.

*"Americans are among the most creative people in our history. We have used radio waves to peer into the deepest reaches of space. We cracked life's genetic code. We have made our air and land and water significantly cleaner, even as we have built the world's strongest economy. When I see what Americans have done, I know what we can do. We can tap the power of economic growth to further protect our environment for generations that follow. And that's what we're going to do."*

– President George W. Bush, February 14, 2002

Cleaner Air

**Clear Skies -- A Clean Air Act for the 21<sup>st</sup> Century:** On February 14, the President unveiled the most aggressive presidential initiative in American history to cut power plant emissions of the three worst air pollutants – nitrogen oxides, sulfur dioxide, and mercury – by 70 percent. The initiative will improve air quality and public health, protect wildlife, habitats and ecosystems, and by using a proven, market-based approach, will make these reductions further, faster, cheaper, and with more certainty than the current scheme.

**Cleaner Diesel Fuel and Engines:** The EPA Administrator affirmed a rule in 2001 that will reduce air pollution from large trucks and buses, and will reduce sulfur levels in diesel fuel. This will have significant health benefits, saving more than 8,300 lives a year. It will enhance the health of children suffering from asthma by preventing up to 360,000 asthma attacks and 386,000 cases of respiratory symptoms annually. To assist its review of the state of technology to meet this rule, EPA is assembling an independent review panel to assess the progress of manufacturers of diesel engines and emission control systems in developing technology to reduce engine exhaust pollutants, and of the fuels industry in developing and demonstrating technologies to effectively lower sulfur levels. The panel will include representatives of the major stakeholder groups and will likely be organized as a Subcommittee under the Clean Air Act Advisory Committee.

**Cleaner Off-Road Vehicles:** EPA will soon develop a proposed rule, building on its program for on-road vehicles described above, to ensure cleaner engines and lower-sulfur diesel for off-road mobile sources.

**Improving Visibility in America's National Parks:** To improve the experience of visitors to America's national parks, EPA has proposed a rule to control the emissions from older power plants and other industrial facilities that contribute to haze that, too often, spoils the scenic views of our great national treasures. This rule will improve visibility at parks such as Yellowstone, the Grand Canyon, and Sequoia. The Clear Skies proposal, while addressing issues well beyond national parks, will more efficiently accomplish the same purpose as this proposed rule if Congress acts on the President's proposal.

**Reforming New Source Review:** EPA is in the process of updating its rules that require new sources and major modifications to existing sources to undergo New Source Review and install certain pollution controls. This process of reform began in the prior Administration, and is supported by an extensive public record that reflects a longstanding, broad bipartisan consensus that the New Source Review program needs to be improved. The nation's governors agreed on the need for reform at their annual meeting last summer, and the nation's environmental commissioners similarly agreed at the annual meeting of the Environmental Council of the States. Among the issues EPA is evaluating is the potential impediment that NSR creates to pollution prevention and energy conservation projects.

**Strong Enforcement of Existing Laws:** The Bush Administration is committed to a strong enforcement program. Last year, EPA and the Department of Justice's enforcement efforts doubled the amount spent by violators on pollution controls and cleanups from FY'00 to FY'01 (from \$2.6 billion to \$4.4 billion). EPA and DOJ obtained almost twice as much in civil judicial penalties against environmental violators (from \$55 million to \$102 million), won the second highest penalty

after trial under the Clean Water Act (against Allegheny Ludlum, for \$8.24 million), and continued to pursue NSR enforcement cases, including a recently concluded settlement with the New Jersey utility, PSEG, that will reduce SO<sub>2</sub> by 32 percent and NO<sub>x</sub> by 20 percent. As a result of EPA's in-use compliance program, in 2001, about 1 million cars and light trucks were recalled by auto companies for repairs of defective air pollution control systems.

**Houston's Air Quality:** To meet the federal air quality standard for ozone, Texas has adopted for Houston, and EPA has approved, one of most stringent clean air plans in the country. The plan requires an almost 90 percent reduction in NO<sub>x</sub> emissions from industrial sources, lower speed limits, expanded and improved tail pipe testing, cleaner diesel fuels, an extensive economic incentive program to increase the use of new diesel technology, and agreements with the airports to reduce ground support equipment emissions. Texas has included enforceable commitments to adopt, by May 2004, measures to achieve any additional emission reductions that may be needed. In addition, Texas is working with universities to further investigate the science of ozone formation to better target emission reduction strategies for the Houston area.

**Budget:** The President's FY'03 budget proposal continues significant funding for cleaner air:

- \$598 million to improve air quality by meeting national ambient air quality standards, reducing air toxics, and reducing acid rain (up \$5 million).
- \$150 million for the President's Clean Coal Power initiative, which, together with the \$150 million appropriated in FY'02, will make \$300 million available to support public-private partnerships to demonstrate clean and efficient clean coal technologies.
- \$6.5 million in new EPA funding for states to conduct air toxics monitoring.
- \$7.2 billion for mass transit (up \$479 million).
- \$1.2 billion for the Department of Transportation's congestion mitigation and air quality program (down due to lower federal highway related receipts).

### Cleaner Water

**Protecting Water Supplies:** In response to the September 11 attacks on America, the Bush Administration has worked with states and local communities to protect America's 168,000 public drinking water systems and 16,000 public waste water systems from terrorist attacks. EPA is working with Sandia National Labs and water utility organizations to develop tools and offer training to water systems on conducting vulnerability assessments to identify ways to make water system facilities more secure. EPA is also working with the FBI to inform local law enforcement agencies nationwide of actions they can take to help prevent attacks on water systems. The President worked with Congress to provide additional funds to support communities in their efforts to protect their drinking water and wastewater facilities.

**Preventing Waterborne Disease:** To improve safeguards for drinking water for America's families and protect the public health, EPA issued a rule to protect consumers from microbial pathogens, including cryptosporidium. Giardiasis was added as a Nationally Notifiable Disease to supplement the Center for Disease Control's National Drinking Water Surveillance System, which monitors and helps to assure healthy water in our communities.

**Restoring the Everglades:** In January 2002, President Bush and Florida Governor Jeb Bush signed an agreement that ensures adequate water supplies are available to support the 30-year Comprehensive Everglades Restoration Plan (CERP). This agreement further bolsters the Bush Administration's strong support for the 30-year, \$7.8 billion CERP, which is the most comprehensive and ambitious ecosystem restoration project ever undertaken in the United States. It includes more than 68 projects, and the costs of the restoration and future operating expenses will be shared 50-50 by the federal government and non-federal interests, including the State of Florida. The President's FY'03 budget proposal includes \$245 million for Everglades restoration. In addition, the Corps of Engineers is beginning the process of developing regulations to guide individual restoration projects and ensure, through adaptive management, that new information will be incorporated into the CERP. The Department of Interior recently closed the West Palm Beach Everglades office, which enabled DOI to reallocate \$1.3 million dollars for restoration work to help recover endangered key deer and protect wildlife habitat by reducing invasive exotics.

**Mining in the Everglades:** Limerock mining from open-pit quarries has occurred in the Lake Belt since the 1950s under Miami-Dade County zoning and wetland permitting regulations. Under the State's 1999 mining plan, mining will be limited in size, and funds will be provided to acquire, restore, and protect wetlands. The Army Corps of Engineers regulates the placement of fill related to the mining. State and local entities also regulate this mining activity. The Corps is working diligently to provide appropriate environmental protections as part of these projects. The State and the Corps are working together to integrate these mining activities into the long-term Everglades Restoration Plan. Water quality management studies are being conducted for the Miami-Dade County Commissioners' consideration of future mining ordinances. The Corps is working closely with tribal, local, State and Federal government representatives and the citizens of Florida on the permitting decisions.

**Cleaning Up the Hudson River:** EPA is moving forward with a major cleanup of portions of the Hudson River contaminated by PCBs, and issued the Record of Decision in 2002. This cleanup is designed to eliminate more than 150,000 pounds of PCBs from the river, and restore the river to a

condition that permits full use of its natural resources. PCBs bio-accumulate in fish and pose cancer threats to people who eat fish caught in the river. EPA and the Army Corps of Engineers have entered into an agreement under which the Corps, which has extensive dredging expertise, will be involved in the cleanup of the first reach of the river.

**An Arsenic Rule Based on Sound Science:** In response to numerous concerns that the level set in the 2000 proposed rule was not sufficiently based on sound science and did not adequately address small community compliance cost issues, EPA asked the National Academy of Sciences to perform an expedited review of a range of 3 to 20 parts per billion of arsenic for a new drinking water standard to protect public health and asked the National Drinking Water Advisory Council and the Science Advisory Board to review the costs of compliance and other economic issues associated with a new standard. After reviewing the findings, EPA established a new standard of 10 parts per billion, a standard that is 80 percent more stringent than the current 50 parts per billion. EPA also is undertaking a two-year, \$20 million arsenic treatment research, technical assistance and training program to reduce the technical and financial impacts for small drinking water systems that must meet the new standard.

**Improving Rules for Cleaner Water:** In response to concerns expressed by Congress, the National Academy of Sciences, and others, EPA Administrator Whitman extended the effective date for the controversial Total Maximum Daily Load (TMDL) rule through April 2003. The TMDL program will continue to operate under rules issued in 1985 and 1991, while the Administrator develops a more flexible and effective approach to TMDLs. The Administration will adopt rules to restore polluted waterbodies that are based on sound science and which will better integrate the several tools in the Clean Water Act to encourage clean-up actions even in advance of TMDLs. The Administration is exploring how this regulatory program can take advantage of market mechanisms to accomplish quicker and more effective cleanups. Ultimately, this rule will help protect the long-term health of America's waterways by addressing numerous legal challenges that have effectively halted many efforts to clean up America's lakes, rivers, and streams. In addition, the Administration has sought additional public comment and data on the proposed Concentrated Animal Feeding Operation (CAFO) rule, proposed on January 12, 2001. EPA held nine meetings across the country in 2001 to engage local communities on the various options in the proposed CAFO rule, and to ensure the final rule is cost efficient and protective of the environment. The final rule will be issued by December 15, 2002.

**Protecting America's Wetlands:** The Administration has taken several actions:

- The Administration affirmed an EPA-Corps rule to protect America's wetlands by more closely regulating mechanized earth-moving activities in wetlands. This rule (the Tulloch Rule) will help prevent loss of wetlands by ensuring that developers understand when they are required to obtain permits for activities affecting wetlands. In the absence of the Tulloch Rule, approximately 20,000 acres of wetlands were lost prior to this action.
- The Corps has issued new nationwide permits, which are general permits that authorize categories of activities determined by the Corps to result in minimal impact to the aquatic environment. Examples of this include certain residential, commercial and agricultural activities affecting ½ acre or less of wetlands. The new permits replace the existing permits, which expired in February 2002. The new permits support the Administration's no net loss goal for

wetlands and, for the first time, call for documented compliance with that goal at the Corps district level. The new permits also strengthen environmental protections for mining-related activities by ensuring full mitigation of impacts and case-by-case review to ensure that impacts are minimal. They also provide greater flexibility for Corps districts to ensure that mitigation projects are tailored to the specific needs of the local watershed.

- The Corps has sent a Regulatory Guidance Letter to Corps districts related to clarifying methods for compensating and mitigating for wetland losses. This was the first such guidance issued in over five years, and included many of the recommendations from a National Research Council report on compensating for wetland loss, including adopting a watershed approach for permit decision-making and additional flexibility in the use of off-site and third party mitigation (including mitigation banking and in-lieu-fee mitigation). These recommendations were designed to improve the effectiveness of wetlands mitigation projects, helping the Corps meet its "no net loss" standard. The Corps has also sought comment from other federal agencies on the RGL to ensure that the "no net loss" of wetlands goal is met.
- EPA and the Corps are nearing completion of a rule designed to make uniform the two agencies' definition of "fill material" under the Clean Water Act. The rule will eliminate any ambiguity regarding the Corps' authority to regulate certain practices that deposit large amounts of coal mining waste into stream beds, as discharges of fill material under the Act. The rule was first proposed near the end of the previous Administration. Since then, the two agencies have been reviewing and responding to over 17,000 comments.
- In 2001, the U.S. Supreme Court ruled (in *SWANCC*) that non-navigable isolated intrastate waters are not subject to Federal jurisdiction under the Clean Water Act merely because they are used by migratory birds. The decision also potentially raised broader jurisdictional issues. On January 19, 2001, EPA and the Army Corps of Engineers issued joint guidance to the field regarding the *SWANCC* decision. Both agencies are working on additional environmentally protective guidance for agency personnel.

**Preventing Sewer Overflows:** Separate sanitary sewer systems, serving 150 million people in 19,000 communities, are designed to convey only sanitary sewage to publicly owned treatment works but, due to infiltration and inflow, can have high peak flows that occasionally cause sanitary sewer overflows. On January 4, 2001, EPA signed a proposed rule to control SSOs through better collection system management, planning, and public notification. EPA withdrew the proposal before it was published, due to concerns about the clarity of the proposed rule and its analysis. EPA expects to issue a proposal soon to address SSOs, and EPA continues to work with communities and take enforcement actions to prevent SSO violations.

**Budget:** The President's FY'03 budget proposal continues significant funding for cleaner water:

- \$2.1 billion for state drinking water and clean water revolving loan funds – these funds are on track to meet program capitalization goals.
- \$1 billion for other EPA water quality programs, including grants for non-point source runoff, public water supervision systems, and state water quality programs.
- \$506 million for Columbia River basin salmon restoration (up \$68 million from '02 funding).



- \$683 million for USDA's water and wastewater grant and loan program that, through leveraging, can provide almost \$1.5 billion for water and wastewater infrastructure in rural communities.
- \$115 million in EPA funding to help US/Mexico border communities and Alaskan rural and native villages with water and wastewater infrastructure.
- \$20 million in new funding for states and local communities to protect water supplies from terrorism, through drinking water vulnerability assessments.
- \$21 million for a new community watershed pilot program.
- \$48 million in new funding to provide technical assistance to farmers on reducing runoff from animal feeding operations.
- \$300 million in new funding to modernize floodplain mapping and thus improve floodplain management.

### Cleaner Lands

**Reclaiming America's Brownfields:** Fulfilling a campaign pledge, President Bush worked with Congress and signed historic, bipartisan brownfields reform legislation on January 11, 2002. The Small Business Liability Relief and Brownfields Revitalization Act gives state and local governments greater flexibility and needed resources to turn environmental eyesores into productive community assets. It reforms important elements of the existing law that had discouraged private investment in cleaning up and redeveloping brownfields. This legislation should significantly increase the pace of brownfields cleanups. The President's '03 budget proposal provides \$200 million – twice the level of '02 funding – in support of the brownfields program, \$171 million of which is for grants for states and local communities. The U.S. Conference of Mayors, the Trust for Public Land, and others endorsed the Administration's brownfields proposal.

**Superfund:** The President's FY '03 budget provides \$1.3 billion for Superfund cleanups. President Bush is committed to the "polluter pays" principle, which requires the parties responsible for a Superfund site to pay for the full cost of cleanup. In cases where the responsible party either cannot be found or is no longer in business, the Superfund pays for cleanup. Currently, about 30 percent of Superfund sites are such "orphan" sites. These cleanup costs were originally funded by a special corporate tax, but the tax expired in 1995 when Congress chose not to reauthorize it. The President's FY '03 budget proposal recognizes that Congress has not reauthorized the tax for seven years, and took measures to ensure full funding for the Superfund this year by providing \$700 million in general revenue to ensure that cleanups will continue. EPA is conducting a management review and is asking the National Advisory Council on Environmental Policy and Technology to identify ways to improve Superfund, maximize resources available for cleanups, and effectively addressing very large "mega" sites.

**Enabling Local Communities to Pursue Smart Growth:** As the President said when he signed the *Small Business Liability Relief and Brownfields Revitalization Act*, "One of the best ways to arrest urban sprawl is to develop brownfields, and make them productive pieces of land, where people can find work and employment." Cleanup and redevelopment of brownfields sites can revitalize surrounding neighborhoods, making previously disinvested communities targets for new growth and development. EPA understands that the federal government cannot and should not be a national or regional development board – many growth-related issues are regulated at the state or local level. The federal government does have an important role in many land use and transportation decisions, so EPA is helping states and communities realize smarter growth while safeguarding private property rights by providing information, model programs, and analytical tools to inform community decisions about growth and development; working to remove federal barriers that hinder smarter community growth; and creating new resources and incentives for states and communities pursuing smart growth. EPA recently announced a new national award for Smart Growth Achievement, which recognizes communities and individual leaders who have demonstrated innovation and success in applying smart growth principles, and a Smart Growth and Open Space program, which offers technical assistance to communities to ensure that brownfields redevelopment meets their smart growth needs.

**Cleaning Up Leaking Underground Storage Tanks:** EPA launched a pilot project to help states and cities clean up contamination from high priority leaking underground storage tanks. With the

President's signing of the new brownfields law, certain funds can now be used to clean up brownfields sites contaminated by petroleum.

**Budget:** The President's FY'03 budget proposal continues significant funding for cleaner lands:

- \$200 million to meet the President's commitment to spur brownfields cleanups – doubling EPA funding for this program that helps states and local communities assess and clean up abandoned industrial and commercial sites. Of the \$200 million, \$171 million will be in grants to states and localities.
- Permanently extends the brownfields tax credit, which is set to expire by 2004.
- \$6.7 billion for the removal and cleanup of Department of Energy nuclear weapons research and production facilities, including \$800 million in a new account to implement cleanup reforms.
- \$1.8 billion for the cleanup of Department of Defense facilities (down \$63 million because more bases have completed cleanup under the Base Realignment and Closure process).
- \$2.0 billion for a tax provision to clarify that funds set aside for decommissioning costs would not be taxable as a gain in income when a nuclear plant is sold.
- \$1.3 billion for Superfund cleanups, of which \$75 million in new Superfund monies will be used to research better techniques for cleaning up buildings contaminated by biological, chemical, or radiological agents.

### Healthier People

**Protecting America's Children from Environmental Hazards:** EPA, HHS, HUD, and DOJ have taken a number of steps in 2001 to improve environmental conditions that have a disproportionate effect on the health of America's children. These measures include public awareness campaigns on asthma and on the dangers of second-hand smoke and the establishment of four new Centers for Children's Environmental Health and Disease Prevention Research. The President re-activated the President's Task Force on the Protection of Children from Environmental Health Risks and Safety Risks, which has made efforts to combat childhood lead poisoning its top priority.

**Reducing Lead Poisoning:** The Administration has set an ambitious goal of eliminating childhood lead poisoning by 2010. Reducing the threat of lead poisoning (through lead paint exposure) is a top priority for the Bush Administration. EPA, HUD and DOJ recently announced the largest legal action ever taken against violations of the lead paint disclosure law, and EPA is tripling the number of inspections to verify compliance with lead paint disclosure laws. The Administration awarded \$67 million in grants to states and communities to eliminate lead hazards in low-income housing, promote educational programs and conduct research on lead hazards. EPA also lowered the threshold for reporting of lead used by industry as part of the Toxics Release Inventory, which will significantly increase the information available to the public about the uses of lead in America's communities.

**Using Biomonitoring:** The Centers for Disease Control and Prevention released the first National Report on Human Exposure to Environmental Chemicals in 2001. Using biomonitoring (actual blood and urine samples, instead of just environmental data), researchers now can more accurately evaluate the effectiveness of our pollution control and health improvement efforts. The report shows continued decline in blood lead levels in children and a dramatic 75 percent reduction in exposure of the U.S. population to environmental tobacco smoke since 1991. It also provided first-time information about 24 chemicals, including certain pesticides, that had never before been measured in the general U.S. population.

**Promoting Food Safety Through Pesticide Management:** EPA achieved agreement among a broad group of stakeholders to an amended consent decree in a case concerning the use of pesticides in farming practices. The changes will guarantee new opportunities for public participation and additional external review of critical pesticide decisions aimed at protecting health and safety. EPA also recently completed work on the first phase of one of the most complex and sophisticated risk assessments ever conducted by EPA, a preliminary assessment of the cumulative risks of organophosphorous pesticides. The preliminary assessment is undergoing scientific peer review now.

**Ensuring Confidence in America's Food Supply:** To help ensure public confidence in America's food supply, EPA has affirmed the importance of rigorous scientific evaluation of plants that have been engineered to protect themselves from pests such as insects, viruses, and fungi (plant incorporated protectants).

**Budget:** The President's FY'03 budget proposal continues significant funding for healthier people:

- \$1.58 billion for the food safety inspections, monitoring, and regulatory activities of the Departments of Agriculture and Health and Human Services, a \$203 million (15 percent) increase, primarily for increased inspections of imported food and pest and disease exclusion and monitoring activities.
- A \$16 million (15 percent) increase in the Department of Housing and Urban Development lead hazard reduction program to meet the Administration's goal of eliminating childhood lead poisoning by 2010.

### Healthier Ecosystems

**Revitalizing the Land and Water Conservation Fund:** Fulfilling a campaign pledge, the President's FY'03 budget proposal once again fully funds the LWCF, at more than \$900 million, to support a variety of conservation approaches. The LWCF may be the most successful federal-state-local partnership for conservation in American history, having funded land conservation and recreation projects throughout the country with revenues from oil and gas exploration and extraction. In recent years, however, funding for State-side LWCF grants has declined significantly. President Bush has reinvigorated funding for the LWCF by emphasizing state and local involvement. The President's FY'03 budget proposal recognizes that federal land acquisition is not the only way to conserve land and other natural resources, and so increases funding to states and local communities to \$200 million, a \$56 million increase over '02 funding, and a \$110 million increase over '01 funding, and allows funds to be used for conservation easements.

**Promoting Cooperative Conservation:** Fulfilling a campaign pledge, President Bush has created new landowner incentive and private stewardship grant programs, which Congress funded at \$50 million. The President's FY'03 Budget includes an additional \$10 million – for a total of \$60 million – for these programs. The Department of Interior also is seeking \$100 million for a new Cooperative Conservation Initiative to protect and conserve the environment through partnerships that will tap the ingenuity, imagination, and innovative spirit of our people. This approach is landscape-based, citizen-centered, and incentive-driven. Challenge grants will be awarded competitively to landowners, environmental groups, land-user groups, communities and local and state governments. In addition, the President was pleased to sign legislation ending the estate tax, which will allow more lands to stay in family ownership and prevent habitat fragmentation.

**Protecting our National Parks:** The President's FY'03 Budget includes the largest National Parks operations budget ever submitted. Fulfilling a campaign pledge, President Bush continues to seek funds to eliminate the backlog of needed repairs in our National Parks. Approximately 25 percent of the President's record FY'03 \$665 million budget request for maintenance backlog will be spent on projects that benefit critical natural resource needs, including continuing work to restore the Everglades and removal of dams on the Elwha River in Olympic National Park. The President's FY'03 budget also includes an \$18 million increase (to \$67.5 million) for the Natural Resource Challenge, a science-based initiative to strengthen natural resource management throughout the National Park system by protecting native species and habitats, improving the health of natural resources within parks, eradicating invasive species, and sharing information about natural resources with the public. Fifty-two parks will have programs to measure park resource health by the end of 2003.

**Protecting our National Wildlife Refuges:** The President's FY'03 budget proposes a record \$376 million, up \$57 million from FY'02, for our National Wildlife Refuges as we prepare to celebrate the system's 100-year anniversary on March 14, 2003. The Department of the Interior's Centennial Campaign will improve resource conservation, visitor programs, and facilities on wildlife refuges nationwide and increase visibility for wildlife refuges by strengthening and expanding partnerships.

**Protecting our National Monuments:** Secretary Norton has stated that the Administration will not seek to overturn any of designations of national monuments made by the last Administration but

instead is working with states and local communities to develop appropriate management plans and determine whether any monument boundaries should be adjusted. The previous Administration left office without developing management plans for the monuments it created, except for one. Secretary Norton has sent out over 400 letters to federal, state, county and local government officials asking for comments regarding these monuments and development of their management plans, and will develop the management plans in close consultation with local communities. The Bush Administration feels very strongly that local and state officials must be consulted whenever the federal government plans to impose significant changes to how the federal lands are managed in those areas. For example, the Department of the Interior is working with the State of Utah to evaluate a potential new national monument in Utah's San Rafael Swells proposed by the Governor of Utah and the local community.

**A Strong Conservation Title for the Farm Bill:** Conservation programs in this Farm Bill will be critical to supplement farmers' and ranchers' income, and to improve water quality, provide wildlife habitat, conserve water and protect open space. It also will be critical for farmers who face increasing scrutiny on environmental issues. President Bush believes that America's agriculture policy should encourage the production of goods and services in more efficient, innovative, and environmentally beneficial ways. By bolstering working lands stewardship through such programs as the Environmental Quality Incentives Program, the Farmland Protection Program, and the new Grasslands Reserve Program, the nation can protect the natural resource and agricultural values of private lands. Expansion of other programs, such as the Conservation Reserve Program, the Wetlands Reserve Program, and the Wildlife Habitat Incentives Program will also be an important component of a strong conservation title in the Farm Bill. Greater use of these well-designed, voluntary, incentive-based conservation programs can provide environmental benefits, such as improved water quality, habitat, soil retention, and carbon sequestration. Such successes reduce the need for increased environmental regulation of agriculture.

**Refocusing Corps of Engineers Water Projects:** The President's FY'03 budget proposal for the Army Corps of Engineers focuses funding on its core mission of environmental restoration, flood damage reduction, and commercial navigation. It reduces the backlog of ongoing construction projects, does not start new projects, does not fund projects that are outside the Corps' historic mission, and increases funding for priority navigation projects and important environmental restoration efforts. The Administration also is preparing a proposal for independent review of significant projects.

**New Salmon Restoration Efforts:** In November 2001, the Administration began implementation of new actions to improve salmon protection and recovery efforts, including a comprehensive public review of its salmon hatchery policies and increasing its support for local recovery efforts, while maintaining current protections for listed salmon species. The President's '03 budget proposal includes \$506 million for Columbia River basin salmon restoration, a \$68 million increase from '02 funding.

**Endangered Species Act:** The Fish and Wildlife Service's Candidate Conservation Program and State Conservation Agreement models are helping protect declining species before they become candidates for listing. In 2001, the Fish and Wildlife Service and several conservation organizations reached an agreement in principle that will enable the Service to complete work on evaluations of numerous species proposed for listing. Under this agreement, the Service will issue final listing

decisions for 14 species, propose eight more species for listing, and take action on four citizen petitions to list species. The Service and the organizations agreed to extend deadlines for eight other critical habitat designations, thereby making funds available for these actions. While the formal agreement is still pending, the Service will immediately reallocate funds to begin work on the covered species. To avoid court ordered listing actions from siphoning money away from other parts of the endangered species budget, the President's budget followed the later budgets proposed by the last administration and called for an overall cap on the amount of money that could be spent on Section 4 listing actions.

**Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve:** The Commerce Department is proceeding with development of a comprehensive, interim management plan for this Reserve while simultaneously initiating an accelerated process that will lead to permanent designation of the Reserve as a National Marine Sanctuary. The Department will issue a draft Reserve Operations Plan for public comment soon, and will hold initial meetings in Hawaii in April regarding designation of the Reserve as a National Marine Sanctuary.

**National Marine Sanctuaries:** Last year, the Commerce Department designated the Tortugas Ecological Reserve as the nation's largest permanent marine reserve. Located more than 70 miles west of Key West, FL, the new reserve is part of the Florida Keys National Marine Sanctuary and encompasses more than 150 square nautical miles of spectacular deepwater and corals and critical fish spawning sites. The Commerce Department's FY'03 budget proposes \$45.6 million to protect over 18,000 miles of oceans through the National Marine Sanctuary Program.

**Marine Protected Areas (MPAs):** The Administration retained Executive Order 13158 on Marine Protected Areas, and the President's budget included \$3 million in first-time funding to coordinate MPA-related activities. MPAs have been used by federal, state, and local governments as an effective conservation and resource management tool. NOAA will continue to administer MPAs and to implement other conservation measures under existing statutory authorities. In the near future, the Secretary of Commerce intends to establish an MPA Advisory Committee through a public process that will ensure the Administration will benefit from a broad, balanced range of expertise as it undertakes MPA-related activities.

**Protecting Roadless Areas:** On May 4, 2001, Secretary Veneman announced that she would implement the Clinton Administration's Roadless Area Conservation Rule of January 12, 2001. On May 10, however, a federal judge enjoined USDA from implementing the rule, which is now subject to nine lawsuits. The USDA's Forest Service is analyzing the nearly 700,000 comments it received from an Advanced Notice of Proposed Rulemaking and will use the responses to determine how best to proceed with protecting roadless values. Inventoried roadless areas in national forests and grasslands are currently being protected by Forest Service Chief Dale Bosworth's interim direction to make decisions, with some exceptions, on proposed road building and timber harvesting in these areas. This policy requires compliance with the National Environmental Policy Act for road management activity in inventoried roadless areas, and requires that inventoried roadless areas generally be managed to preserve their roadless characteristics. Chief Bosworth has not approved any projects to build roads in inventoried roadless areas under this policy.

**The Tongass National Forest:** The Roadless Area Conservation Rule of January 12, 2001, applied to the Tongass National Forest but allows road construction, reconstruction, and the



cutting, sale, or removal of timber from inventoried roadless areas on the Tongass National Forest to go forward under certain conditions. Planning and implementation is ongoing for these activities. A federal judge threw out the 1999 Tongass Forest Plan Revision Record of Decision, so the current forest plan direction is based on the 1997 forest plan revision. The judge also required analysis of inventoried roadless areas for a wilderness recommendation. Some aspects of the judge's decision are being appealed.

**Bitterroot National Forest Decision – Responsible Salvage Logging:** In response to fires that burned more than 307,000 acres of land in the Bitterroot National Forest and subsequent intense rains that created unacceptable risks to resources, public safety and private property, the Forest Service developed a "burned area recovery project." The Bitterroot National Forest spent 15 months and \$1 million developing the plan, which included post-fire assessments, environmental analysis, and public involvement. Montana stated that the Forest Service's approach was better than state streamside management laws and forestry best management practice guidelines. To ensure prompt recovery, Under Secretary Rey allowed the project to begin immediately, forgoing the administrative appeal process so that concerned parties could proceed directly to litigation. Under a settlement agreement between the parties reached in February 2002, half of the fuel reduction projects on a portion of the proposed acres will soon occur, with some already underway. The other originally proposed projects will not be implemented unless the Forest Service prepares a new decision, conducts new reviews under NEPA, and undergoes an administrative appeals process.

**Snowmobile Usage in Yellowstone and Grand Teton:** The Bush Administration allowed the previous Administration's rule phasing out snowmobiles in Yellowstone and Grand Teton National Parks to go into effect in April 2001. Under the terms of a settlement agreement to a lawsuit brought by the International Snowmobile Manufacturers Association, the State of Wyoming, and others over the rule, the Department of the Interior has agreed to prepare a Supplemental Environmental Impact Statement (SEIS). The National Park Service has prepared a draft SEIS and is seeking public comment, through May 29, 2002, and evaluating studies and data on new, cleaner and quieter snowmobile technology. The draft SEIS includes four alternatives (but does not designate a preferred alternative), ranging from implementation of the current rule to alternatives that would allow limited access for cleaner, quieter snowmobiles. The final SEIS is scheduled to be available to the public on October 15, 2002, with a Record of Decision scheduled for completion by November 15, 2002. No final decision has been made on the future of snowmobiles in Yellowstone and Grand Teton National Parks.

**Hardrock Mining Rule:** In response to concerns that the hardrock mining rule implemented by the previous Administration may have exceeded statutory authorities and/or Congressional intent, the Bush Administration reviewed the rule and issued a proposed rule to meet those concerns, and to reflect the findings of the National Academy of Sciences report. In response, the Bush Administration reviewed the rule and determined that there were significant improvements in mining administration that could benefit the environment, benefit the public, and ensure that taxpayers are never forced to absorb the cost of mining operation cleanups. Several key provisions of the rule were retained unchanged, including the bonding provisions and the performance standards that address such matters as the use of cyanide and protection against acid mine drainage. In March 2001, BLM proposed the changes to the newly implemented regulations and requested comments. On December 17, 2001, the Department finalized the regulations. In

addition, the Secretary of the Interior has proposed to Congress several areas for mining law reform, including: permanent authorization of a mining claim holding fee; revision of the patent system; authorization of hardrock production royalty payments; authority for civil penalties; and an expanded role for states in managing the mining program.

Mining in Soledad Canyon, California: Although critics have accused the Bush Administration of promoting mining in Soledad Canyon, this project was approved by the prior Administration. The BLM signed the Record of Decision for Soledad Canyon on August 1, 2000. The area is within an historic mining area, zoned by Los Angeles County for sand and gravel extraction and processing.

**Budget:** The President's FY'03 budget continues significant funding for healthier ecosystems, and notably provides the largest budget for the Department of the Interior, \$10.3 billion, ever submitted by a President:

- \$70 million (up \$5 million) for the Forest Legacy program, in which the Forest Service partners with states, communities, conservation groups, and landowners to protect critical forests.
- \$4.3 billion (down \$307 million) for the Corps of Engineers. The budget would enable the Corps to complete ongoing construction projects sooner. Does not fund discretionary new construction starts (Lower Columbia River Ecosystem Restoration is funded to meet legal requirements) and focuses funding on the Corps' principle missions: environmental enhancement, flood control, and navigation.
- \$3.5 billion (up \$203 million from '02) for operations of the Park Service, the Fish and Wildlife Service and the Bureau of Land Management.
- \$73.5 billion above the baseline over 10 years (2002-2011) for a new, conservation-focused Farm Bill. In FY'03, this includes \$1 billion (up \$800 million from baseline) for the Environmental Quality Incentives Program; \$176 million (up \$176 million) for the Wetlands Reserve Program; and \$1.91 billion (up \$89 million) for the Conservation Reserve Program. We will address further increases in conservation funding during consideration of the Farm Bill.
- \$43.56 million to fund the North American Wetlands Conservation Act, which leverages funding to conserve and restore wetland habitat.
- \$15 million in new Forest Service funding to support consultations by the Fish and Wildlife Service and the National Marine Fisheries Service on Endangered Species Act and National Environmental Policy Act reviews.
- Fifty percent exclusion for capital gains from the sale of property for conservation purposes.

### Cleaner Energy

**A National Energy Policy for America:** The President's National Energy Policy (NEP), the first one in many years, emphasizes the need for conservation, renewable energy resources, advanced technologies, and cleaner energy development, generation, transmission, and use. This is a balanced, comprehensive and aggressive energy plan that will increase our energy independence. The plan promotes conservation, increases funding for energy efficiency and renewable energy programs, and supports the development of fuel-efficient vehicles. It will modernize our energy delivery systems, because new technology can make our energy cleaner, cheaper, and more efficient by upgrading power lines and connecting producers and consumers across the whole country. Nearly every dollar of the NEP's \$9.2 billion energy tax proposals for FYs 2003-2012 would be devoted to increasing efficiency, conservation, and renewable energy. The fiscal centerpiece of the NEP is a \$3 billion consumer tax credit for the purchase of hybrid and fuel cell vehicles. The President's plan offers tax credits and other incentives for the use of renewable energy sources, like wind power, solar power, and fuels derived from crops, because renewable energy can increase our energy independence and help our farm economy. And it encourages safe and clean exploration at home. Economic growth requires reliable and affordable energy, and this plan will create thousands of new jobs.

**Requiring Energy Conservation from the Federal Government:** On May 3, 2001, President Bush directed the heads of executive departments and agencies to take appropriate actions to conserve energy use at their facilities to the maximum extent consistent with the effective discharge of public responsibilities. As a result, federal agencies have reported a significant reduction in energy use. In particular, the Department of Defense implemented a program that conserved as much as 10 percent of peak use at certain periods. In addition, the White House is completing projects begun in prior Administration and undertaking new conservation measures that could reduce energy usage 25 to 35 percent.

**Developing Cleaner Coal Technologies:** The President's budget provides \$326 million for the Coal Research Initiative on cleaner coal technologies, the highest request by a President in 25 years and is consistent with the \$2 billion commitment over 10 years.

**Improving Fuel Economy:** The Bush Administration supports increasing fuel economy by encouraging new technologies that reduce our dependence on imported oil while protecting passenger safety and American jobs. Secretary Mineta has urged Congress to give DOT the necessary authority to reform the fuel economy program, guided by the recommendations in the National Academy of Sciences report. DOT is seeking public comment on new standards for light trucks to cover all or some of model years 2005 to 2010, and on possible reforms, particularly those that the NAS recommended. To encourage Americans to buy more fuel efficient vehicles today, the President has proposed tax incentives for the purchase of hybrid and fuel cell vehicles totaling more than \$3 billion (from 2002 to 2012). To accelerate the development of even more fuel-efficient vehicles, the Administration is leveraging resources for research, development and commercialization of new vehicle and fuel technologies, including hybrid vehicles, ultra-low sulfur fuels and \$150 million for the new FreedomCAR program.

**Cleaner Burning Gasoline in the Midwest:** To help avoid seasonal gasoline price spikes in Chicago, Milwaukee and throughout the Midwest while maintaining air quality, EPA has made it easier for refiners to add ethanol to gasoline to help it burn cleaner.

**Air Conditioner Efficiency Standards:** DOE has proposed a Seasonal Energy Efficiency Ratio (SEER) of 12 for central air conditioners and heat pumps. This standard will improve energy efficiency by 20 percent, and save consumers \$2 billion. DOE withdrew the Clinton Administration's proposed 13 SEER rule because it would have cost consumers \$1 billion. The 13 SEER would have hit low-income consumers particularly hard, with more of them facing air conditioner purchase prices exceeding utility bill savings. The Energy Star program, which requires that its products be at least 10 percent more efficient than the minimum regulatory standard, sets the new Energy Star level at a 13 SEER for air conditioners to encourage even higher efficiency for those who can afford it.

**Cleaner Energy through Energy Star:** With the help of the voluntary Energy Star program, businesses and consumers saved an estimated \$5 billion on energy bills in 2000, reduced air pollution, and cut emissions of greenhouse gases. In 2001, more than 150 million Energy Star-labeled products were purchased by consumers and businesses and over 25,000 Energy Star-labeled new homes were constructed. In 2001, EPA developed Energy Star performance specifications for traffic signals, dehumidifiers, water coolers, ventilation fans, ceiling fans, telephones, light commercial HVAC, and reach-in refrigerators and freezers, and expanded Energy Star's building energy performance rating system to include grocery stores, hospitals, and hotels.

**Standby Power:** President Bush, through an Executive Order, directed that federal agencies purchase electronic equipment with a "standby power" requirement of one watt or less wherever practical and cost-effective. (Many devices such as televisions, computers, and battery chargers consume power even when they are "off" or are not in use.) A device's standby power requirement will also be a consideration in appliance standards and Energy Star ratings.

**Energy Activities on Public Lands:** The Bureau of Land Management is focused on increasing domestic energy production of both renewable and non-renewable energy resources through sound environmental management and maintaining its commitment to protect the resources of the public lands. Areas of focus include the North Slope of Alaska, oil and gas leasing, coal resources, and renewable resources (such as biomass, wind, solar, and geothermal power). The BLM's Energy Policy and Conservation Act studies of the five major oil and gas basins are expected to be completed by April 2002. The BLM is working to expedite the development of renewable resources on the public lands, and is working on follow-up to the Secretary's Renewable Energy Summits in November 2001 and February 2002. In addition, there are no federal oil and gas leases now, and there will be no further leasing within the Grand Staircase Escalante National Monument area.

**Arctic National Wildlife Refuge:** ANWR is 19 million acres of land in the Northeast corner of Alaska adjacent to Canada, of which 8 million acres is designated as wilderness. In 1980, Congress called for evaluation of the energy potential of 1.5 million acres in the coastal plain of ANWR (referred to as the 1002 Area). In 1987, the Department of the Interior recommended that the 1002 Area be opened for oil and gas leasing, and Congress has debated the issue since then. The 1002 Area is the single most promising petroleum prospect in the United States. The mean

U.S. Geological Survey 1998 estimates for the 1002 area are 10.4 billion barrels of oil and 3.8 trillion cubic feet of gas. Development of such large amounts of oil and gas would yield substantial economic benefits, including total revenues to the United States and the State of Alaska in the range of \$20 to \$30 billion. Peak production from ANWR could be between one and 1.3 million barrels a day and account for 20 percent of all U.S. oil production. ANWR is by far the largest untapped source of domestic petroleum potential, and would equal nearly 40 years of oil imports from Iraq. The United States imports almost 800,000 barrels of oil a day from Saddam Hussein. The House-passed energy bill, H.R. 4, would impose an environmental standard of "no significant adverse effect on fish and wildlife, their habitat, and the environment." Operations would have to cease if they have such an impact. The Department of the Interior would impose the most stringent environmental requirements ever enacted into law on its lessees to mitigate any impacts on the area's species. In addition, H.R. 4 limited the area that could be covered by production and support facilities to 2,000 acres.

**Yucca Mountain:** President Bush has designated the Yucca Mountain site in Nevada to be developed as the nation's first long-term geologic repository for high-level radioactive waste, relying on more than 20 years and \$4 billion in scientific study that demonstrates Yucca Mountain is scientifically and technically suitable for development. Yucca Mountain is a geologically stable site, positioned in a closed groundwater basin, isolated on federally controlled land, housed approximately 800 feet underground, and located farther from any metropolitan area than the great majority of less secure, temporary nuclear waste storage sites that exist today. In 1987, Congress determined that the Yucca Mountain site was the best of the nine other sites that had been scientifically studied, and directed the Secretary of Energy to investigate and recommend to the President whether such a repository could be located at Yucca Mountain. DOE has determined that, based on the extensive investigation and scientific analysis, a repository at the site will protect public health and safety and should be able to meet EPA's radiological protection standards. The designation of a site for a repository for this material is environmentally important because it is critical to our ability to clean up former defense sites around the country as well as to retaining nuclear power, which currently provides 20 percent of our electricity without producing any airborne pollutants or greenhouse gases, as a clean and reliable source of electricity.

**Recycling DOE Materials:** To determine how best to handle the scrap metals located at its many sites, the Department of Energy is preparing a Programmatic Environmental Impact Statement (PEIS) on the disposition of such scrap metals. The PEIS, for which DOE is seeking public comment and holding public hearings, will address policy options for managing those metals located in radiological areas on DOE sites and any other scrap metals at DOE sites that might have some potential for residual surface radioactivity. The PEIS is expected to be completed in 2003. The National Academy of Sciences is undertaking a review, at the request of the Nuclear Regulatory Commission, of similar materials at NRC-licensed power plants. The NAS study should be completed this spring. After DOE entered a contract in 1999 with British Nuclear Fuels Limited, Inc. to recycle radioactive scrap metal from DOE's Oak Ridge, Tennessee facility, the DOE then issued a moratorium in 2000 to prevent disposition of such materials from DOE sites.

**Budget:** The President's FY'03 budget proposal continues significant funding for cleaner energy:

- \$7.1 billion in tax incentives over 10 years for investments in energy efficiency and renewable energy sources, including more than \$3 billion for consumers to purchase hybrid and fuel cell vehicles.
- \$1.2 billion (one-half of the oil and gas bonus bids) from the first lease sale in ANWR, subject to authorization, dedicated to fund research and development of renewable energy technology.
- \$150 million for the FreedomCAR research initiative, a new Department of Energy partnership with automakers and researchers with a long-term vision of hydrogen-powered fuel cell vehicles.
- \$1 million (up from \$60,000) for the Department of Transportation to improve fuel economy standards.

**A Cleaner, Healthier World Community**

**Reducing Greenhouse Gas Emissions:** The President has committed America to an aggressive new strategy to improve the greenhouse gas intensity of our economy by 18 percent over the next 10 years. This would result in reducing America's greenhouse gas emissions by 100 million metric tons a year by 2012. The President's initiative puts America on a path to slow the growth of greenhouse gas emissions, and – as the science justifies – to stop, and then reverse that growth. The President's greenhouse gas intensity goal is supported by a broad range of domestic and international climate change initiatives, including \$4.5 billion (a \$700 million increase) in FY'03 funding for climate change, including \$178 million (a 76 percent increase) for the Global Environment Facility. In the last decade, America did not make full payments to the GEF, but the President's budget makes a substantial downpayment on our debt. The President's budget also includes \$50 million to help conserve tropical forests through programs like debt-for-nature swaps under the Tropical Forest Conservation Act. The President's budget also includes \$4.6 billion in the next five years for tax incentives for renewable energy generation such as solar, geothermal and wind power, and advanced fuel cell or hybrid vehicles. The initiative also supports vital climate change research on science, technology, and sequestration. Of the \$40 million increase proposed for the Climate Change Research Initiative, \$5 million is to establish a world-class climate modeling center within NOAA's Geophysical Fluid Dynamic Laboratory.

**Eliminating Persistent Organic Pollutants (POPs):** To protect the American people and the world from the dangers of 12 chemicals that persist in the environment long after their use, President Bush announced the United States' support for the Convention on Persistent Organic Pollutants. Governor Whitman signed the treaty, which bans or restricts the production, use, and/or release of 12 chemicals that have been linked to numerous adverse effects in humans and animals, including cancer, central nervous system damage, reproductive disorders, and immune system disruption. The Administration is preparing the legislative package to send to Congress.

**Budget:** The President's FY'03 budget proposal continues significant funding for the following:

- \$4.5 billion for federal climate-related programs (up \$700 million), a commitment unmatched by any other nation – including \$2.9 billion for climate change research and technologies – \$80 million for the new Climate Change Research Initiative and the National Climate Change Technology Initiative, and \$54 million (up \$22 million) for carbon sequestration research funding within the President's Coal Research Initiative.
- \$178 million (up 76 percent) for the Global Environment Facility, which is the primary financial mechanism for transferring energy and sequestration technologies from the developed to the developing world under the United Nations Framework Convention on Climate Change -- fully funds the first installment (\$107.5 million) of the U.S. pledge of \$430 million to the GEF's third replenishment, and \$70 million to clear one-third of the arrears incurred during the past decade.
- \$50 million to meet the President's commitment to help conserve tropical forests – up to \$40 million may be used to continue funding debt-for-nature swaps under the Tropical Forest Conservation Act – in 2001, the U.S. successfully completed TFCA deals with Belize, El Salvador and Thailand.

### Effective, Accountable Regulatory Process

**Regulatory Review:** In the same tradition as previous Administrations, the first regulatory action initiated by the Bush Administration was a housekeeping exercise to review and understand the many regulations proposed just before President Bush came into office. This review was initiated through the issuance of a January 20, 2001 directive from the President's Chief of Staff to agency heads to take steps to ensure that policy officials in the incoming Administration had the opportunity to review any new or pending regulations.

These actions, subject to certain exceptions, included withdrawing unpublished regulations from the Federal Register and from OMB's Office of Information and Regulatory Affairs, and delaying the effective date of final rules published in the Federal Register but not yet in effect.

The directives issued by Chief of Staff Andrew Card and OMB Director Mitchell Daniels to Federal agencies to review and, if necessary and appropriate, withdraw unpublished regulations and delay the effective date of certain published regulations allowed newly appointed political officials to ensure that regulations published and implemented after January 20, 2001, reflected the priorities and policies of the Bush administration. Given the deliberative (and often lengthy) nature of the rulemaking process, some of the regulations that were subject to the reviews and procedures required by the Card and OMB directives remain under active consideration by agencies. The vast majority of regulations subject to this review went forward.

**The Role of OIRA:** Federal regulation is a fundamental instrument of national policy. The Bush Administration supports federal regulations that meet important needs and are based on sound science, economics, and law, including the Administration's regulatory actions (32 rules) in response to the shocking events of September 11th. Just as in previous Administrations over the last 20 years, OMB's Office of Information and Regulatory Affairs (OIRA) coordinates regulatory policy among the agencies.

OIRA is stimulating development of a smarter regulatory process, one that adopts new rules when markets fail, modifies existing rules to make them more effective and/or less costly or intrusive, and rescinds outmoded rules whose benefits do not justify their costs.

In pursuing this agenda, OIRA is implementing the principles of good regulatory analysis and policy espoused in Executive Order 12866, signed into law by President Clinton in 1993. Regulations adopted under these principles hold promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack. To make clear that OMB is dedicated to the quality of new rulemakings, OIRA has made more frequent use of the "return letter." This is a formal letter sent by OIRA to the responsible agency official, explaining in a clear and transparent way how OIRA believes the proposed rule can be improved to comply with the principles in E.O. 12866. Agencies may, and frequently do, conduct further work on the draft and resubmit it for OMB consideration. OIRA posts all return letters on its Website for public review.

Historically, OIRA has been primarily a reactive force in the regulatory process, responding to proposed and final rulemakings generated by federal agencies. Under the Bush Administration, OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration.



"Prompt" letters are a new mechanism designed to put OIRA in the pro-active role of suggesting issues that agencies might address. Prompt letters may suggest areas where further regulation may be needed to fill gaps in current environmental, health or safety protections; or they could be used to suggest areas where a current regulation is no longer needed and should be modified or rescinded.

So far, OIRA has issued 5 prompt letters: to the Department of Health and Human Services concerning Trans Fatty Acid; to the Department of Labor concerning Automatic External Defibrillators; to the National Highway Traffic Safety Administration concerning frontal crash protection; and two prompt letters to the Environmental Protection Agency. The first EPA prompt letter urges administrative and legislative action to reduce public exposure to fine particles in outdoor air emissions, coupled with a targeted multi-year research program aimed at discovering which sources of particles are most responsible for the adverse health impacts of breathing fine particulate matter. The second EPA prompt letter provides recommendations for EPA to speed up the gathering and release of information to the public on industrial toxic chemical discharges through EPA's Toxic Release Inventory, an annual accounting of industrial chemical pollution.

OIRA has taken several steps to increase the openness, transparency, and timeliness of the process, assure that regulatory proposals are based on quality analysis and sound science, upgrade its professional staff, and prioritize regulations in order to provide the maximum benefit to the public.

OMB has developed a more open approach to centralized regulatory oversight, including an open-door approach to meetings with outside parties, a log on OIRA's website for public meetings (which notes the meeting date, topic, lead agency, and participants), information about written correspondence from outside parties on regulations under review by OIRA on the website, and additional measures to improve the public's electronic access to the information now contained in OIRA's public docket room.

**Federal contractor responsibility:** The Federal Acquisition Regulatory Council, after public notice and comment, has finalized a rule that revokes the Clinton Administration's rule (due to vagueness of the Clinton standard) and returns to the standard that existed prior to January 19, 2001. This standard holds that a business firm will be considered eligible for a federal contract award if it possesses, among other things, "a satisfactory record of integrity and business ethics." The rule makes clear that real or alleged violations among contractors should be immediately referred to agency Debarment and Suspension officers for remedial action, including a decision whether a contractor should be suspended or debarred from doing further business with the Government.

**FY 2003 Environment Budget Crosscut  
High-Priority Environment and Natural Resource Programs \***  
(Budget Authority, in millions of dollars)

	March 6, 2002		2003 Proposed	Dollar Change		% Change		% Change 2002 to 2003
	2001 Actual	2002 Enacted		2001 to 2003	2001 to 2003	2001 to 2003	2002 to 2003	
Land and Water Conservation Fund (DOI and USDA)	645	684	911	266	41%	227	33%	100%
Cooperative Conservation Initiative	0	0	100	100	100%	100	100%	45%
Everglades Restoration (Corps and DOI)	202	254	245	43	21%	9	9	18%
National Wildlife Refuge System (DOI)	300	319	376	76	25%	57	19%	16%
Columbia River Basin Salmon (DOC, Corps, DOI, EPA, USDA, DOE)	352	438	506	154	44%	68	44%	3%
U.S. Global Change Research Program (NASA, DOE, NSF, others)	1,728	1,670	1,714	-14	-1%	44	44	100%
Climate Change Research Initiative (NOAA, NASA, USDA, DOE, NSF)	...	...	40	40	100%	40	40	100%
National Climate Change Technology Initiative (DOE)	...	...	40	40	100%	40	40	100%
FreedomCAR (DOE)	...	...	150	150	100%	150	150	100%
Montreal Protocol (EPA and State)	37	36	34	-3	-8%	-2	-2	-6%
Global Environment Facility (Treasury)	108	101	178	70	65%	77	77	76%
Tropical Forestry (Treasury/USAID)	13	5	50	37	285%	45	45	900%
<b>Environmental Protection Agency (EPA):</b>								
Operating Program	3,940	3,985	4,056	116	3%	71	71	2%
State Revolving Funds (SRFs):								
Drinking Water	823	850	850	27	3%	0	0	0%
Clean Water	1,347	1,350	1,212	-135	-10%	-138	-138	-10%
Brownfields	92	98	200	108	117%	102	102	104%
Superfund	1,286	1,289	1,293	7	1%	4	4	0%
Other	538	533	192	-346	-64%	-341	-341	-64%
<b>Subtotal, EPA</b>	<b>8,026</b>	<b>8,007</b>	<b>7,724</b>	<b>-302</b>	<b>-4%</b>	<b>-283</b>	<b>-283</b>	<b>-4%</b>
<b>Department of the Interior (DOI):</b>								
National Park Service (NPS) Operating Program	1,443	1,555	1,645	202	14%	110	110	7%
NFS Natural Resource Challenge	30	50	68	38	127%	18	18	36%
NFS Maintenance Backlog Projects (construction/facility maintenance)	571	662	665	94	16%	3	3	0%
Bureau of Land Management Operating Program	896	920	959	63	7%	39	39	4%
Fish and Wildlife Service Operating Program	834	881	935	101	12%	54	54	6%
<b>Department of Agriculture (USDA):</b>								
Forest Service Operations, Maintenance, and Construction	1,897	1,957	1,999	102	5%	42	42	2%
Natural Resources Conservation Service Operating Program	759	829	897	138	18%	68	68	8%
Water/Wastewater Grants and Loans BA	643	647	683	40	6%	36	36	6%
Water/Wastewater Grants and Loans Program Level (non-add)	1,417	1,475	1,479	62	4%	4	4	0%
Conservation Programs (mandatory):								
Wetlands Reserve Program (WRP)	144	0	176	32	22%	176	176	100%
Conservation Reserve Program (CRP)	1,658	1,821	1,910	252	15%	89	89	5%
Environmental Quality Incentives Program (EQIP)	200	200	1,000	800	400%	800	800	400%

**FY 2003 Environment Budget Crosscut  
High-Priority Environment and Natural Resources Programs \***  
(Budget Authority, in millions of dollars)

March 6, 2002					
	2001	2002	2003	Dollar Change	% Change
	Actual	Enacted	Proposed	2001 to 2003	2001 to 2003
				Dollar Change	% Change
				2002 to 2003	2002 to 2003
<b>Department of Energy (DOE):</b>					
Energy Conservation and Efficiency (gross)	810	915	904	94	12%
Renewable Energy Resources R&D (net)	370	386	408	38	10%
Federal Facilities Cleanup (Environmental Management Program)	6,450	6,731	6,714	264	4%
<b>National Oceanic and Atmospheric Administration (NOAA):</b>					
Ocean and Coastal Activities	578	502	415	-163	-28%
Fisheries and Protected Species Activities	706	707	803	97	14%
Ocean and Atmospheric Research	337	376	308	-29	-9%
<b>Department of Transportation (DOT):</b>					
Mass Transit	7,554	6,751	7,230	-324	-4%
Congestion Mitigation and Air Quality	884	1,692	1,198	314	36%
Transportation Enhancements	754	732	666	-88	-12%
<b>Department of Defense (DOD):</b>					
Environmental Compliance/Pollution Prevention/Conservation	2,019	2,029	2,090	71	4%
Federal Facilities Cleanup	2,080	1,860	1,797	-283	-14%
Environmental Technology	303	245	213	-90	-30%
<b>Total 9/</b>	<b>42,479</b>	<b>42,999</b>	<b>44,362</b>	<b>1,883</b>	<b>4%</b>
				<b>1,363</b>	<b>3%</b>

\* Includes retirement accruals except for small programs below the account level. Excludes Emergency Response Funding (ERF) for FY 2001 and 2002.  
 1/ Includes only those programs funded out of LWCF in each year. Includes accrual amounts.  
 2/ For Army Corps of Engineers, includes construction projects only.  
 3/ Up until FY 2003, funding for the Tropical Forest Conservation Act was appropriated to Treasury. FY 2003 funding is requested in the Development Assistance account of USAID. For FY 2002, up to an additional \$20 million in existing balances may be used.  
 4/ NPS maintenance backlog funding includes amounts in the construction account and the facility maintenance subactivity. Includes accrual amounts for construction only.  
 5/ Includes \$50 million in Federal Infrastructure Improvements.  
 6/ Includes \$25 million in Federal Infrastructure Improvements.  
 7/ Includes \$25 million in Federal Infrastructure Improvements.  
 8/ The Budget proposes Farm Bill increases of \$6.9 million in FY 2002 for WRP, CRP, and EQIP.  
 9/ Includes mandatory spending. Total adjusted to eliminate double counts.

**Questions for the Official Record to Administrator Whitman  
Submitted by Senator Lieberman  
Hearing on Public Health and Natural Resources:  
A Review of the Implementation of Our Environmental Laws  
March 7, 2002**

1. As I indicated during the hearing, the following is the detailed data regarding the Clean Skies Initiative:

An analysis conducted by the Environmental Protection Agency and dated September 18, 2001 projected that implementation of the current Clean Air Act would secure far greater reductions than the Clear Skies proposal. As the enclosed charts show, the analysis predicted that by 2012 nitrogen oxide (NOX) reductions would have been reduced to about 1.5 million tons; sulfur dioxide emissions (SO<sub>2</sub>) to 4 million tons; and mercury emissions reduced to about 10 million tons. (Insert 1) However, a presentation made by the EPA in February showed that EPA is predicting that the current Clean Air Act would achieve significantly fewer reductions by 2012: NOX emissions would be reduced to 4 million tons; sulfur dioxide to only about 9 million tons; and mercury emissions to 42 million tons. (Insert 2)

Please clarify for the record the differences in the data. What changed between September 18 and February? Why was the change in projections made? What programs did you assume would be implemented under the original proposal that you no longer assume would be implemented?

2. I understand that EPA produced a "strawman proposal," which would have provided for much deeper cuts than Clear Skies, and conducted a cost-benefit analysis of the "strawman." In particular, the "strawman" would have called for cuts, by 2010, to 2 million tons for SO<sub>2</sub>, 1.25 million tons for NOX, and to 7.5 million tons for mercury. The cost-benefit analysis showed that the "strawman" would have resulted in \$155 billion in annual benefits versus a maximum of \$10 billion in annual costs by 2020. What factors caused the Administration to change its objectives between EPA's "strawman" and the Clear Skies proposal? Have you done an equivalent cost-benefit analysis for the Clear Skies proposal? If so, please submit the analysis.

3. Would any requirements of current law be eliminated under the proposed Clean Skies program? If so, what programs? By what dates?

4. In addition to possible new proposals on clean air programs, I believe we need to be vigilant in implementing our current law. In this vein, please provide answers to the following questions regarding the current Clean Air Act.

a) It has been over a year since the D.C. Circuit remanded to EPA the ozone rule to develop an 8-hour implementation strategy. What is the schedule for developing this strategy? What is the schedule for designating 8-hour ozone nonattainment areas?

b) With regard to the fine particulates rule, the Agency has a July 2002 deadline for its review of the standard and evaluation of possible modifications. What is the schedule for completing this review? What is the schedule for designating PM<sub>2.5</sub> nonattainment areas?

c) As you know, I have been concerned about the delay in the compliance date for the Section 126 regulations and want to ensure that the rule is not delayed any further. I understand, however, that you have yet to respond to the D.C. Circuit regarding its questions about growth factors, making me concerned that the court will not be able to resolve its remaining questions in time for the scheduled effective date of the rule. When will you respond to the D.C. Circuit?

**Questions for the Official Record to Administrator Whitman****EPA Answers to Governmental Affairs Committee Additional Questions  
from March 7, 2002 Hearing Entitled, "Public Health and Natural Resources: A Review  
of the Implementation of Our Environmental Laws"****Questions Submitted by Chairman Joseph Lieberman:****1. As I indicated during the hearing, the following is the detailed data regarding the Clear Skies Initiative:**

An analysis conducted by the Environmental Protection Agency and dated September 18, 2001 projected the implementation of the current Clean Air Act would secure far greater reductions than the Clear Skies Proposal. As the enclosed charts show, the analysis predicted that by 2012 nitrogen oxide (NOx) reductions would have been reduced to about 1.5 million tons; sulfur dioxide emissions (SO2) to 4 million tons; and mercury emissions reduced to about 10 million (sic) tons. However, a presentation made by the EPA in February showed that EPA is predicting that the current Clean Air Act would achieve significantly fewer reductions by 2012: NOx emissions would be reduced to 4 million tons; sulfur dioxide to only about 9 million tons; and mercury emissions to 42 millions (sic) tons.

**Please clarify for the record the differences in the data. What changed between September 18 and February? What was the change in projections made? What programs did you assume would be implemented under the original proposal that you no longer assume would be implemented?**

**RESPONSE:**

The question is based on the false assumption that the first set of numbers (NOx - 1.5 MT, SO2 - 4 MT, Hg - 10 T) was a projection of the implementation of the current Clean Air Act. Rather, the first set of emissions numbers listed in your question was a prediction of what emissions would be in 2012 under a specific multi-pollutant legislative policy option that was one of the policy options being considered within the Administration. The second set of emissions numbers mentioned above (NOx - 4 MT, SO2 - 9 MT, Hg - 42 T) reflects what EPA believes the Clean Air Act would achieve over the next 6 - 10 years. The President's Clear Skies proposal would achieve significantly greater reductions from power generators earlier than would the Clean Air Act - reducing SO2 emissions by 25 million tons over the next decade, NOx emissions by 20 million tons over the next decade and mercury emissions by 20 tons over the next six years as compared to implementation of the current Clean Air Act.

**2. I understand that EPA produced a “strawman proposal,” which would have provided for much deeper cuts than Clear Skies, and conducted a cost-benefit analysis of the “strawman.” In particular, the “strawman” would have called for cuts, by 2010, to 2 million tons for SO<sub>2</sub>, 1.25 million tons for NO<sub>x</sub>, and to 7.5 million tons for mercury. The cost-benefit analysis showed the “strawman” would have resulted in \$155 billion in annual benefits versus a maximum of \$10 billion in annual costs by 2020. What factors caused the Administration to change its objectives between EPA’s “strawman” and the Clear Skies Proposal? Have you done an equivalent cost-benefit analysis for the Clear Skies Proposal? If so, please submit the analysis.**

***RESPONSE:***

Differences between the “straw” proposal and Clear Skies do not reflect differences in the Administration’s objectives. The initial “straw” proposal developed by EPA in August 2001 was a preliminary proposal developed for discussion with other decision makers within the Administration. It was one of numerous policy options considered by the Administration. It was clear at the outset that developing the President’s comprehensive multi-pollutant emissions trading program would be an iterative process as more detailed analyses were completed and experts throughout the government had an opportunity to contribute. This is typically the policy development process. While the range of estimated benefits did significantly exceed the estimated costs of the initial straw proposal, this result did not reflect any detailed analysis of the feasibility of installing the necessary environmental controls to meet the emissions caps in the comparatively short time allotted under the proposal. This was an important consideration as we did not want a proposal to pose reliability concerns by causing disruptions in the electricity supply for American consumers. Further, EPA’s analysis of the straw proposal included numerous assumptions that were reviewed and evaluated in greater depth as part of the Administration’s development of its legislative proposal. Since development of the straw proposal, EPA has conducted an extensive feasibility analysis which has played a role in shaping the timing and cap levels of the current Clear Skies proposal.

**3. Would any requirements of current law be eliminated under the proposed Clear Skies program? If so, what programs? By what dates?**

***RESPONSE:***

The President’s Clear Skies Initiative would be an important enhancement of the existing Clean Air Act. Preliminary projections indicate that the power sector’s emissions caps in Clear Skies would reduce regional PM<sub>2.5</sub> pollution so significantly that it would bring a significant number of areas into attainment with the PM<sub>2.5</sub> health-based standard. It would also help areas come into attainment with the ozone health-based standard; reduce acid rain, nitrogen deposition and mercury deposition; and increase visibility. These substantial steps toward attainment are only from the power sector. Given the substantial emissions reductions and air quality improvements under the Clear Skies Initiative, we are reviewing the current Clean Air Act provisions to determine which provisions would be redundant if Clear Skies is enacted. Among the provisions

under review for redundancy as they apply to the power generation sector are: section 126 rule addressing interstate ozone transport, Best Available Retrofit Technology (BART) requirements, Maximum Achievable Control Technology (MACT), and new source review.

**4. In addition to possible new proposals on clean air programs, I believe we need to be vigilant in implementing our current law. In this vein, please provide answers to the following questions regarding the current Clean Air Act.**

**a) It has been over a year since the D.C. Circuit remanded to EPA the ozone rule to develop an 8-hour implementation strategy. What is the schedule for developing this strategy? What is the schedule for designating 8-hour ozone nonattainment areas?**

**RESPONSE:**

We plan to adopt the implementation strategy for the 8-hour ozone standard through a rulemaking process. We intend to propose the strategy this summer and then finalize it a year after its proposal. In March and April of this year, we held three public hearings about the implementation strategy in Alexandria, VA; Atlanta, GA; and Tempe, AZ. We will consider all comments received at these hearings in developing the proposed rule.

At this point, we expect to designate areas as attainment, nonattainment or unclassifiable for the 8-hour ozone standard in 2004. Prior to issuing designations, we will complete the response to the May 1999 remand from the Court of Appeals for the District of Columbia Circuit concerning UVB radiation and finalize the implementation strategy rule.

**b) With regard to the fine particulates rule, the Agency has a July 2002 deadline for its review of the standard and evaluation of possible modifications. What is the schedule for completing this review? What is the schedule for designating PM2.5 nonattainment areas?**

**RESPONSE:**

We currently plan to complete the review of the particulate matter standards by the end of 2003. A revised draft of the scientific Criteria Document for PM will be released in May and reviewed by the Clean Air Scientific Advisory Committee (CASAC) in July. The first complete draft of an EPA staff paper will be produced this summer and reviewed by CASAC in September. Both documents will also undergo public review. Once peer and public review and final drafting of these documents is complete, the decision on retaining or revising these standards will undergo notice and public comment.

Before the PM2.5 nonattainment areas can be designated, we must first collect, review, and quality-assure three years of federal reference data. We will make the data available in as timely a fashion as possible and expect designation recommendations from states by mid 2003. EPA then has one year to act on these recommendations. If there are no delays or extensions, EPA could

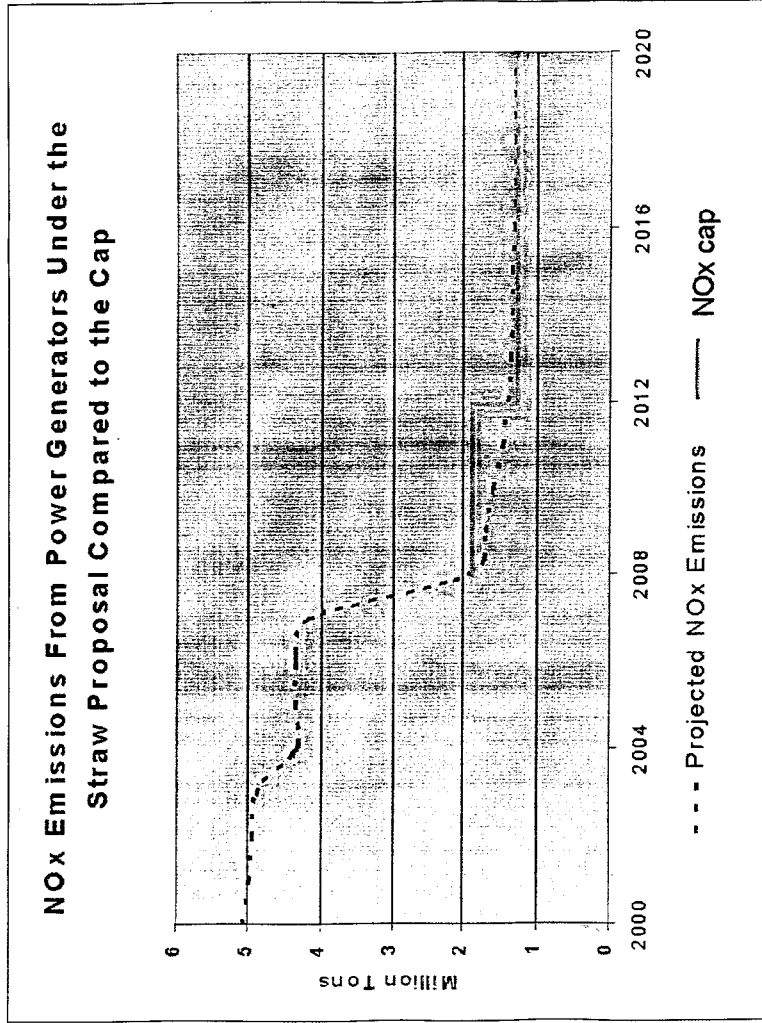
finalize the designations for PM2.5 nonattainment areas by as early as mid 2004. According to TEA-21, the designation process for PM2.5 must be completed before December 31, 2005.

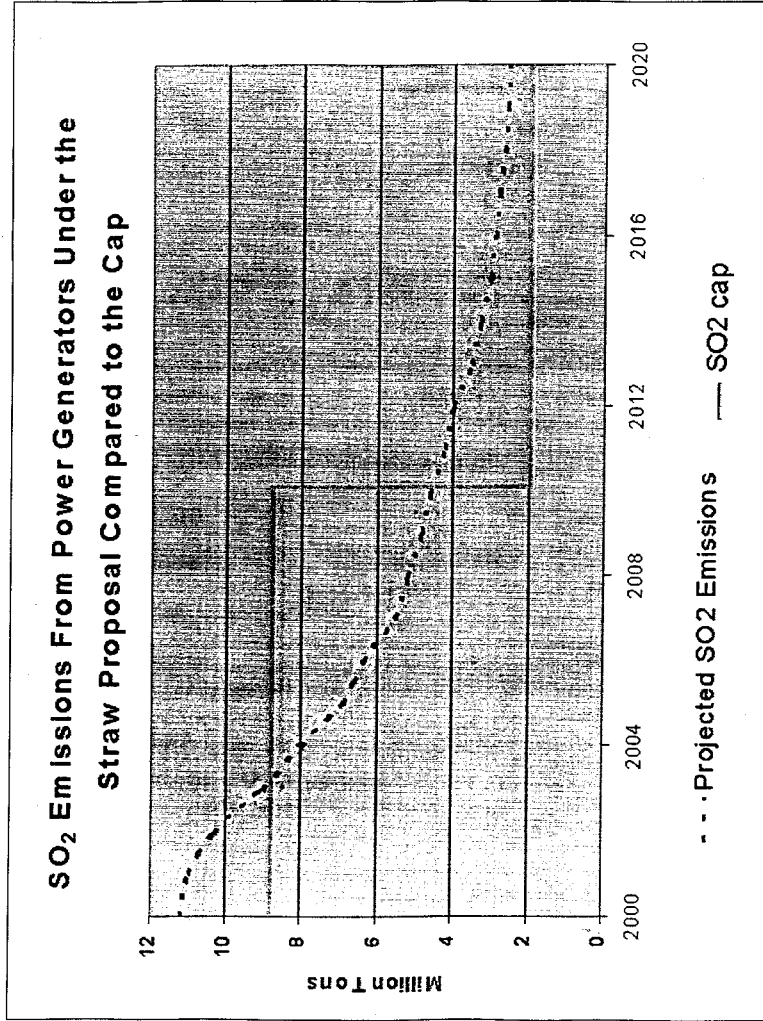
**c) As you know, I have been concerned about the delay in the compliance date for the Section 126 regulation and want to ensure that the rule is not delayed any further. I understand, however, that you have yet to respond to the D.C. Circuit regarding its questions about growth factors, making me concerned that the court will not be able to resolve its remaining questions in time for the scheduled effective date of the rule. When will you respond to the D.C. Circuit?**

***RESPONSE:***

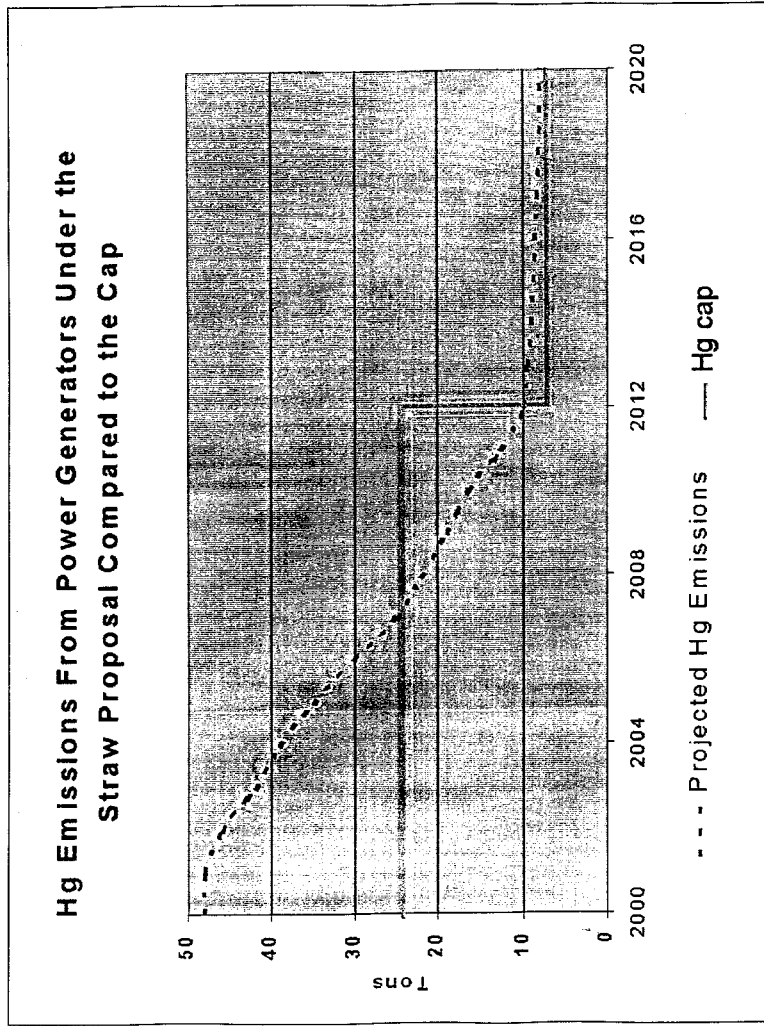
The Administrator signed EPA's response to the growth factor remand from the Court of Appeals for the District of Columbia Circuit on April 23, 2002.

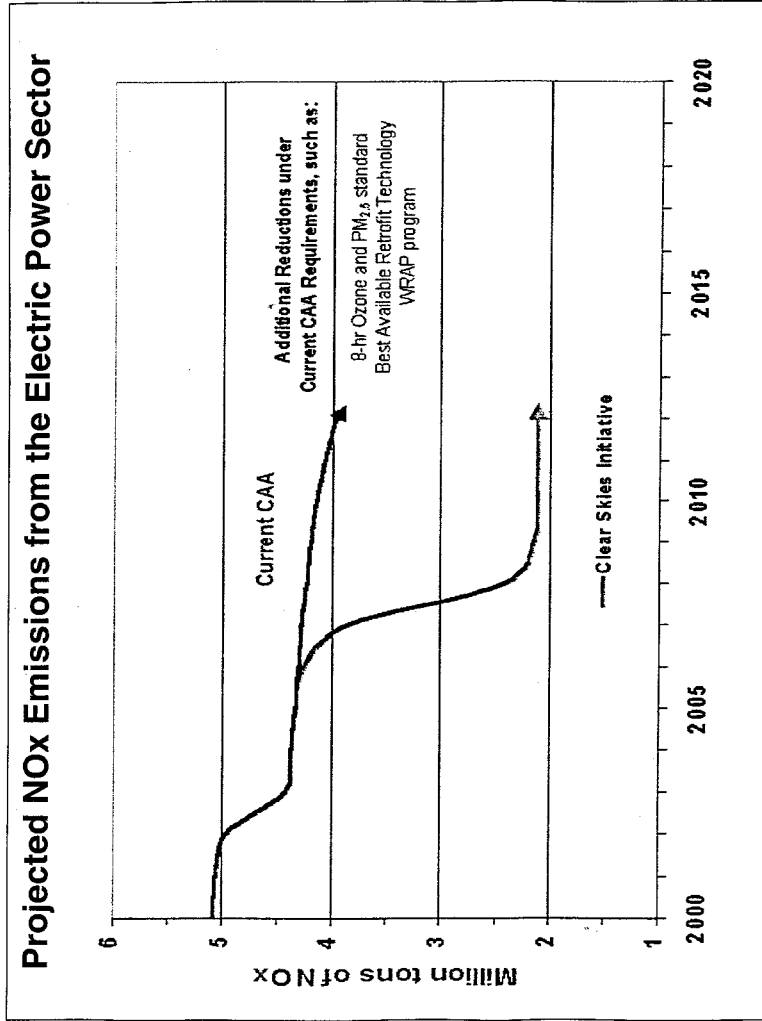




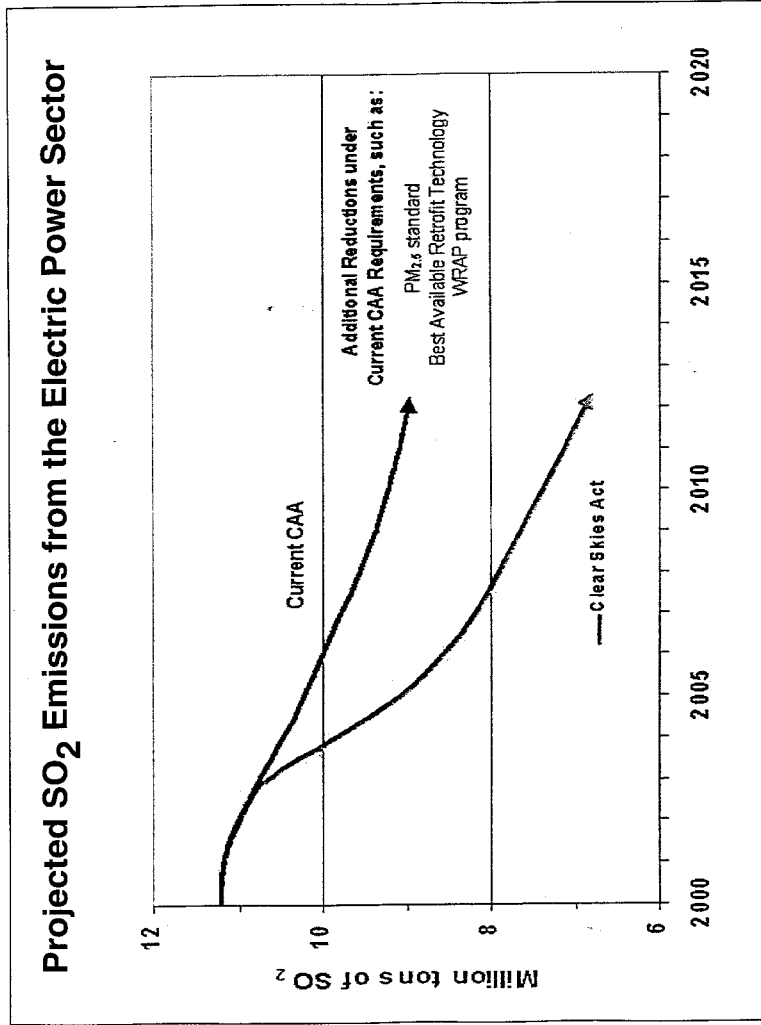


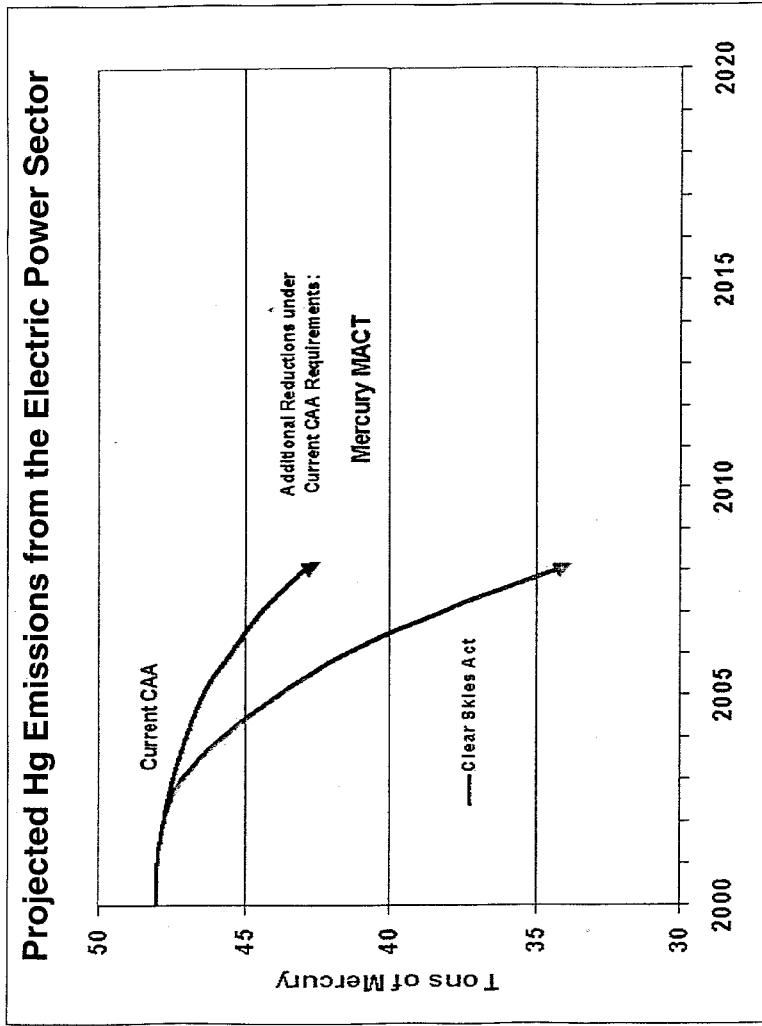
1-3





2-18





4-3

**Questions for the Official Record  
to Administrator Whitman Regarding Clear Skies Initiative  
Submitted by Senator Fred Thompson, Ranking Member**

**“Public Health and Natural Resources: A Review  
of the Implementation of Our Environmental Laws, Part I”**

March 7, 2002

Administrator Whitman: During the hearing, you said that the Clear Skies proposal includes a recommendation that power plants within 50 kilometers of Class I Areas be required to meet additional air pollution controls and provide better modeling data. How will this approach achieve greater benefits than the existing Clean Air Act? I would like to learn more about the precise details of this recommendation, specifically whether it would apply to existing facilities? Were other ranges considered? Was a cost-benefit analysis conducted for each proposed range, and would you please provide the Committee with a summary of relevant cost-benefit considerations?

Administrator Whitman: During the hearing, you provided the Committee with a map that identified potential air quality improvements through 2020 under the Clear Skies proposal, which projected a 25 percent visibility improvement, as measured by deciviews, for the Great Smoky Mountains National Park. It is my understanding that the Environmental Protection Agency is preparing a more detailed analysis of this projection. I would appreciate you providing the Committee with a final assessment of the projected visibility improvements under the Clear Skies proposal, as measured by deciviews, along with the level of emissions used as a baseline for making these projections, i.e. 1990 levels, current levels, or future levels assuming that all existing laws and regulations are enforced? I would also like to know how the projected reductions under the existing Clean Air Act compare with the projected visibility improvements under the President’s Clear Skies proposal.

Administrator Whitman: It is my understanding that under the Regional Haze Program, States are required to develop long term strategies aimed at reaching “natural background conditions” for visibility in Class I Areas within 60 years. Will the President’s Clear Skies proposal help to reduce emissions that contribute to impaired visibility more quickly than the Regional Haze Program and at less cost to the States? In addition, I would like to know when the Environmental Protection Agency expects to send a proposed final rule on the Best Available Retrofit Technology regulations to the Office of Management and Budget and when it might be finalized?

**EPA Answers to Governmental Affairs Committee Additional Questions  
from March 7, 2002 Hearing Entitled, "Public Health and Natural Resources: A Review  
of the Implementation of Our Environmental Laws"**

**Questions Submitted by Senator Fred Thompson, Ranking Member**

**Administrator Whitman:** During the hearing, you said that the Clear Skies proposal includes a recommendation that power plants within 50 kilometers of Class I Areas be required to meet additional air pollution controls and provide better modeling data. How will this approach achieve greater benefits than the existing Clean Air Act? I would like to learn more about the precise details of this recommendation, specifically whether it would apply to existing facilities? Were other ranges considered? Was a cost-benefit analysis conducted for each proposed range, and would you please provide the Committee with a summary of relevant cost-benefit considerations?

**RESPONSE:**

The Clear Skies proposal is intended to achieve nationwide emission reductions beyond what the current Clean Air Act requires. Air quality in and around most Class I areas will benefit significantly from the overall reduction in emissions that will be achieved under the proposal. The recommendation that new powerplants within 50 km of Class I areas be required to meet additional air pollution controls and provide better modeling data is intended to ensure that air quality in every Class I area is adequately protected should a new power plant locate near it. The additional requirements would apply only to new electrical generating units. Although cost benefits analyses are being done for the overall reductions associated with various multi-pollutant scenarios, no cost benefit analysis was done specific to the issues you cite.

**Administrator Whitman:** During the hearing, you provided the Committee with a map that identified potential air quality improvements through 2020 under the Clear Skies proposal, which projected a 25 percent visibility improvement, as measured by deciviews, for the Great Smoky Mountains National Park. It is my understanding that the Environmental Protection Agency is preparing a more detailed analysis of this projection. I would appreciate you providing the Committee with a final assessment of the projected visibility improvements under the Clear Skies proposal, as measured by deciviews, along with the level of emissions used as a baseline for making these projections, i.e. 1990 levels, current levels, or future levels assuming that all existing laws and regulations are enforced? I would also like to know how the projected reductions under the existing Clean Air Act compare with the projected visibility improvements under the President's Clear Skies proposal.

**RESPONSE:**

The map provided to the Committee projects notable improvements in visibility on the order of 3 deciviews for the Great Smoky National Park and the Southern Appalachian region through 2020. This was presented to the Committee to offer some indication of the visibility



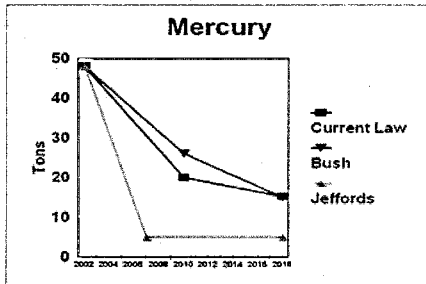
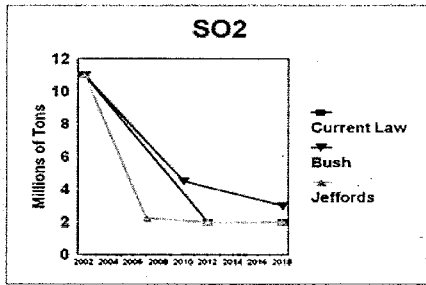
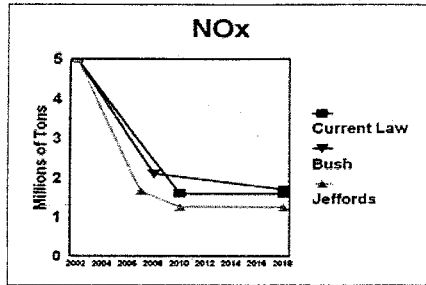
improvements anticipated under the President's Clear Skies proposal in 2020. It is based on analysis of a multi-pollutant policy scenario that would be slightly less stringent than Clear Skies would be in 2020. We anticipate comparable improvements in visibility under the Clear Skies proposal. EPA is currently in the process of preparing a comprehensive assessment of the air quality benefits projected from emission reductions under the Clear Skies proposal. Once this assessment is complete, we will be happy to provide the Committee with the final benefit results, including the projected visibility improvements of Clear Skies, and how these projected improvements compare with visibility projected under a Clean Air Act baseline.

**Administrator Whitman: It is my understanding that under the Regional Haze Program, States are required to develop long term strategies aimed at reaching "natural background conditions" for visibility in Class I Areas within 60 years. Will the President's Clear Skies proposal help to reduce emissions that contribute to impaired visibility more quickly than the Regional Haze Program and at less cost to the States? In addition, I would like to know when the Environmental Protection Agency expects to send a proposed final rule on the Best Available Retrofit Technology regulations to the Office of Management and Budget and when it might be finalized?**

***RESPONSE:***

In the next decade, the Clear Skies Initiative is expected to reduce more emissions contributing to visibility impairment than the Regional Haze Program and to do so in a cost-effective way that will assist States in meeting their obligations under the Regional Haze rule. We expect to send the proposed rule on Best Available Retrofit Technology to the Office of Management and Budget for review by June of this year and to issue the final rule late this summer.

**The Importance of Enforcement:  
Pollution Reductions Achievable Through  
Enforcement of Current Clean Air Act  
Compared with Clear Skies (Bush) and S.556 (Jeffords)**



Current Law Scenario is a conservative synthesis of several analyses:

- "Analysis of Strategies for Reducing Multiple Emissions from Power Plants: Sulfur Dioxide, Nitrogen Oxides, and Carbon Dioxide," U.S. Department of Energy (December 2000) (predicting SO<sub>2</sub> emissions of 1.9 M tons and NO<sub>x</sub> emissions of 1.6 M tons in 2010 assuming New Source Review enforcement at all electric generating stations over 25 MW)

- Internal EPA documents predicting a reduction of 4.9 M tons SO<sub>2</sub> and 2.0 M tons NO<sub>x</sub> from existing NSR cases, extrapolated to more sources

- "Discussion of Multi-Pollutant Strategy, Meeting with EEI," U.S.EPA (September 2001) (indicating 2.0 M tons SO<sub>2</sub> cap from PM 2.5 rule in 2012, 1.1 - 1.6 M tons NO<sub>x</sub> in 2010 - 2020 under different scenarios, and 60 - 80% facility Hg reductions by 2010 and 14 tons Hg in 2020) (EPA is now disavowing these predictions. However, they are consistent with expected mercury MACT rule and other regulatory demands)

**Source:  
New York Attorney General**

Note: Lines connecting data points are not intended to reflect the actual rates at which reductions would be achieved.

## SNOWMOBILE EXHAUST CONCERNS BONNIE GAFNEY

On December 28 and 29, 2000 I spent the morning hours from 0830 to 1100 at the West Entrance station or on a snowmobile on the West Entrance Road. On Dec. 28<sup>th</sup> myself and three other LE Rangers spent 2.5 hours "walking the lines" of snowmobiles as they lined up to enter the Park. The lines were extensive, with at least 200 - 300 snowmobile engines running at any given time. Lines could not proceed quickly, as a very large number of underage drivers attempted to use the express lane to illegally enter the Park. Fumes were horrible, as clouds of blue smoke engulfed the entrance area and all along the road corridor as they entered the park.

Within 30 minutes I experienced a very raspy and dry throat, making speaking painful and difficult. A headache occurred within one hour, which continued throughout the day. At the end of the "rush" (1100 hours) myself and Ranger John Piastuck went inside the office and attempted to have a conversation. We found it difficult to maintain a logical train of thought, with significant feelings of lethargy and inability to concentrate. My eyes were red and irritated. This feeling of lethargy and extreme tiredness continued throughout the day and into the evening. Due to fatigue, I was unable to perform normal evening activity at home, and found I had no appetite for lunch or dinner.

On Dec. 29, 2000 I spent an hour "walking the lines" at the gate, and a total of 5 hours performing snowmobile patrol on the West Entrance road. Once again I found the fumes to be extremely irritating, with a sore throat, headache and general fatigue occurring within an hour. The snowmobile patrols were not quite as debilitating as the gate lines, but still existed to a slightly lesser degree.

For health reasons, on Dec. 29<sup>th</sup> I opted not to even go over to the gate, although it was very busy. When I write the schedule I try hard not to put a LE ranger at the gate more than once a week, for health reasons. One day, let alone three days in a row have shown to produce extreme health concerns which I feel can have some long lasting effects. The short acting effects are very obvious.

Bonnie Gafney  
- ass sub. district  
Ranger - Gallegos

**MEDICAL COMPLAINT – RICK BENNETT**

On 12/28/00, I was assigned to work the West Entrance Station during the morning hours checking for underage snowmobile operators, excessively loud snowmobiles, etc., or to offer assistance to the gate staff as necessary. When I went to work that morning, I felt fine in that I had no problems with my voice nor did I have a sore throat. The total snowmobile count for the day was 1180 sleds with 890 of them coming through the entrance station by 1030 hrs. I was at the entrance station from 0830 until 1100 hrs.

On this particular morning, the "blue haze" from snowmobile exhaust was incredible. Several times I recall looking toward the east and all I could see was a river of blue haze. Looking toward the town to the west, I couldn't see the town. As the morning progressed, I began to lose my voice and develop a sore throat. I also had a burning sensation in my eyes and my eyes were somewhat watery. Throughout the day, I had a headache. This persisted throughout the day and began to feel better once I was away from the snowmobiles at the end of the day.

On the 30<sup>th</sup>, I was again at the gate working the lines of snowmobiles. After 45 minutes, I found that I couldn't talk and again had developed a sore throat. I developed a headache which lasted until around 1800 hrs. The snowmobile count this day was 1021 machines with 788 of them entering the park by 1030 hrs. Again, the West Entrance area was enveloped in a blue haze cloud of snowmobile exhaust for most of the morning.

The week between Christmas and New Years 2000 was the busiest, most intense snowmobile visitation I have seen in my time at Yellowstone. I have never seen the intensity of the "blue haze" to last so long as it did this year. Between the 27<sup>th</sup> and the 31<sup>st</sup>, there were 4797 snowmobiles that entered through the West Entrance. The effect of this large number of snowmobiles was very apparent upon employees who worked the West Entrance Station as well as the park itself along the West Entrance road corridor. This entire area had the smell of a snowmobile.

*Rick Bennett*

Rick Bennett  
Gallatin Sub-District Ranger

DATE:	FEB 09, 2002
TIME:	7:30 AM - Noon
NAME:	[REDACTED]
DUTY STATION/LOCATION:	WEST Entrance Station
WEATHER CONDITIONS:	Clear & Cold w/inversion
TRAFFIC OBSERVATIONS:	AT noon 800 biles' - (10:30 CT 695) Very large groups
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Symptoms started immed. Sore Eyes, Scratchy throat & for the first time... Sores on my bottom lip. Carmex & Visine don't seem to work -- Also, today I could actually "Taste" the fumes. Eyes are very sore... Hope the above symptoms subside soon I've got sties to work till my shift is complete.
	* Please <u>do not</u> use my name in any publications..

DATE:	Feb. 10, 2002
TIME:	
NAME:	John Stobinski
DUTY STATION/LOCATION:	West
WEATHER CONDITIONS:	Low -12
TRAFFIC OBSERVATIONS:	Heavy
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptom started, specific symptoms, severity of symptoms etc...)	Headache - turned into migraine. Nausea. Slight dizziness

DATE:	02-01-02
TIME:	0830 - 0930
NAME:	Virginia Warner
DUTY STATION/LOCATION:	West Entrance
WEATHER CONDITIONS:	cold, single digits (6° at opening) lt. snow, overcast calm
TRAFFIC OBSERVATIONS:	traffic steady since 0730 many personal sleds vs. rentals
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	
<p>At 0930:</p> <ul style="list-style-type: none"> <li>- mild headache</li> <li>- mild queasiness</li> <li>- nose burning noticeably, esp. when I stepped outside to chip ice, write a date on a sticky pass, and cut off an old pass w/wire cutters</li> </ul> <p>By 1300 symptoms are mostly gone</p>	

DATE:	12/29/01
TIME:	0830-
NAME:	Pat Wemberley
DUTY STATION/LOCATION:	West - Booth 'C'
WEATHER CONDITIONS:	Overcast approx 20°
TRAFFIC OBSERVATIONS:	1200 snowmobiles
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Came to work @ 0630, onset of headache @ 0830 - headache continues @ 1400 hrs. Also fatigue, lethargy in afternoon



DATE:	1/8/02
TIME:	9:00 am
NAME:	Virginia Warner
DUTY STATION/LOCATION:	West Entrance
WEATHER CONDITIONS:	warm (30-35°) calm clear
TRAFFIC OBSERVATIONS:	Approx. 400 sleds by 10:30 am. Slow, but majority came between 8-9:30. Many personal sleds as opposed to rentals.
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptom started, specific symptoms, severity of symptoms etc...)	Eyes dry, red, burning after 1 hour. Mild headache. Symptoms gone by 12 noon.

DATE:	01-18-02
TIME:	9:10 - 9:40 am
NAME:	Virginia Warner
DUTY STATION/LOCATION:	West Entrance
WEATHER CONDITIONS:	clear, cold inversion visible in town
TRAFFIC OBSERVATIONS:	traffic quite steady since 8:00 a.m.
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Symptoms began at 09:10 am: Eyes burning queasiness  Symptoms gone by 1300.

DATE:	1/3/02
TIME:	Shift 7:30 Am to 4:30 pm
NAME:	Moldenhauer, Alex S.
DUTY STATION/LOCATION:	West Entrance Sta. YNP
WEATHER CONDITIONS:	Cloudy, light snow, temp = 28°F.
TRAFFIC OBSERVATIONS:	<ul style="list-style-type: none"> <li>- Medium amount of snowmobiles for the West Entrance</li> <li>- Number of snowmobiles @ 10:30 AM 440</li> </ul>
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	<p>I began work @ 7:30 am. and was feeling fine. Heavy snowmobile traffic started @ ~ 9:00 am. By 9:30 am. I had a sore throat &amp; slight headache. There was a noticeable smog cloud and exhaust smell from ~ 9:30 am to 11:00 am.</p>

DATE:	02-07-02	
TIME:	9:00 - 12:00	
NAME:	Kitty Eubae	
DUTY STATION/LOCATION:	West Entrance	
WEATHER CONDITIONS:	Cold - 12 - Inversion Crain Taking pictures - the air Very smoky.	
TRAFFIC OBSERVATIONS:	By 10:30, 695 Snowmachines	
SYMPTOMS: (Be specific, include amount of time working before symptoms started, when symptom started, specific symptoms, severity of symptoms etc...)	<sup>sore</sup> sore throat - Headache. sore By 12:30 after work.	

DATE:	2-10-2002
TIME:	10:00 - 12:00
NAME:	Kathy Embae
DUTY STATION/LOCATION:	West Entrance
WEATHER CONDITIONS:	- 12°, then warmed
TRAFFIC OBSERVATIONS:	395 miles by 10:30
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Sore throat SORE

DATE:	12-30-01
TIME:	12:30
NAME:	Kitty Enebere
DUTY STATION/LOCATION:	B Booth - out helping alot
WEATHER CONDITIONS:	overcast / 20-25
TRAFFIC OBSERVATIONS:	950 SM
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Came at 6:30 - 9:30 headache - continued until 12:30 when Rush was over.

DATE:	12/27/01
TIME:	12:00
NAME:	Kathy
DUTY STATION/LOCATION:	West
WEATHER CONDITIONS:	Inversion, + cold (-25)
TRAFFIC OBSERVATIONS:	We had 1,000 by 1:00
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptoms started, specific symptoms, severity of symptoms etc...)	Came at 6:30 only 2 lanes open. by 10:00. I had a head ache. Stayed with me until things slowed down about 1:30. Only slipped one by 3:00

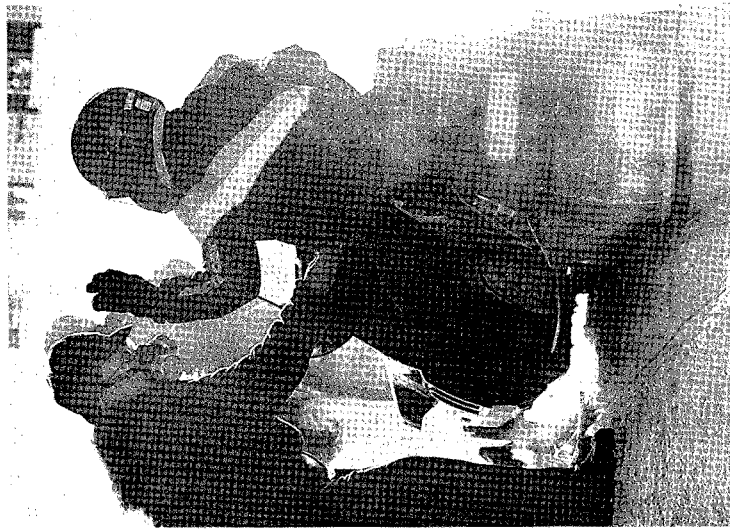
DATE:	12/27/01
TIME:	1520
NAME:	Christine Greve
DUTY STATION/LOCATION:	West Entrance
WEATHER CONDITIONS:	-25°F → approx 10-12°F Inversion in am. then clear cold No breeze - wind calm
TRAFFIC OBSERVATIONS:	very heavy travel day
SYMPTOMS: (Be specific. Include amount of time working before symptoms started, when symptom started, specific symptoms, severity of symptoms etc...)	
<p>C + A <del>block</del> were only tracks up operated  due to Dina Dixon's illness. In afternoon. 1083 sled day  Jethony in afternoon 28 coaches</p>	



**YELLOWSTONE AT A CROSSROADS**



The natural beauty of Yellowstone National Park



Park Rangers wearing respirators at the west entrance of Yellowstone National Park this February 2002











**United States District Court  
Violation Notice**

Case No. W 498

Violation No. P 382150

Defendant Name D. Berninger

Defendant No. 02-0387

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:

Date and Time of Offense 2/15/02 0720

Offense Charge 306A.4.2(1)

Place of Offense WEST entrance Rd (B01)

Offense Description speed 50/35

70-40-00

City Highway

Street Address [REDACTED]

City [REDACTED]

State [REDACTED]

Zip [REDACTED]

Vehicle No. [REDACTED]

Vehicle Type [REDACTED]

Vehicle Color [REDACTED]

Vehicle Make [REDACTED]

Vehicle Year [REDACTED]

Vehicle State [REDACTED]

Vehicle License [REDACTED]

Vehicle Color [REDACTED]

Vehicle Make [REDACTED]

Vehicle Year [REDACTED]

Vehicle State [REDACTED]

Vehicle License [REDACTED]

A.  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B.  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the additional amount below, in cash.

I plead not guilty and promise to appear as required.

Court Address 18365.00

Date 02/15/02

Time 08:30

YOUR COURT DATE

Physical Description

Original - CVR Copy

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: Light  Heavy

Other: (Check One)  Safe  Inmate

NPS Form 10-50, Rev. 5/97

**United States District Court  
Violation Notice**

Case No. W 498

Violation No. P 382377

Defendant Name D. Berninger

Defendant No. 02-0389

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:

Date and Time of Offense 2/15/02 1805

Offense Charge 306A.4.2(1)

Place of Offense WEST entrance Rd (B01)

Offense Description speed 63/35

70-40-00

City Highway

Street Address [REDACTED]

City [REDACTED]

State [REDACTED]

Zip [REDACTED]

Vehicle No. [REDACTED]

Vehicle Type [REDACTED]

Vehicle Color [REDACTED]

Vehicle Make [REDACTED]

Vehicle Year [REDACTED]

Vehicle State [REDACTED]

Vehicle License [REDACTED]

Vehicle Color [REDACTED]

Vehicle Make [REDACTED]

Vehicle Year [REDACTED]

Vehicle State [REDACTED]

Vehicle License [REDACTED]

A.  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B.  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the additional amount below, in cash.

I plead not guilty and promise to appear as required.

Court Address 18365.00

Date 02/15/02

Time 08:30

YOUR COURT DATE

Physical Description

Original - CVR Copy

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: Light  Heavy

Other: (Check One)  Safe  Inmate

NPS Form 10-50, Rev. 5/97

United States District Court Violation Notice	
Loc. Code <b>W7NP</b>	
Violation No. <b>P 382243</b>	Print Officer Name <b>D. CAMICIA</b>
<b>02-0440</b>	Officer No. <b>16031</b>
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION.	
Date and Time of Offense <b>2/10/02 10:53</b>	Offense Charged <b>38 CFR 21.2 (C)</b>
Place of Offense <b>West End 45 25 No 3 (201)</b>	
Offense Description <b>Snowmobile use in an unregistered area (61-01-01)</b>	
Defendant's Last Name <b>ZELM</b>	First Name <b>ERIC</b>
M.I. <b>K</b>	
Street Address [REDACTED]	
City [REDACTED]	State [REDACTED]
Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	State Security Number [REDACTED]
VEHICLE DESCRIPTION <b>152463 8840</b>	
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]
Year [REDACTED]	Vehicle Make <b>ATV</b>
	Vehicle Color <b>Blk</b>
<p><input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p><input checked="" type="checkbox"/> B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p>I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p>I plead not guilty and promise to appear as required.</p>	
YOUR COURT DATE	
Court Address <b>Pain B 10 000 (251)</b>	Date <b>2/10/02</b>
Collateral (fine) <b>\$100</b>	For payment by credit card, SEE INSTRUCTIONS.
Physical Description	
Sex [REDACTED]	Race [REDACTED]
Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]	Eyes [REDACTED]
(Circle One) <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile	
Weather Conditions Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog <input type="checkbox"/>	
Traffic Conditions Light <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Heavy <input type="checkbox"/>	

P382243



Loc Code		United States District Court Violation Notice	
WYNP		Print Officer Name A. R. Dimmick	
Violation No. P 381801		Officer No. 2040	
BD#02-0341			
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense 2/2/02 1600		Offense Charged 30 CFR 2.18(d)(4) #1-01-05	
Description of Offense Went over 7 mi. bridge - Med River, West			
Offense Description Racing or speed in excess of 45 mph			
Defendant's Last Name TOM LYNSON		First Name JOSEPH	M.I. W
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year 02	Vehicle Make Audi Vehicle Color Blk/Grn
A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. I wish to terminate this matter by paying the collateral shown below, enclosed. I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address		Date	
		Time	
Collateral (fine) 100.00	For payment by credit card, SEE INSTRUCTIONS.		
Physical Description		Original - CVB Copy	
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]	Eyes [REDACTED]	(Circle One) Adult Juvenile	
Weather Conditions [REDACTED]		Cloudy	Rain Snow Ice Fog
Traffic Conditions [REDACTED]		Light	Medium Heavy

DAD

Loc. Code <b>WYWP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 384861</b>		Print Officer Name <b>J. Duckett</b>	
<b>Bd# 02-0337</b>		Officer No. <b>D 7937</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>02/02/02 1535</b>		Offense Charged <b>56 CFR 4.21 (c)</b>	
Place of Offense <b>N of Gr-hole Picnic Area</b>			
Offense Description <b>operate a snowmobile in the excess of the posted speed by traveling at 58mph in a 35mph zone</b>			
Defendant's Last Name <b>Gomez</b>		First Name <b>Jonathan</b>	M.I. <b>T</b>
Street Address [REDACTED]			
City	State	Zip Code	Date of Birth
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Drivers License No.	D.L. State	Social Security Number	
[REDACTED]	[REDACTED]	[REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make
[REDACTED]	[REDACTED]	[REDACTED]	<b>Arctic Cat</b>
			Vehicle Color <b>white/black</b>
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
YOUR COURT DATE			
Court Address			Date
			Time
Collateral (fee)	For payment by credit card, SEE INSTRUCTIONS.		
<b>\$89.00</b>			
Physical Description		Original - CVB Copy	
Sex	Race	Height	Weight
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		Hair	Eyes
		[REDACTED]	[REDACTED]
(Circle One)			
		<input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Weather Conditions: <input checked="" type="radio"/> Clear <input type="radio"/> Cloudy <input type="radio"/> Rain <input type="radio"/> Snow <input type="radio"/> Ice <input type="radio"/> Fog			
Traffic Conditions: <input type="radio"/> Light <input type="radio"/> Medium <input checked="" type="radio"/> Heavy			

P 384861

CRD

**United States District Court**  
Violation Notice

Loc. Code: **WYNP**      Print Officer Name: **Dennis York**  
Violation No.: **P 384772**      Officer No.: **17368**

Date and Time of Offense: **08-03-99**      YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: **GT-01-11**

Offense Charge: **2-2-00 1558 BLACK CR. P. SEC 7.1(B)**  
Place of Offense: **ATLANTA-DUNWOODY ROAD @ THORGE BURNING**  
Offense Description: **NO-MOBILE - A-401 UNLICENSED**  
Driver's License No.: **(SHAH)**  
Driver's Name: **SHAH, VIKAS**

City: **Atlanta**      State: **GA**      Date of Birth: **11/11/71**  
Street Address: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle Tag State: **GA**      Year: **2003**      Vehicle Make: **POL**      Vehicle Color: **BLU**

VEHICLE DESCRIPTION: **[REDACTED]**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fine): **\$50.00**      For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Weather Conditions:  Clear     Rain     Snow     Fog  
 Windy     Hazy     Foggy     Other

**United States District Court**  
Violation Notice

Loc. Code: **WYNP**      Print Officer Name: **C.R. Dimmick**  
Violation No.: **P 380974**      Officer No.: **2045**

Date and Time of Offense: **08-02-03**      YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: **380974**

Offense Charge: **36 CR. 2.186(1)(a)**  
Place of Offense: **W.S.R. Rd, 7 mi. S of 76 Road Ave**  
Offense Description: **Racing or speed in excess of 45 mph**

City: **Atlanta**      State: **GA**      Date of Birth: **[REDACTED]**  
Street Address: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle Tag State: **GA**      Year: **02**      Vehicle Make: **Polaris**      Vehicle Color: **Red**

VEHICLE DESCRIPTION: **[REDACTED]**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fine): **100.00**      For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Weather Conditions:  Clear     Rain     Snow     Fog  
 Windy     Hazy     Foggy     Other

United States District Court Violation Notice	
Loc. Code	
Violation No. <i>WV 02</i>	Print Officer Name <i>Amy Fink</i>
<b>P 382298</b>	Officer No. <i>FC996</i>
<b># 02-0417</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION	
Date and Time of Offense <i>02/07/02 - 7:25</i>	Offense Charged <i>30 LFF 4.21 (L)</i>
Place of Offense <i>West End - MP 3</i>	<i>(120)</i>
Offense Description <i>Spd 50/35</i>	<i>(70.40.00)</i>
Defendant's Last Name <i>Murphy</i>	First Name <i>James</i>
Street Address	City
State	Zip Code
Date of Birth	MI
Driver's License No.	DL State
Vehicle Description	Social Security Number
Vehicle Tag No.	Vehicle Tag State
Year	Vehicle Make
	Vehicle Color
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Spammable)</p> <p>B <input checked="" type="checkbox"/> YOU MUST MAKE ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input checked="" type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>	
YOUR COURT DATE	
Court Address	Date
<i>paid credit card # 5522 3290004 8222</i>	Time
Collateral (fine)	Payment by credit card. SEE INSTRUCTIONS.
Physical Description	Original - CVB Copy
Sex	Race
Height	Weight
Hair	Eyes
(Circle One) <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile	
Weather Conditions:	Clear <input type="checkbox"/> Cloudy <input checked="" type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog <input type="checkbox"/>
Traffic Conditions:	Light <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Heavy <input type="checkbox"/>

P382298

United States District Court Violation Notice			
Offense Code NYP	Print Officer Name D. CAMICIA		
Violation No. P 382242 # 02-0425	Officer No. 6601		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense 1/8/02 1607	Offense Charged 36 CFR 4.21 (G)		
Place of Offense WEST ENTRANCE RD MP. 3 (120)	Offense Description SPEED 55/35 (40-40-20)		
Defendant's Last Name WEST	First Name WALLACE	M.I. L.	
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year 94	Vehicle Make, Model, Color NASCAR CREST ERY BLK (NON-MOTOR)
<input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> I wish to terminate this matter by paying the collateral shown below enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address P.O. Box 111111 2/3/02 D.C.	Date 1/8/02		Time [REDACTED]
Collateral (fine) \$200	For payment by credit card, SEE INSTRUCTIONS.		
Physical Description			
Sex [REDACTED]	Race [REDACTED]	Weight [REDACTED]	Height [REDACTED]
Weather Conditions: Clear <input type="checkbox"/> Cloudy <input checked="" type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog <input type="checkbox"/>		(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Traffic Conditions: Light <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Heavy <input type="checkbox"/>			

P382242

Loc. Code <b>2 WYMP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382222</b> Bond # <b>020345</b>		Print Officer Name <b>Barland-Liles</b> Officer No. <b>2080</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>02-03-02 0925</b>		Offense Charged <b>36 CFR 4.12</b>	
Place of Offense <b>West Entrance Road in m. 05 (120)</b>			
Offense Description <b>Snow Mobile Traffic Control Devices STOP SIGN</b>			
Defendant's Last Name <b>Fisher</b>		First Name <b>Scott</b>	
Street Address [REDACTED]			
City [REDACTED]		State Zip Code Date of Birth [REDACTED]	
Driver's License No. [REDACTED]		D.L. State Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>76</b>	Vehicle Make <b>Snow Jet</b>
		Vehicle Color <b>Blue</b>	
A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.			
<input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below enclosed.			
<input type="checkbox"/> I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address <b>To Mail in</b>		Date Time	
Collateral (fine) <b>\$50.00</b>		For payment by credit card, SEE INSTRUCTIONS.	
Physical Description		Original - CVR Copy	
Sex <input checked="" type="checkbox"/> Male	Race <input checked="" type="checkbox"/> White	Height <input checked="" type="checkbox"/> 5-10	Weight <input checked="" type="checkbox"/> 150
Hair <input checked="" type="checkbox"/> Brown	Eyes <input checked="" type="checkbox"/> Blue	(Circle One) <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile	
Weather Conditions: Clear		Cloudy Rain Snow	
Traffic Conditions: Light		MEDIUM Heavy	

P382222

United States District Court Violation Notice			
Loc. Code <i>WYWA</i>	Print Officer Name <i>D. Beeringer</i>		
Violation No. <b>P 382376</b> # <i>02-0388</i>	Officer No. <i>67339</i>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <i>2/10/02 7:49</i>	Offense Charged <i>34 C.F.R. 421 (c)</i>		
Place of Offense <i>122 BT Entrance NW (1201)</i>	Offense Description <i>(-7040-00) Speed 53/35</i>		
Defendant's Last Name <i>Summer</i>	First Name <i>MWA</i>	M.I. <i>A.</i>	
Street Address [REDACTED]	City [REDACTED]	State [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <i>2002</i>	Vehicle Make <i>ARTIC</i>
		Vehicle Model <i>BLK</i>	Vehicle Color <i>BLK</i>
A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (nonmobile) B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. ___ I wish to terminate this matter by paying the nonappearance below, enclosed. ___ I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address <i>70 MA</i>	Date [REDACTED]		Time [REDACTED]
Collateral (fine) <i>\$74.00</i>	For payment by credit card, SEE INSTRUCTIONS.		
Physical Description			
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]		Eyes [REDACTED]	
Weather Condition Clear <input checked="" type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog <input type="checkbox"/>		Traffic Conditions Light <input checked="" type="checkbox"/> Heavy <input type="checkbox"/>	

P382376

United States District Court Violation Notice			
Loc. Code <b>WVNP</b>	Print Officer Name <b>D. CLARA McCLURE</b>		
Violation No. <b>P 189339</b> <b>#020399</b>	Officer No. <b>1275</b>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:			
Date and Time of Offense <b>2/16/02 1250hrs</b>	Offense Charged <b>36 CFR 1.12(a)(1) <del>36 CFR 1.12(a)(1) (b)(1)</del> Dam</b>		
Place of Offense <b>Artists PAINT PATS</b>	Offense Description <b>UNDERAGE OPERATION NO OPERATORS LICENSE (61-01-010)</b>		
Defendant's Last Name <b>PELLIGRANT</b>	First Name <b>Susan</b>	M.I. <b>ANN</b>	
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>02</b>	Vehicle Color <b>Grey</b>
<input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile) <input checked="" type="checkbox"/> B YOU MUST MAIL ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> I wish to terminate this matter by paying the collection shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address <b>PAID - with Mastercard credit card - 2-6-02 (DCA)</b>	Date [REDACTED]		
Collateral (fine) <b>\$500.00</b>	For payment by check, call SEE INSTRUCTIONS.		
Physical Description: Original - CVB Copy			
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]		Eyes [REDACTED]	
(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile			
Weather Conditions <b>Clear</b>	Cloudy [REDACTED]	Rain [REDACTED]	Snow [REDACTED]
Traffic Conditions <b>Light</b>	Medium [REDACTED]	Heavy [REDACTED]	Fog [REDACTED]

PAID w/ m/c

P189339



Loc. Code WYN		<b>United States District Court Violation Notice</b>	
Violation No. P 382239 # 02-0403		Print Officer Name D. AMY... Officer No. 6651	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense 7/10/02 1540		Offense Charged 36 CFR 7.10(a)	
Place of Offense 1 M. ... of ...			
Offense Description DENIES DRIVER REQUIRED - OPERATING A MOTORVEHICLE WITHOUT A DRIVERS LICENSE (41-01-10)			
Defendant's Last Name BRASSEY		First Name JENNIFER	
Street Address [REDACTED]			
City	State	Zip Code	Date of Birth
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Driver's License No.	D.L. State	Social Security Number	
[REDACTED]	[REDACTED]	[REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make
[REDACTED]	[REDACTED]	02	FORD
			Vehicle Color RED
<input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (New Vehicle) <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> I wish to terminate this matter by paying the collaterals shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.			
YOUR COURT DATE			
Court Address P.O. ...		Date 7/15/02	
Collateral (fine) \$50.00		For payment by credit card, SEE INSTRUCTIONS.	
Physical Description		Original - CVB Copy	
Sex	Race	Height	Weight
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			Hair
			[REDACTED]
			Eyes
			[REDACTED]
Weather Conditions		(Circle One) Adult Juvenile	
Clear		[REDACTED]	
Cloudy		[REDACTED]	
Rain		[REDACTED]	
Snow		[REDACTED]	
Ice		[REDACTED]	
Fog		[REDACTED]	
Traffic Conditions		Light Medium Heavy	
Light		Medium	
Heavy		[REDACTED]	

P382239



### United States District Court Violation Notice

Lic. Code: **WMP**  
 Violation No.: **P 384813**  
 Print Officer Name: **C.R. Dimmick**  
 Officer No.: **2045**  
 Bond # **02-0411**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: **2/16/02 10:15**  
 Officer Charged: **366FK 422666**  
 Office: **Grand Loop Rd. Madison S. Curve**  
 Description: **Swampy - Unsafe operation - operate motor vehicle at speed greater than reasonable considering wildlife, traffic, weather, road conditions and road character.**  
 Section: **73-02-02**  
 M.I.: **Schaefer**  
 State: **MI**

YOU MUST APPEAR IN COURT SEE INSTRUCTIONS  
 A  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 B  I wish to terminate this matter by paying the contact shown below, enclosed. I plead not guilty and promise to appear as required.

YOUR COURT DATE: **2/27/02**  
 Court Address: **91000 US Courthouse**  
 Courtroom: **Room 210**  
 Call Number: **313-234-1000**  
 For payment by credit card, SEE INSTRUCTIONS.

Original - CIV Copy  
 Physical Description: **Sex: M, Hair: B, Eyes: B, Weight: 170, Height: 5'10", Build: M, Complexion: F, Scars: None, Tattoos: None, Birth Date: 12/15/70, Birth Place: MI, Social Security Number: [REDACTED]**  
 Traffic Condition: **Light** (Medium, Heavy)  
 (Circle One) **Light** (Medium, Heavy)

### United States District Court Violation Notice

Lic. Code: **WMP**  
 Violation No.: **P 384812**  
 Print Officer Name: **C.R. Dimmick**  
 Officer No.: **2045**  
 Bond # **02-0411**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: **2/16/02 10:15**  
 Officer Charged: **366FK 422666**  
 Office: **Grand Loop Rd. Madison S. Curve**  
 Description: **Swampy - Unsafe operation - operate motor vehicle at speed greater than reasonable considering wildlife, traffic, weather, road conditions and road character.**  
 Section: **73-02-02**  
 M.I.: **Schaefer**  
 State: **MI**

YOU MUST APPEAR IN COURT SEE INSTRUCTIONS  
 A  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 B  I wish to terminate this matter by paying the contact shown below, enclosed. I plead not guilty and promise to appear as required.

YOUR COURT DATE: **2/27/02**  
 Court Address: **91000 US Courthouse**  
 Courtroom: **Room 210**  
 Call Number: **313-234-1000**  
 For payment by credit card, SEE INSTRUCTIONS.

Original - CIV Copy  
 Physical Description: **Sex: M, Hair: B, Eyes: B, Weight: 170, Height: 5'10", Build: M, Complexion: F, Scars: None, Tattoos: None, Birth Date: 12/15/70, Birth Place: MI, Social Security Number: [REDACTED]**  
 Traffic Condition: **Light** (Medium, Heavy)  
 (Circle One) **Light** (Medium, Heavy)

United States District Court Violation Notice				
Loc. Code <b>WYNT</b>	Print Officer Name <b>C. R. Dimmick</b>			
Violation No. <b>P 384814</b>	Officer No. <b>2045</b>			
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION				
Date and Time of Offense <b>2/1/02 1015</b>	Offense Charged <b>36CFR 4.22(b)(1)</b>			
Place of Offense <b>Grand Loop Rd</b>	Offense Description <b>Medison S curves</b>			
<b>Small mobile + unsafe operation - operating a motor vehicle without due care or at a speed greater than reasonable considering wildlife, traffic, weather, road conditions and road character</b>				
Defendant's Last Name <b>Elwert</b>	First Name <b>Christian</b>			
Street Address <b>[REDACTED]</b>	M.I. <b>[REDACTED]</b>			
City <b>[REDACTED]</b>	State <b>[REDACTED]</b>			
Zip Code <b>[REDACTED]</b>	Date of Birth <b>[REDACTED]</b>			
D.L. State <b>[REDACTED]</b>	Social Security Number <b>[REDACTED]</b>			
VEHICLE DESCRIPTION				
Vehicle Tag No. <b>[REDACTED]</b>	Vehicle Tag State <b>[REDACTED]</b>	Year <b>02</b>	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Blue</b>
A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.				
YOUR COURT DATE				
Court Address <b>Pl Clerk 100-105C</b>	Date <b>2/2/02</b>	Time <b>[REDACTED]</b>		
Collateral (fine) <b>\$100.00</b>	For payment by credit card, SEE INSTRUCTIONS.			
Physical Description		Original - CVB Copy		
Sex <b>[REDACTED]</b>	Race <b>[REDACTED]</b>	Height <b>[REDACTED]</b>	Weight <b>[REDACTED]</b>	Hair <b>[REDACTED]</b>
Eyes <b>[REDACTED]</b>		(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile		
Weather Conditions <b>Clear</b>	Cloudy	Rain	Snow	Ice
Traffic Conditions <b>Light</b>	Medium	Heavy		

**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
 Violation No.: **P 381805**  
 Print Officer Name: **C.R. Dimmick**  
 Officer No.: **2045**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **2/1/02 1:50**  
 Offense Charged: **36 CFR 2.18 (14)**

Place of Offense: **N. East Rd. E of Mt. Hayes**  
 Offense Description: **Racing or speed in excess of 45 mph or unless otherwise restricted on a snowpack**

Defendant's Last Name: **SEARATEKAT**  
 First Name: **SCARLETT**  
 Middle Name: **W**  
 Sex: **F**  
 Date of Birth: **[REDACTED]**  
 Zip Code: **[REDACTED]**  
 State: **VT**  
 P. S. State: **[REDACTED]**  
 Social Security Number: **[REDACTED]**

Vehicle License No.: **[REDACTED]**  
 Vehicle Make: **[REDACTED]**  
 Vehicle Year: **[REDACTED]**  
 Vehicle Color: **[REDACTED]**

**YOU MUST APPEAR IN COURT - SEE INSTRUCTIONS.**  
**YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Time: \_\_\_\_\_

Collection Copy: **100**  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: **Original - CVR Copy**

Sex:  Male  Female  Other  Juvenile  Adult  Available  (Check One)

Vehicle Condition:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Condition:  Light  Normal  Heavy

NPS Form 10-58, Rev. 5/97

**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
 Violation No.: **P 381804**  
 Print Officer Name: **C.R. Dimmick**  
 Officer No.: **2045**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **2/1/02 1:50**  
 Offense Charged: **36 CFR 2.18 (14)**

Place of Offense: **N. East Rd. E of Mt. Hayes**  
 Offense Description: **Racing or speed in excess of 45 mph or unless otherwise restricted on a snowpack**

Defendant's Last Name: **BARRETT**  
 First Name: **SCOTT**  
 Middle Name: **[REDACTED]**  
 Sex: **M**  
 Date of Birth: **[REDACTED]**  
 Zip Code: **[REDACTED]**  
 State: **VT**  
 P. S. State: **[REDACTED]**  
 Social Security Number: **[REDACTED]**

Vehicle License No.: **[REDACTED]**  
 Vehicle Make: **[REDACTED]**  
 Vehicle Year: **[REDACTED]**  
 Vehicle Color: **[REDACTED]**

**YOU MUST APPEAR IN COURT - SEE INSTRUCTIONS.**  
**YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Time: \_\_\_\_\_

Collection Copy: **100**  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: **Original - CVR Copy**

Sex:  Male  Female  Other  Juvenile  Adult  Available  (Check One)

Vehicle Condition:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Condition:  Light  Normal  Heavy

NPS Form 10-58, Rev. 5/97

United States District Court Violation Notice			
Loc. Code <b>WT NR</b>	Print Officer Name <b>Amy Bink</b>		
Violation No. <b>P 382297</b> <b># 02-0415</b>	Officer No. <b>EL996</b>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>02/07/02 16:45</b>	Offense Charged <b>76 CFR 4.21 (c)</b> <b>(12d)</b>		
Place of Offense <b>West Mt. St. - mp 3</b>	Offense Description <b>speed 50/35</b> <b>(70-40-00)</b>		
Defendant's Last Name <b>McLaren</b>	First Name <b>Alexander</b>	M.I. <b>S</b>	
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Reg No. [REDACTED]	Vehicle Reg State [REDACTED]	Year [REDACTED]	Vehicle Make <b>Polaris</b>
		Vehicle Color <b>Blk</b>	
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Automobile)</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input checked="" type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
YOUR COURT DATE			
Court Address <b>Daid</b> <b>02/07/02</b> <b>by 449227 0055 7859</b>			Date [REDACTED]
Collateral (fine) <b>\$65.00</b>			Time [REDACTED]
For payment by credit card, SEE INSTRUCTIONS.			
Physical Description			
Sex [REDACTED]	Race [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]
Weather Conditions: Clear			(Circle One) <input checked="" type="checkbox"/> Juvenile
Traffic Conditions: Light		<input checked="" type="checkbox"/> Rain	<input type="checkbox"/> Snow
		<input checked="" type="checkbox"/> Medium	<input type="checkbox"/> Fog
		<input type="checkbox"/> Heavy	

P382297

**United States District Court**  
**Violation Notice**

Loc. Code: WYMP  
 Violation No.: P 382174  
 # 02-0087  
 1/16/02 16:45  
 3/4/02  
 1/10/02 16:45  
 3/4/02  
 1/10/02 16:45  
 3/4/02

Print Officer Name: Amey, RAK  
 Officer No.: 1699C

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: 1/10/02 16:45  
 Place of Offense: 1699C  
 Officer's Description: 1/10/02 16:45

Offense Charged: 36 CFR 41.22 (AM)

Offense Description: Carabin Operation - using gunpin - separate  
a suspension of an unaccompanied and supervised  
minor who is not in the custody of a parent or  
guardian.

Defendant's Last Name: MUNN  
 First Name: DAVID  
 Street Address: 1699C  
 City: 1699C  
 State: 1699C  
 ZIP Code: 1699C  
 Date of Birth: 1699C  
 Sex: 1699C  
 Race: 1699C  
 Social Security Number: 1699C

Vehicle Tag No.: 1699C  
 Vehicle Make: 1699C  
 Vehicle Year: 1699C  
 Vehicle Color: 1699C

A  D YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  E YOU MUST MAKE ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I seek to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: 5/3  
 Court Address: 1699C  
 Date: 1699C  
 Time: 1699C

Collateral (Cash): 1699C  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: 1699C  
 Original - CVR Copy

Weather Conditions: 1699C  
 Clear  Rain  Snow  Ice  Fog

Trade Conditions: 1699C  
 Light  Heavy

**United States District Court**  
**Violation Notice**

Loc. Code: WYMP  
 Violation No.: P 380969  
 # 02-0080  
 1/10/02 16:45  
 3/4/02  
 1/10/02 16:45  
 3/4/02

Print Officer Name: G.R. DWALEK  
 Officer No.: 2045

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: 1/10/02 16:45  
 Place of Offense: 1699C  
 Officer's Description: 1/10/02 16:45

Offense Charged: 36 CFR 41.22 (AM)

Offense Description: Carabin Operation - using gunpin - separate  
a suspension of an unaccompanied and supervised  
minor who is not in the custody of a parent or  
guardian.

Defendant's Last Name: DUMITRE  
 First Name: ALEXANDER  
 Street Address: 1699C  
 City: 1699C  
 State: 1699C  
 ZIP Code: 1699C  
 Date of Birth: 1699C  
 Sex: 1699C  
 Race: 1699C  
 Social Security Number: 1699C

Vehicle Tag No.: 1699C  
 Vehicle Make: 1699C  
 Vehicle Year: 1699C  
 Vehicle Color: 1699C

A  D YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  E YOU MUST MAKE ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I seek to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: 5/3  
 Court Address: 1699C  
 Date: 1699C  
 Time: 1699C

Collateral (Cash): 1699C  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: 1699C  
 Original - CVR Copy

Weather Conditions: 1699C  
 Clear  Rain  Snow  Ice  Fog

Trade Conditions: 1699C  
 Light  Heavy

**United States District Court  
Violation Notice**

Loc. Code: **WY 04**  
 Violation No.: **P 384803**  
 Print Officer Name: **Michael R. Eastman**  
 Officer No.: **2757**  
 Date and Time of Offense: **02-08-88**  
 Offense Charged: **OFFER 4122(b)(6)**  
 Place of Offense: **WEST ENTRANCE RD**  
 Offense Description: **MT. HAYNES RICOULT**  
 Details: **Control operation - operate in non-vehicle without license or with speed greater than allowable**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Print Name: **SMOBS**  
 First Name: **Mary**  
 Last Name: **E**  
 Street Address: [REDACTED]  
 City: [REDACTED]  
 State: [REDACTED]  
 Zip Code: [REDACTED]  
 Date of Birth: [REDACTED]  
 Driver's License No.: [REDACTED]  
 Social Security Number: [REDACTED]

Vehicle Description: [REDACTED]  
 Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: **SAAB** Vehicle Color: **BL**

YOUR COURT DATE: [REDACTED]  
 Court Address: [REDACTED]

Collection (Incl): **100.00**  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)  
 Weather Conditions: [REDACTED] Cloudy [REDACTED] Rain [REDACTED] Snow [REDACTED] Ice [REDACTED] Fog [REDACTED]  
 Traffic Conditions: [REDACTED] Medium [REDACTED] Heavy

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collaterals shown below.  
 I plead not guilty and promise to appear as required.

**United States District Court  
Violation Notice**

Loc. Code: **WY 04**  
 Violation No.: **P 384169**  
 Print Officer Name: **Michael K. Eastman**  
 Officer No.: **1270**  
 Date and Time of Offense: **02-08-88**  
 Offense Charged: **OFFER 4122(b)(6)**  
 Place of Offense: **SEVENTH ENTRANCE ROAD**  
 Offense Description: **EXCEEDING A DESIGNATED SPEED LIMIT IN EXCESS OF THE POSTED 45 MPH SPEED LIMIT**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Print Name: **CAVE**  
 First Name: **TRAY**  
 Last Name: **L**  
 Street Address: [REDACTED]  
 City: [REDACTED]  
 State: [REDACTED]  
 Zip Code: [REDACTED]  
 Date of Birth: [REDACTED]  
 Driver's License No.: [REDACTED]  
 Social Security Number: [REDACTED]

Vehicle Description: [REDACTED]  
 Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: [REDACTED] Vehicle Color: [REDACTED]

YOUR COURT DATE: **50**  
 Court Address: **MANitou, WY**

Collection (Incl): **100.00**  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)  
 Weather Conditions: [REDACTED] Cloudy [REDACTED] Rain [REDACTED] Snow [REDACTED] Ice [REDACTED] Fog [REDACTED]  
 Traffic Conditions: [REDACTED] Medium [REDACTED] Heavy

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collaterals shown below.  
 I plead not guilty and promise to appear as required.



United States District Court  
Violation Notice

Loc. Code: WYNP  
Violation No. 020330  
Print Officer Name: GARY NELSON  
Officer No. 574  
P 190936

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 02/05/02 10:50  
Offense Charged: 36 CFR 7.131  
Place of Offense: GRAND LOOP ROAD - FOUNTAIN FLATS  
Offense Description: ALLOWING AN UNLICENSED MINOR TO OPERATE A SNOWMOBILE

P190936

Defendant's Last Name: HAZELTINE  
First Name: STEPHEN  
M.I.: L  
Date of Birth: 61-01-10

City, State, Zip Code, Date of Birth, Driver's License No., D.L. State, Social Security Number

VEHICLE DESCRIPTION

Vehicle Tag No., Vehicle Tag State, Year, Vehicle Make, Vehicle Color  
01 POLARIS Red

- A.  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B.  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address: PAID 50.00 CASH  
Date: GRN 02/05/02

Collateral (fine): 50.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy  
Sex, Race, Height, Weight, Hair, Eyes, (Circle One) Adult/Juvenile  
Weather Conditions: Clear, Cloudy, Rain, Snow, Ice, Fog  
Traffic Conditions: Light, Medium, Heavy

**United States District Court  
Violation Notice**

Loc. Code: WYMAP

Violation No. P 382149      Print Officer Name: D. Barringer

# 02-0373      Officer No. 67339

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 2/5/02 7:018      Offense Charged: 36 C.F.R. 4.21(e)

Place of Offense: W 1st Anti Bl. (1201)

Offense Description: Speed 55/35

Defendant's Last Name: Councilman      First Name: JOHN      M.I.: P.

Street Address: [REDACTED]

City: [REDACTED]      State: [REDACTED]      Zip Code: [REDACTED]      Date of Birth: [REDACTED]

Driver's License No.: [REDACTED]      D.L. State: [REDACTED]      Social Security Number: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.: [REDACTED]      Vehicle Tag State: [REDACTED]      Year: 2000      Vehicle Make: Ski      Vehicle Color: Yellow

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile)

B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.

I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address: to mail:      Date: \_\_\_\_\_

Time: \_\_\_\_\_

Collateral (fine): \$80.00      For payment by credit card, SEE INSTRUCTIONS.

Physical Description

Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult    Juvenile
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Weather Conditions: Clear    Cloudy    Rain    Snow    Ice    Fog

Traffic Conditions: Light    Medium    Heavy

NPS Form 10-50, Rev. 5/97

P382149

Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382147</b> <b>02-0369</b>		Print Officer Name <b>D. Berringer</b> Officer No. <b>87339</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>2/4/02 1742</b>		Offense Charged <b>36 CFR 2.18 (c)</b>	
Place of Offense <b>West Ent. Boundary @ Govatt Area (201)</b>			
Offense Description <b>snowmobile in Undesignated Area</b> <b>61-01-01</b>			
Defendant's Last Name <b>Amat</b>		First Name <b>Jean-Pierre C</b>	M.I. <b>C</b>
Street [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Type [REDACTED]	Year <b>01</b>	Vehicle Make <b>Polaris</b>
			Vehicle Color <b>Red</b>
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
YOUR COURT DATE			
Court Address <b>Pd. 84000 Visa card</b> <b>21402 DSB</b>		Date	Time
Collateral (fine) <b>\$700.00</b>	For payment by credit card, SEE INSTRUCTIONS.		
Physical Description		Original - CVB Copy	
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
		Hair [REDACTED]	Eyes [REDACTED]
Weather Conditions		(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Traffic Conditions		Clear Cloudy Rain Snow Ice Fog	
		Light Medium Heavy	

P382147

**United States District Court**  
**Violation Notice**

Loc. Code: **W3NP**      Print Officer Name: **J. Duckett**  
 Violation No.: **P 384863**      Officer No.: **D7937**  
**B# 02 0367**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
 Date and Time of Offense: **02/04/02 1500**      Offense Charged: **066 219 (c)**  
 Place of Offense: **St. Francis Park Pk.**  
 Officer Description: **USE OF snowmobile in a undesignated area by traveling of the roadway**

Defendant's Last Name: **Beckall**      First Name: **L**  
 Street Address: **[REDACTED]**  
 City: **[REDACTED]**      State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle: The No. **[REDACTED]**      Year: **[REDACTED]**      Make: **[REDACTED]**      Model: **[REDACTED]**      Color: **blue**  
 Vehicle Description: **not given**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: \_\_\_\_\_  
 Court Address: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (fine): **\$ 1000**      For payment by credit card, SEE INSTRUCTIONS.  
 Physical Description: Original - CV0 Copy  
 Set:  100%  75%  50%  25%  10%  5%  1%  
 Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy

**United States District Court**  
**Violation Notice**

Loc. Code: **W3NP**      Print Officer Name: **T. BELLA**  
 Violation No.: **P 881765**      Officer No.: **S3014**  
**02-0368**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
 Date and Time of Offense: **2/14/02 10:02**      Offense Charged: **36GR-4.2(C)**  
 Place of Offense: **SEVEN MILE ROAD**  
 Officer Description: **DRIVER IN EXCESS OF SPEED LIMIT TO WITHIN 5 MPH IN 35 MPH SPEED ZONE**

Defendant's Last Name: **MCARTHUR**      First Name: **PATRICK**      Age: **1**  
 Street Address: **[REDACTED]**  
 City: **[REDACTED]**      State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle: The No. **[REDACTED]**      Year: **02**      Make: **POL**      Model: **BLU2**  
 Vehicle Description: **BLU2**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: \_\_\_\_\_  
 Court Address: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (fine): **\$ 500**      For payment by credit card, SEE INSTRUCTIONS.  
 Physical Description: Original - CV0 Copy  
 Set:  100%  75%  50%  25%  10%  5%  1%  
 Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy

WYNT  
Violation No. P 381764  
Offense No. 02-0863  
Print Officer Name: U. SELVA  
Officer No. S3014  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense: 2/10/02 14:16  
Place of Offense: WILDWATER EXHIBIT-NADSON  
Offense Description: 70-40-00 COOPERATES A MOTOR VEHICLE AT SPEEDS IN EXCESS OF THE POSTED SPEED LIMIT TO WITHIN 35 MPH SPEED ZONES  
Driver's License No. [REDACTED]  
State: [REDACTED] City: [REDACTED] Driver of Right: [REDACTED]  
Driver's License No. [REDACTED] Social Security Number: [REDACTED]

Vehicle Description: Vehicle Tag State Year Vehicle Make Vehicle Color  
[REDACTED] 02 POL RED

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the delinquent shown below, enclosed.  
I plead not guilty and promise to appear as requested.

Courtesy Fee: PAID IN FULL  
Collateral Fee: CC 2/10/02  
Physical Description: Original - CVR Copy  
Weather Conditions: [REDACTED] Heavy  
Traffic Conditions: [REDACTED] Heavy  
NPS Form 10-50, Rev. 5/97

WYNT  
Violation No. P 381763  
Offense No. 02-0362  
Print Officer Name: U. SELVA  
Officer No. S3014  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense: 2/10/02 14:16  
Place of Offense: WILDWATER EXHIBIT-NADSON  
Offense Description: 70-40-00 COOPERATES A MOTOR VEHICLE AT SPEEDS IN EXCESS OF THE POSTED SPEED LIMIT TO WITHIN 35 MPH SPEED ZONES  
Driver's License No. [REDACTED]  
State: [REDACTED] City: [REDACTED] Driver of Right: [REDACTED]  
Driver's License No. [REDACTED] Social Security Number: [REDACTED]

Vehicle Description: Vehicle Tag State Year Vehicle Make Vehicle Color  
[REDACTED] 02 POL RED

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the delinquent shown below, enclosed.  
I plead not guilty and promise to appear as requested.

Courtesy Fee: PAID IN FULL  
Collateral Fee: CC 2/10/02  
Physical Description: Original - CVR Copy  
Weather Conditions: [REDACTED] Heavy  
Traffic Conditions: [REDACTED] Heavy  
NPS Form 10-50, Rev. 5/97

WYNT  
Violation No. P 381764  
Offense No. 02-0863  
Print Officer Name: U. SELVA  
Officer No. S3014  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense: 2/10/02 14:16  
Place of Offense: WILDWATER EXHIBIT-NADSON  
Offense Description: 70-40-00 COOPERATES A MOTOR VEHICLE AT SPEEDS IN EXCESS OF THE POSTED SPEED LIMIT TO WITHIN 35 MPH SPEED ZONES  
Driver's License No. [REDACTED]  
State: [REDACTED] City: [REDACTED] Driver of Right: [REDACTED]  
Driver's License No. [REDACTED] Social Security Number: [REDACTED]

Vehicle Description: Vehicle Tag State Year Vehicle Make Vehicle Color  
[REDACTED] 02 POL RED

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the delinquent shown below, enclosed.  
I plead not guilty and promise to appear as requested.

Courtesy Fee: PAID IN FULL  
Collateral Fee: CC 2/10/02  
Physical Description: Original - CVR Copy  
Weather Conditions: [REDACTED] Heavy  
Traffic Conditions: [REDACTED] Heavy  
NPS Form 10-50, Rev. 5/97

WYNT  
Violation No. P 381763  
Offense No. 02-0362  
Print Officer Name: U. SELVA  
Officer No. S3014  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense: 2/10/02 14:16  
Place of Offense: WILDWATER EXHIBIT-NADSON  
Offense Description: 70-40-00 COOPERATES A MOTOR VEHICLE AT SPEEDS IN EXCESS OF THE POSTED SPEED LIMIT TO WITHIN 35 MPH SPEED ZONES  
Driver's License No. [REDACTED]  
State: [REDACTED] City: [REDACTED] Driver of Right: [REDACTED]  
Driver's License No. [REDACTED] Social Security Number: [REDACTED]

Vehicle Description: Vehicle Tag State Year Vehicle Make Vehicle Color  
[REDACTED] 02 POL RED

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the delinquent shown below, enclosed.  
I plead not guilty and promise to appear as requested.

Courtesy Fee: PAID IN FULL  
Collateral Fee: CC 2/10/02  
Physical Description: Original - CVR Copy  
Weather Conditions: [REDACTED] Heavy  
Traffic Conditions: [REDACTED] Heavy  
NPS Form 10-50, Rev. 5/97

**United States District Court  
Violation Notice**

Loc. Code: **WYNP** Violation No.: **P 200778** Third Officer Name: **T. SCHWARTZ**  
 Officer No.: **S-0151**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
 BOND # **020347** Date and Time of Offense: **02/03/02** Officer Charged: **1155 JG CER**  
 Place of Offense: **EAST ENTRANCE STATION** M.I. **W**  
 Offense Description: **VIOLATE CONDITIONS OF PERMIT - NO SNOWMOBILE REGISTRATION**

Defendant's Last Name: **RAJERS** First Name: **KELLY** M.I. **W**  
 State: **WY** Zip Code: **82001** Date of Birth: **01/15/78**  
 Driver's License No.: **1155 JG CER** Social Security Number: **1155 JG CER**  
 Vehicle Reg. No.: **1155 JG CER** Year: **1998** Vehicle Make: **POLARIS** Vehicle Color: **GREEN**

VEHICLE DESCRIPTION: **PA**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 YOUR COURT DATE: \_\_\_\_\_

Collateral (Fees): **50.00** For payment by credit card, SEE INSTRUCTIONS.  
 Original - CVB Copy

Physical Description:  Race  Height  Weight  Hair  Eyes  (Check One) Adult Juvenile  
 Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy

**United States District Court  
Violation Notice**

Loc. Code: **WYNP** Violation No.: **P 384862** Third Officer Name: **J. DUCKER**  
 Officer No.: **D-1987**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
 BOND # **02-0853** Date and Time of Offense: **02/03/02** Officer Charged: **1155 JG CER**  
 Place of Offense: **TUFF CITY** M.I. **C**  
 Offense Description: **operate a snowmobile at a high rate of speed by traveling at 35 mph in a 25 mph zone**

Defendant's Last Name: **ROBERT** First Name: **ROBERT** M.I. **C**  
 State: **WY** Zip Code: **82001** Date of Birth: **01/15/78**  
 Driver's License No.: **1155 JG CER** Social Security Number: **1155 JG CER**  
 Vehicle Reg. No.: **1155 JG CER** Year: **1998** Vehicle Make: **ATV** Vehicle Color: **Grey**

VEHICLE DESCRIPTION: **ATV**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 YOUR COURT DATE: \_\_\_\_\_

Collateral (Fees): **183.00** For payment by credit card, SEE INSTRUCTIONS.  
 Original - CVB Copy

Physical Description:  Race  Height  Weight  Hair  Eyes  (Check One) Adult Juvenile  
 Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy

United States District Court  
Violation Notice

Loc. Code <b>WYND</b>	Print Officer Name <b>J. Duckett</b>
Violation No. <b>P 384854</b>	Officer No. <b>D7937</b>
Bd# 02-0115	

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>01/12/02 1727</b>	Offense Charged <b>36CFR 4.21(c)</b>
Place of Offense <b>Grand Loop Road / Ent Mad Dump pit</b>	Offense Description <b>Operating a snowmobile in the excess of the posted speed by traveling 62 mph in 35 mph zone</b>
Defendant's Last Name <b>Fernal</b>	First Name <b>Michael</b>
Street Address [REDACTED]	City [REDACTED]
State [REDACTED]	Zip Code [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]
Social Security Number [REDACTED]	

P384854

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	<b>02</b>	<b>Ski-doo</b>	<b>red</b>

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

**59** YOUR COURT DATE

Court Address	Date
	Time

Collateral (fine) <b>\$91.00</b>	For payment by credit card, SEE INSTRUCTIONS.
-------------------------------------	---

Physical Description

Sex	Race	Height	Weight	Hair	Eyes	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP**  
 Violation No.: **P 384853**  
 Print Officer Name: **J. DUCKETT**  
 Officer No.: **D7937**  
 Bd# **02-0109**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **11/20/02 12:50**  
 Offense Charged: **316CER 7.13D**  
 Place of Offense: **W. Entrance Rd. W. of Madras, OR**  
 Offense Description: **Travel off design marked roadway on a snowmobile greater than 100 feet**

Defendant's Last Name: **Malstrom** First Name: **Megan** M.I.: **L** SSN: **08 05 03**

Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**

Driver's License No.: **[REDACTED]** DL State: **[REDACTED]** Social Security Number: **[REDACTED]**

**VEHICLE DESCRIPTION**

Vehicle Reg No.: **[REDACTED]** Vehicle Type: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Polaris** Vehicle Color: **Red**

**A**  **YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B**  **YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

**57** YOUR COURT DATE: \_\_\_\_\_  
 Court Address: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collateral (Cash): **100.00** For payment by credit card, SEE INSTRUCTIONS.

**Physical Description**

Original - CVR Copy

Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** Hair: **[REDACTED]** (Check One)  Male  Female

Weather Conditions: **[REDACTED]** Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: **[REDACTED]** Light  Medium  Heavy

NPS Form 10-011-101

**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP**  
 Violation No.: **P 380970**  
 Print Officer Name: **C.R. DIMARCO**  
 Officer No.: **2045**  
 Bd# **02-0109**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **11/20/02 12:50**  
 Offense Charged: **316CER 7.13E**  
 Place of Offense: **W. Entrance Rd. W. of Madras, OR**  
 Offense Description: **Travel off design marked roadway on a snowmobile, less than 100 feet**

Defendant's Last Name: **KREAGER** First Name: **TRISTAN** M.I.: **K**

Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**

Driver's License No.: **[REDACTED]** DL State: **[REDACTED]** Social Security Number: **[REDACTED]**

**VEHICLE DESCRIPTION**

Vehicle Reg No.: **[REDACTED]** Vehicle Type: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Polaris** Vehicle Color: **Red**

**A**  **YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B**  **YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

**56** YOUR COURT DATE: \_\_\_\_\_  
 Court Address: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collateral (Cash): **100.00** For payment by credit card, SEE INSTRUCTIONS.

**Physical Description**

Original - CVR Copy

Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** Hair: **[REDACTED]** (Check One)  Male  Female

Weather Conditions: **[REDACTED]** Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: **[REDACTED]** Light  Medium  Heavy

NPS Form 10-011-101



*Copy*

United States District Court  
Violation Notice

Loc. Code: **WYNP**  
Violation No.: **P 380972**  
Print Officer Name: **C.R. DIMARCO**  
Officer No.: **2045**

Date and Time of Offense: **11/9/02 135D**  
Offense Charged: **36 CFR 7.13 b**  
Place of Offense: **Grand Lodge Rd. N. of Madison Ga**  
Offense Description: **Supervising Adult - allowing unlicensed operation of a snowmobile, 1 year old son**

Defendant's Last Name: **BERNARD**  
First Name: **MILES**  
M.I.: **W.**

Street Address: [REDACTED]  
City: [REDACTED]  
State: [REDACTED] Zip Code: [REDACTED]  
Date of Birth: [REDACTED]  
DL State: [REDACTED] Social Security Number: [REDACTED]

Vehicle Tag No.: [REDACTED] Year: **02** Vehicle Make: **Plymouth** Vehicle Color: **Red**

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (cash): **50**  
Pay payment by credit card. SEE INSTRUCTIONS.

Original - CVR Copy  
Physical Description: [REDACTED]  
Weather Conditions: [REDACTED]  
Traffic Conditions: [REDACTED]

United States District Court  
Violation Notice

Loc. Code: **WYNP**  
Violation No.: **P 384805**  
Print Officer Name: **JOE HASEL & EASTMAN**  
Officer No.: **5257**

Date and Time of Offense: **01/14/02 1350**  
Offense Charged: **36 CFR 71.3(d)**  
Place of Offense: **Jeff Cliff**  
Offense Description: **Allowing an unlicensed, unpermitted child to operate a snowmobile.**

Defendant's Last Name: [REDACTED]  
First Name: [REDACTED]  
M.I.: **PAUL**

Street Address: **611 W. D. [REDACTED]**  
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]  
Date of Birth: [REDACTED]  
DL State: [REDACTED] Social Security Number: [REDACTED]

Vehicle Tag No.: [REDACTED] Year: **97** Vehicle Make: **Plymouth** Vehicle Color: **Red/Black**

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (cash): **150.00**  
Pay payment by credit card. SEE INSTRUCTIONS.

Original - CVR Copy  
Physical Description: [REDACTED]  
Weather Conditions: [REDACTED]  
Traffic Conditions: [REDACTED]

**United States District Court**  
**Violation Notice**

Loc. Code: **WJMP**  
Violation No: **P 382233**  
Offense No: **02-0191**

Defendant's Last Name: **HALVERSON**  
First Name: **KURT**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Date and Time of Offense: **1/19/02 1240**  
Offense Charged: **36 CFR 4.21(c) (22)**  
Offense Description: **ENTRANCE ROAD MA 3 (22)**  
**SPEED 59 1/3**

Offense Charged: **36 CFR 4.22 (b)**  
Offense Description: **UNLAWFUL OPERATION OF VEHICLE IN A STATE WITH A LICENSE WHICH IS A CONDITION OF THE LICENSE TO OPERATE THE VEHICLE IN THAT STATE**

Defendant's Last Name: **HOONSTAL**  
First Name: **CARY**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **ALCYC** Vehicle Color: **BLK**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **70-40-2003**

Collected (fine): **\$ 125**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: **Sex**  Male  Female **Height**  [ ] **Weight**  [ ] **Hair**  [ ] **Eyes**  [ ] **Build**  Adult  Juvenile **Other**  [ ]

Weather Conditions: **Clear**  **Cloudy**  **Rain**  **Snow**  **Ice**  **Fog**

Traffic Conditions: **Light**  **Medium**  **Heavy**

**United States District Court**  
**Violation Notice**

Loc. Code: **WJMP**  
Violation No: **P 381761**  
Offense No: **02-0189**

Defendant's Last Name: **HOONSTAL**  
First Name: **CARY**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Date and Time of Offense: **1/19/02 12:08**  
Offense Charged: **36 CFR 4.22 (b)**  
Offense Description: **UNLAWFUL OPERATION OF VEHICLE IN A STATE WITH A LICENSE WHICH IS A CONDITION OF THE LICENSE TO OPERATE THE VEHICLE IN THAT STATE**

Defendant's Last Name: **HOONSTAL**  
First Name: **CARY**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **SAFARI** Vehicle Color: **BLU**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **70-40-2003**

Collected (fine): **\$ 100**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: **Sex**  Male  Female **Height**  [ ] **Weight**  [ ] **Hair**  [ ] **Eyes**  [ ] **Build**  Adult  Juvenile **Other**  [ ]

Weather Conditions: **Clear**  **Cloudy**  **Rain**  **Snow**  **Ice**  **Fog**

Traffic Conditions: **Light**  **Medium**  **Heavy**

Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382189</b>		Print Officer Name <b>J. HANNAFORD</b>	
#020184		Office No. <b>257</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>01/18/02 - 1545</b>		Offense Charge <b>36CFR 4.21 (c)</b>	
Place of Offense <b>WENT RD, HP 3 (L201)</b>			
Offense Description <b>SPEED - 54/35 (304000)</b>			
Defendant's Last Name <b>LINDHOLM</b>		First Name <b>MICHAEL</b>	M.I. <b>D.</b>
Street Address [REDACTED]			
City [REDACTED]		State [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]		D.L. State [REDACTED]	Social Security Number [REDACTED]
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>01</b>	Vehicle Make <b>POL</b>
			Vehicle Color <b>RED</b>
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <i>(Grounded)</i></p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
80 Court Address		YOUR COURT DATE	
		Date	
		Time	
Collateral Fine <b>\$77.00</b>		For payment by credit card, SEE INSTRUCTIONS.	
Physical Description Original - CVB Copy			
Sex <b>M</b>	Race <b>[REDACTED]</b>	Height <b>[REDACTED]</b>	Weight <b>[REDACTED]</b>
Hair <b>[REDACTED]</b>	Eyes <b>[REDACTED]</b>	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Weather Conditions: <input checked="" type="radio"/> Clear <input type="radio"/> Cloudy <input type="radio"/> Rain <input type="radio"/> Snow <input type="radio"/> Ice <input type="radio"/> Fog			
Traffic Conditions: <input checked="" type="radio"/> Light <input type="radio"/> Medium <input type="radio"/> Heavy			

(CRD)

**United States District Court  
Violation Notice**

Loc. Code: WYNI

Violation No.: P 384765

Print Officer Name: Dennis Young

Officer No.: 17368

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: 61-01-11

Date and Time of Offense: 1-15-02 1657

Offense Charged: 38 CFR CH. I SEC 71.3L

Place of Offense: MAJISCA TUNIC TIA

Offense Description: SNOWMOBILE - ALLOW UNLICENSED SNOWMOBILE OPERATION

Defendant's Last Name: MADEW

First Name: DAVID

MI: -

Street Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED] Date of Birth: [REDACTED]

Telephone: [REDACTED] Mailing Address: [REDACTED] Social Security Number: [REDACTED]

P84765

VEHICLE DESCRIPTION

Vehicle Title No.	Vehicle Type	State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	[REDACTED]	<u>200</u>	<u>AV</u>	<u>BLU</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

78 YOUR COURT DATE

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Time: \_\_\_\_\_

Co. Rate: \$50 For payment by credit card, SEE INSTRUCTIONS.

Physical Description

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Adult

Weather Conditions: Cloud Cloudy Rain Snow Ice Fog

Traffic Conditions: Light Medium Heavy

NPS Form 10-50, Rev. 5/97

**United States District Court  
Violation Notice**

License Code: **WYNP**  
 Violation No.: **P 114906**  
 Court Address: **Hubbard**  
 Date and Time of Offense: **2234**  
 Officer Charged: **2234**  
 Place of Offense: **117102 1550**  
 Other Description: **36 CFR 421(c)**  
 Offense Description: **Speeding - operate on a non-motor vehicle at a speed in excess of the posted speed limit**  
 Defendant's Last Name: **THOMPSON**  
 First Name: **Cory**  
 Sex: **M**  
 Date of Birth: **70-10-20**  
 Social Security Number: **[REDACTED]**  
 State: **MI**  
 Zip Code: **[REDACTED]**  
 City: **[REDACTED]**  
 Street Address: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**  
 Vehicle Tag State: **[REDACTED]**  
 Year: **97**  
 Vehicle Make: **Jeep**  
 Vehicle Color: **Red**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **7/7**  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (Cash): **95**  
 Per payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy  
 Sex:  Male  Female  Hair:  Black  Brown  Grey  Other (Specify One)  
 Weight:  Light  Medium  Heavy  
 Build:  Slender  Average  Stocky  
 Eye Color:  Blue  Green  Brown  Grey  Other (Specify One)  
 Hair Color:  Black  Brown  Grey  Other (Specify One)  
 Traffic Conditions:  Clear  Rain  Snow  Ice  Fog

**United States District Court  
Violation Notice**

License Code: **WYNP**  
 Violation No.: **P 382281**  
 Court Address: **Arroyo Frk**  
 Date and Time of Offense: **02-06-7**  
 Officer Charged: **FLYK**  
 Place of Offense: **617012 1612**  
 Other Description: **36 CFR 421(c)**  
 Offense Description: **Speed 56/35**  
 Defendant's Last Name: **THOMPSON**  
 First Name: **Cory**  
 Sex: **M**  
 Date of Birth: **70-10-20**  
 Social Security Number: **[REDACTED]**  
 State: **MI**  
 Zip Code: **[REDACTED]**  
 City: **[REDACTED]**  
 Street Address: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**  
 Vehicle Tag State: **[REDACTED]**  
 Year: **97**  
 Vehicle Make: **Jeep**  
 Vehicle Color: **Black**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **7/5**  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (Cash): **83.00**  
 Per payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy  
 Sex:  Male  Female  Hair:  Black  Brown  Grey  Other (Specify One)  
 Weight:  Light  Medium  Heavy  
 Build:  Slender  Average  Stocky  
 Eye Color:  Blue  Green  Brown  Grey  Other (Specify One)  
 Hair Color:  Black  Brown  Grey  Other (Specify One)  
 Traffic Conditions:  Clear  Rain  Snow  Ice  Fog

Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 380971</b>		Print Officer Name <b>C.R. DIMMICK</b>	
<b>BD# 02 - 0158</b>		Officer No. <b>2045</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>1/17/02 0935</b>	Offense Charged <b>36CFR 4.22(b)(1) 73-00-00</b>		
Place of Offense <b>West End Rd - New Milford - Madison</b>			
Offense Description <b>Unsafe Operation - Careless Operation Operate a Snowmobile on a road and in a manner that is unsafe considering traffic, visibility, environment</b>			
Defendant's Last Name <b>PINCIARO</b>		First Name <b>DAVID</b>	M.I. <b>E.</b>
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>02</b>	Vehicle Make <b>Polaris RMX</b>
		Vehicle Color <b>Blue</b>	
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAKE THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
73 YOUR COURT DATE			
Court Address [REDACTED]		Date [REDACTED]	
		Time [REDACTED]	
Collateral (fine) <b>100.-</b>	For payment by credit card, SEE INSTRUCTIONS.		
Original - CVB Copy			
Sex [REDACTED]	Build [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]		Eyes [REDACTED]	
(Check One) <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile			
Weather Conditions: <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog			
Traffic Conditions: <input type="checkbox"/> Light <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Heavy			

P 380971

CRD

**United States District Court  
Violation Notice**

Loc. Code: WYNP

Violation No.: P384855      Print Officer Name: J. Duckett  
 Officer No.: D1937

Batt 02 - 0140

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 01/14/02 1539      Offense Charged: 30 CFR 4.21 (c)

Place of Offense: w. Entrance Rd

Offense Description: 70-40.00  
operating a snowmobile in excess  
of the posted speed by traveling  
52 mph in a 35 mph zone

Defendant's Last Name: Ghuneim      First Name: Michael      M.I.: F

Street Address: [REDACTED]

City: [REDACTED]      State: [REDACTED]      Zip Code: [REDACTED]      Date of Birth: [REDACTED]

Driver's License No.: [REDACTED]      D.L. State: [REDACTED]      Social Security Number: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
/	/	/	<u>Belgian</u>	<u>blue</u>

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

67 YOUR COURT DATE

Court Address: [REDACTED]      Date: [REDACTED]  
 Time: [REDACTED]

Collateral (fine): \$ 700      For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	<input checked="" type="radio"/> Adult	<input type="radio"/> Juvenile

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: Light  Medium  Heavy

NPS Form 10-50, Rev. 5/97

P384855

MC

CRD

United States District Court  
Violation Notice

Loc. Code <b>WYNP</b>	Print Officer Name <b>MICHAEL R EASTMAN</b>
Violation No. <b>P 384804</b>	Officer No. <b>E 8757</b>
Burd# 02-0126	

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>1/3/02 1710</b>	Offense Charged <b>36CFR 2.2 (a)(2)</b>
Place of Offense <b>1/2 mile North of Fountain Flats Drive</b>	
Offense Description <b>Disturbing Wildlife (bison) by driving snowmobile to close. As a result one bison lying down jumped up and ran off the road.</b>	

P 384804

Defendant's Last Name <b>Kounsky</b>	First Name <b>JOE</b>	M.I. <b>H</b>
---	--------------------------	------------------

State	Zip Code	Date of Birth
-------	----------	---------------

Driver's License No.	D.L. State	Social Security Number
----------------------	------------	------------------------

VEHICLE DESCRIPTION				
Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

<b>60</b>	YOUR COURT DATE
Court Address	Date
	Time

Collateral (fine) <b>\$50.00</b>	For payment by credit card, SEE INSTRUCTIONS.
-------------------------------------	---

Physical Description						Original - CVB Copy
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult Juvenile
Weather Conditions:	<input checked="" type="radio"/> Clear	<input type="radio"/> Cloudy	<input type="radio"/> Rain	<input type="radio"/> Snow	<input type="radio"/> Ice	<input type="radio"/> Fog
Traffic Conditions:	<input checked="" type="radio"/> Light	<input type="radio"/> Medium	<input type="radio"/> Heavy			



**United States District Court**  
**Violation Notice**

Loc. Code: **WVNP**  
Violation No.: **P 384767**  
First Officer Name: **DENNIS YOUNG**  
Officer No.: **17368**

# **02-02-70**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: **02-02-70 10:01-11**  
Offense Charged: **1-26-02-095A RECD. CH. I. SEC. 17.1**  
**WEST ENTRANCE ROAD RAINIER**  
Offense Description: **SWIMMING - ALLOW UNLICENSED OPERATION**

Defendant's Last Name: **DOYLE** M.I. **R**  
Street Address: **[REDACTED]**  
City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle No.: **[REDACTED]** Year: **[REDACTED]** Make: **[REDACTED]** Model: **[REDACTED]** Color: **[REDACTED]**  
Vehicle Description: **[REDACTED]**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **1/11** Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collected (fine): **5.50** For payment by credit card, SEE INSTRUCTIONS.  
Physical Description: Original - CV9 Copy  
Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** Hair: **[REDACTED]** (Circle One) **Male** **Female**  
Weather Condition: **Clear** **Cloudy** **Rain** **Snow** **Ice** **Fog**  
Traffic Condition: **Light** **Medium** **Heavy**

**United States District Court**  
**Violation Notice**

Loc. Code: **WVNP**  
Violation No.: **P 353765**  
First Officer Name: **J. Stobjinski**  
Officer No.: **696**

# **02-02-66**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: **02-02-66 3:00-4:00**  
Offense Charged: **1-26-02-1626 36 CFR 4.21(c)**  
**W. End Rd - Mir 3 (1201)**  
Offense Description: **Speed 56/35 (70-40-00)**

Defendant's Last Name: **Leika** M.I. **A**  
Street Address: **[REDACTED]**  
City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**  
Driver's License No.: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle No.: **[REDACTED]** Year: **[REDACTED]** Make: **[REDACTED]** Model: **[REDACTED]** Color: **[REDACTED]**  
Vehicle Description: **Did not leave**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **1/10** Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collected (fine): **83.00** For payment by credit card, SEE INSTRUCTIONS.  
Physical Description: Original - CV9 Copy  
Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** Hair: **[REDACTED]** (Circle One) **Male** **Female**  
Weather Condition: **Clear** **Cloudy** **Rain** **Snow** **Ice** **Fog**  
Traffic Condition: **Light** **Medium** **Heavy**

Loc. Code <b>WYNP</b>	<b>United States District Court Violation Notice</b>	
Violation No. <b>P 380745</b> <b>02-0255</b>	Print Officer Name <b>April Wood</b>	Officer No. <b>W0350</b>

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>12/02 1030</b>	Offense Charged <b>30(C.F.R. 7.13(c))</b>
Place of Offense <b>Old Loop Road - Old Faithful</b>	Offense Description <b>Drivers license required for operating snowmobile.</b>
<b>01-01-10</b>	

Defendant's Last Name <b>PARKER</b>	First Name <b>RICHARD</b>	M.I. <b>A</b>
Street Address [REDACTED]	Date of Birth [REDACTED]	License Number [REDACTED]
City/State [REDACTED]	State [REDACTED]	Social Security Number [REDACTED]

VEHICLE DESCRIPTION				
Vehicle Tag No. <b>Snowmobile</b>	Vehicle Tag State [REDACTED]	Year <b>02</b>	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Blue</b>

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below enclosed.
- I plead not guilty and promise to appear as required.

<b>108</b>	YOUR COURT DATE
Court Address	Date
	Time

Collateral (fine) <b>\$50.00</b>	For payment by credit card, SEE INSTRUCTIONS.
-------------------------------------	---

Physical Description	Original - CVB Copy
Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED]	(Circle One) Adult Juvenile
Weather Conditions: Clear Cloudy Rain Snow Ice Fog	
Traffic Condition: Light Medium Heavy	

P380745

United States District Court  
Violation Notice

Loc. Code: **WYNP**

Violation No. **02-0253**  
**P 196939**

Print Officer Name: **JUSTIN IVARY**

Officer No.: **I 9949**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: **8/24/02 1220** Offense Charged: **36 CFR - 2.18(d)(4)**

Place of Offense: **SOUTH BURNING ROAD 0801**

Offense Description: **MAKING: OPERATING A SNOWMOBILE IN EXCESS OF 45 MPH**

**61-01-05**

Defendant's Last Name: **EAUGUST** First Name: **IAN** MI: **J**

Street Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED] Date of Birth: [REDACTED]

Driver's License No.: [REDACTED] D.L. State: [REDACTED] Social Security Number: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	<b>02</b>	<b>361-DOO</b>	<b>RED</b>

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

**107** YOUR COURT DATE

Court Address: [REDACTED] Date: [REDACTED]

Time: [REDACTED]

Collateral (fine): **\$100** For payment by credit-card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)					
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	<input checked="" type="radio"/> Adult	<input type="radio"/> Juvenile				
Weather Conditions:						<input type="checkbox"/> Clear	<input checked="" type="checkbox"/> Cloudy	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice	<input type="checkbox"/> Fog
Traffic Conditions:						<input checked="" type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy	<b>DGP</b>		

P196939

**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP**  
Violation No.: **P 384859**  
Print Offense Name: **Duckett, J**  
Offense No.: **D7937**

Date and Time of Offense: **01/23/02 1019**  
Offense Charged: **Block 4.2(C)**

Place of Offense: **W. Entrance rd / MT Hayes**  
Offense Description: **operate a snowmobile in the excess of the posted speed by traveling 62 mph in a 35 mph zone**

Date of Birth: **01/23/02**  
Sex: **M**  
M.I.: **P**  
Last Name: **Brent**

City: **[REDACTED]**  
State: **[REDACTED]**  
Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**

Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]**  
Vehicle Tag State: **[REDACTED]**  
Year: **[REDACTED]**  
Vehicle Make: **Acura**  
Vehicle Model: **CRF**  
Vehicle Color: **Green**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **1/25**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fine): **\$100.00**  
By payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

(Check One)  
Adult  Juvenile  Inc  Prob  Parole  Other  Other  Other

**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP**  
Violation No.: **P 190934**  
Print Offense Name: **Clark, NELSON**  
Offense No.: **574**

Date and Time of Offense: **01/23/02 1430**  
Offense Charged: **3rd CFR 4.22(B)**

Place of Offense: **Pass Kopper - 5105 S. W. 1st**  
Offense Description: **without operation of a motor vehicle with out due care or speed considering traffic and conditions and**

Date of Birth: **01/23/02**  
Sex: **M**  
M.I.: **J**  
Last Name: **Clark**

City: **[REDACTED]**  
State: **[REDACTED]**  
Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**

Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]**  
Vehicle Tag State: **[REDACTED]**  
Year: **[REDACTED]**  
Vehicle Make: **[REDACTED]**  
Vehicle Model: **[REDACTED]**  
Vehicle Color: **[REDACTED]**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **1/24**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fine): **[REDACTED]**  
By payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

(Check One)  
Adult  Juvenile  Inc  Prob  Parole  Other  Other  Other

**United States District Court**  
**Violation Notice**

Loc. Code: WV-11-P  
 Violation No.: 020238  
 P 190932  
 Plaintiff Name: CASEY NELSON  
 Officer No.: 514

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: 01/30/21 1850  
 Officer Charged: SAUER 42281  
 Offense Description: DRIVER SAID TO BE A MARIJUANA USER WITH A BAC OF .017. THE DRIVER WAS STOPPED AT A CHECKPOINT THAT WAS CONDUCTED BY THE POLICE. THE DRIVER SAID TO BE A MARIJUANA USER.

Defendant's Name: BENTLEY  
 Defendant's Address: [REDACTED]  
 Defendant's Phone: [REDACTED]  
 Defendant's License No.: [REDACTED]  
 Defendant's Sex: [REDACTED]  
 Defendant's Race: [REDACTED]  
 Defendant's Height: [REDACTED]  
 Defendant's Weight: [REDACTED]  
 Defendant's Eyes: [REDACTED]  
 Defendant's Hair: [REDACTED]  
 Defendant's Complexion: [REDACTED]  
 Defendant's Traffic Condition: [REDACTED]

**VEHICLE DESCRIPTION**

Vehicle Tag No.: [REDACTED]  
 Vehicle Tag State: 01  
 Vehicle Make: Volvo  
 Vehicle Color: Red

**A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B  YOU MUST APPEAR IN COURT WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

102 YOUR COURT DATE  
 Court Address: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (See 102) 102 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] Complexion: [REDACTED] Traffic Condition: [REDACTED]

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

See Form 10-50, 10-52

**United States District Court**  
**Violation Notice**

Loc. Code: WV-11-P  
 Violation No.: 020239  
 P 190933  
 Plaintiff Name: CASEY NELSON  
 Officer No.: 514

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: 01/23/21 1420  
 Officer Charged: 3L FR 42261  
 Offense Description: DRIVER SAID TO BE A MARIJUANA USER WITH A BAC OF .017. THE DRIVER WAS STOPPED AT A CHECKPOINT THAT WAS CONDUCTED BY THE POLICE. THE DRIVER SAID TO BE A MARIJUANA USER.

Defendant's Name: DAVID  
 Defendant's Address: [REDACTED]  
 Defendant's Phone: [REDACTED]  
 Defendant's License No.: [REDACTED]  
 Defendant's Sex: [REDACTED]  
 Defendant's Race: [REDACTED]  
 Defendant's Height: [REDACTED]  
 Defendant's Weight: [REDACTED]  
 Defendant's Eyes: [REDACTED]  
 Defendant's Hair: [REDACTED]  
 Defendant's Complexion: [REDACTED]  
 Defendant's Traffic Condition: [REDACTED]

**VEHICLE DESCRIPTION**

Vehicle Tag No.: [REDACTED]  
 Vehicle Tag State: 01  
 Vehicle Make: Volvo  
 Vehicle Color: Red

**A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B  YOU MUST APPEAR IN COURT WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

103 YOUR COURT DATE  
 Court Address: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (See 102) 102 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] Complexion: [REDACTED] Traffic Condition: [REDACTED]

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

See Form 10-50, 10-52

Loc. Code <b>WVNP</b>		<b>United States District Court Violation Notice</b>		<b>P</b>			
Violation No. <b>P 382191</b>		Print Officer Name <b>J. HANNAFORD</b>					
<b>#020203</b>		Officer No. <b>257</b>					
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION							
Date and Time of Offense <b>01/27/02 7:10 310 CFR 7.13(L)</b>		Offense Charged					
Place of Offense <b>WEST ENT STA. (1201)</b>							
Offense Description <b>DRIVERS LICENSE REQUIRED TO OPERATE SNOWMOBILE (610110)</b>							
Defendant's Last Name <b>GRAVDahl</b>		First Name <b>TAMARA</b>	M.I. <b>L</b>	<b>P 382191</b>			
Street Address [REDACTED]							
City [REDACTED]		State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]			
D.L. State [REDACTED]		Social Security Number [REDACTED]					
VEHICLE DESCRIPTION							
Vehicle Tag No. —	Vehicle Tag State —	Year —	Vehicle Make —	Vehicle Color —			
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p>— I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p>— I plead not guilty and promise to appear as required.</p>							
<b>100</b> YOUR COURT DATE							
Court Address [REDACTED]			Date [REDACTED]				
Time [REDACTED]							
Collateral (if any) <b>\$ 50</b>		For payment by credit card, SEE INSTRUCTIONS.					
Physical Description Original - CVB Copy							
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult Juvenile	
						Adult Juvenile	
Weather Conditions:		Clear	Cloudy	Rain	Snow	Ice	Fog
Traffic Conditions:		Light	Medium	Heavy			

Loc. Code <i>WIND</i>	<b>United States District Court Violation Notice</b>	
Violation No. <i>20176</i>	Print Officer Name <i>LARRY NELSON</i>	
<b>P190931</b>	Officer No. <i>0401 514</i>	

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Vehicle Tag No. <i>1105</i>	Offense Charged <i>36CFR 4.22 B1</i>	
Place of Offense <i>Middlebury (Coyser Basin) - Grand Loop Rd</i>		
Offense Description <i>OPERATES A MOTOR VEHICLE (snowmobile) without due care or AT A SPEED GREATER THAN IS REASONABLE CONSIDERING TRAFFIC, WILDLIFE, ROAD CONDITIONS 7.300.</i>		
Defendant's Last Name <i>Coy</i>	First Name <i>Tyler</i>	M.I. <i>Kelly</i>
Street Address [REDACTED]		
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number <i>UNKNOWN</i>

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	<i>01</i>	<i>TAHES</i>	<i>BLK</i>

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

*94* YOUR COURT DATE

Court Address	Date
	Time

Collateral (fee) *100* For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVR Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult Juvenile
						Adult

Weather Conditions: Clear  Cloudy Rain Snow Ice Fog  
 Windy Conditions: Light Medium  Heavy

United States District Court  
Violation Notice

Loc. Code: **WVMP**  
Violation No: **02-2096**  
P 190930

Print Officer Name: **Cathy Nelson**  
Officer No: **0401**  
514

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: **01/10/02 1120**  
 Officer Charged: **3607R 422 BU**  
 Offense Description: **RED FIGHTER DAMAGED AND A MAJOR VEHICLE AS AT 150000 GREATS HAPPY'S ASSUMINGLY CONSIDER WILL BE TREATING RE: HEADLIGHTS 750000**

Defendant's Last Name: **TRUST**  
First Name: **ROSEY**  
Middle Name: **C**  
Sex: **F**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **MD**  
Date of Birth: **[REDACTED]**  
D.L. State: **[REDACTED]**  
Social Security Number: **[REDACTED]**  
M.D.I. No: **[REDACTED]**

Vehicle Registration No.: **[REDACTED]**  
Vehicle Make: **01**  
Vehicle Model: **2001**  
Vehicle Year: **01**  
Vehicle Color: **201 FOLKSWAGEN**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I place and fully and promise to appear as required.

YOUR COURT DATE: **93**

Collateral (USD): **100**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex: **Female**  
 Race: **White**  
 Hair: **Blonde**  
 Eyes: **Blue**  
 Height: **5'00"**  
 Weight: **110**  
 Build: **Slender**  
 Complexion: **Clear**  
 Scars: **None**  
 Tattoos: **None**  
 Glasses: **None**  
 Other: **None**

Signature: **[Signature]**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

United States District Court  
Violation Notice

Loc. Code: **WVMP**  
Violation No: **02-2097**  
P 190929

Print Officer Name: **Cathy Nelson**  
Officer No: **0401**  
514

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 Date and Time of Offense: **01/10/02 1120**  
 Officer Charged: **3607R 422 BU**  
 Offense Description: **TO DRIVE A SUBSTANTIAL MINOR TO DRIVE A SUBSTANTIAL MINOR OUT A VALID LICENSE OR PERMIT PLATE**

Defendant's Last Name: **HARRICK**  
First Name: **PETER**  
Middle Name: **S**  
Sex: **M**  
Street Address: **[REDACTED]**  
City: **[REDACTED]**  
State: **MD**  
Date of Birth: **[REDACTED]**  
D.L. State: **[REDACTED]**  
Social Security Number: **[REDACTED]**  
M.D.I. No: **[REDACTED]**

Vehicle Registration No.: **[REDACTED]**  
Vehicle Make: **02**  
Vehicle Model: **2002**  
Vehicle Year: **02**  
Vehicle Color: **2002 PLYMOUTH**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I place and fully and promise to appear as required.

YOUR COURT DATE: **93**

Collateral (USD): **50**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex: **Male**  
 Race: **White**  
 Hair: **Black**  
 Eyes: **Brown**  
 Height: **5'00"**  
 Weight: **150**  
 Build: **Medium**  
 Complexion: **Clear**  
 Scars: **None**  
 Tattoos: **None**  
 Glasses: **None**  
 Other: **None**

Signature: **[Signature]**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_



Loc. Code <b>WVND</b>		<b>United States District Court Violation Notice</b>					
Violation No. <b>P 384766</b>	Print Officer Name <b>MICHAEL R. CANTRELL</b>	Officer No. <b>E2757</b>					
<b>02-0209</b>		<b>61-01-05</b>					
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION							
Date and Time of Offense <b>1-20-02 1617</b>	Offense Charged <b>36(C)(1)(C) II SEC. 21824</b>	<b>P 384766</b>					
Place of Offense <b>WEST ENTRANCE RD @ SEIGH MILE BRIDGE</b>	Offense Description <b>SMALLER - RAMP IN EXCESS OF 45 MPH</b>						
Defendant's Last Name <b>OTTER</b>	First Name <b>DANIEL</b>			M.I. <b>L</b>			
City	State	Zip Code	Date of Birth				
Defendant's License No.	D.L. State	Social Security Number					
VEHICLE DESCRIPTION							
Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color			
		<b>2002</b>	<b>POL</b>	<b>BLK</b>			
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>							
<b>88</b> YOUR COURT DATE							
Court Address			Date	Time			
Collateral (None)	For payment by credit card, SEE INSTRUCTIONS.						
<b>\$100</b>							
Physical Description Original - CVB Copy							
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult Juvenile	
Weather Conditions:		Clear	<input checked="" type="checkbox"/> Cloudy	Rain	Snow	Ice	Fog
Traffic Conditions:		Light	<input checked="" type="checkbox"/> Medium	Heavy			

**United States District Court**  
**Violation Notice**

Loc. Code: **WVMP** Part Officer Name: **T. SULLIVA**  
 Violation No.: **P 381762** Officer No.: **53014**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **11/12/02 11:05** Offense Charged: **3. (C.F.R. 4.2 (c))**  
 Place of Offense: **FOUNTAIN PLAS**

Offense Description: **OPERATES A MOTOR VEHICLE IN EXCESS OF THE SPEED LIMIT. THIS VIOLATION IS LIMITED TO 53 MPH IN 35 MPH ZONE.**

Defendant's Last Name: **WACHEN** First Name: **A** M.A. **A**

City: **[REDACTED]** State: **[REDACTED]** Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]** DL Class: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle Description: **[REDACTED]** Vehicle Year: **01** Vehicle Make: **ACU** Vehicle Color: **BL**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

**86** YOUR COURT DATE: \_\_\_\_\_ Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (fine): **74** For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVN Copy

Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Hair: **[REDACTED]** Eyes: **[REDACTED]** (Click One)  
 Weather Condition: **Clear** Cloudy **[REDACTED]** Rain **[REDACTED]** Snow **[REDACTED]** Ice **[REDACTED]** Fog **[REDACTED]**  
 Traffic Condition: **Light** Moderate **[REDACTED]** Heavy **[REDACTED]**

**United States District Court**  
**Violation Notice**

Loc. Code: **WVMP** Part Officer Name: **CHRISTOPHER ESTERHA**  
 Violation No.: **P 384806** Officer No.: **60257**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **1/26/02 1615** Offense Charged: **3. (C.F.R. 4.2 (c))**  
 Place of Offense: **3500 E. BERRY BLVD. W. IN WASH DC**

Offense Description: **EXCEEDS SPEED LIMIT IN EXCESS OF 45 MPH.**

Defendant's Last Name: **SPINDLER** First Name: **[REDACTED]** M.A. **[REDACTED]**

City: **[REDACTED]** State: **[REDACTED]** Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]** DL Class: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle Description: **[REDACTED]** Vehicle Year: **01** Vehicle Make: **POLARIS** Vehicle Color: **BLK**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

**87** YOUR COURT DATE: \_\_\_\_\_ Date: \_\_\_\_\_  
 Time: \_\_\_\_\_

Collateral (fine): **100.00** For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVN Copy

Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Hair: **[REDACTED]** Eyes: **[REDACTED]** (Click One)  
 Weather Condition: **Clear** Cloudy **[REDACTED]** Rain **[REDACTED]** Snow **[REDACTED]** Ice **[REDACTED]** Fog **[REDACTED]**  
 Traffic Condition: **Light** Moderate **[REDACTED]** Heavy **[REDACTED]**

Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382182</b> <b>#02</b> <b>#10080</b>		Print Officer Name <b>J. HANNAPED</b>	
		Officer No. <b>257</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>01/08/02 - 1615</b>		Offense Charged <b>26 CFR 4.21 (a)</b>	
Place of Offense <b>W. ENT. RD, MP 3 (120)</b>			
Offense Description <b>SPEED - 51/35</b> <b>(20000)</b>			
Defendant's Last Name <b>HALLETT</b>		First Name <b>VIRGINIA</b>	M.I. <b>C.</b>
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>01</b>	Vehicle Make <b>AC</b>
		Vehicle Color <b>RED</b>	
<input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Summons) <input checked="" type="checkbox"/> B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.			
Court Address [REDACTED]		YOUR COURT DATE Date Time	
<input checked="" type="checkbox"/> For payment by credit card, SEE INSTRUCTIONS. <input type="checkbox"/>			
Physical Description		Original - CVB Copy	
Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Race <input checked="" type="checkbox"/> [REDACTED] <input type="checkbox"/> [REDACTED]	Height [REDACTED]	Weight [REDACTED]
		Hair [REDACTED]	Eyes [REDACTED]
		(Check One) <input checked="" type="checkbox"/> Adult <input type="checkbox"/> Juvenile	
Weather Conditions: <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog			
Traffic Conditions: <input checked="" type="checkbox"/> Light <input type="checkbox"/> Medium <input type="checkbox"/> Heavy			

P382182

**United States District Court**  
**Violation Notice**

Esc. Code: **WYAP**  
Violation No.: **P 384771**  
Offense No.: **02-0336**

Print Officer Name: **Dennis Young**  
Officer No.: **17368**

Date and Time of Offense: **01-01-2002 15:22**  
Offense Charged: **36 CAL. V. SEC. 2.1**

Physical Description: **WALTER DAVID THURGOOD**  
Sex: **M**  
Hair: **BRN**  
Eyes: **BLU**  
Build: **AVG**  
Complexion: **FAIR**  
Height: **5'10"**  
Weight: **170**  
Age: **37**

Vehicle Description: **2001 FORD MUSTANG**  
Year: **2001**  
Make: **FORD**  
Model: **MUSTANG**  
Color: **BLK**

City: **IRVINE**  
State: **CA**  
Zip Code: **92614**  
Zone of Birth: **IRVINE, CA**

Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Title No.: **[REDACTED]**  
Vehicle Make: **FORD**  
Vehicle Model: **MUSTANG**  
Vehicle Color: **BLK**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Collateral (if any): **\$100**  
No payment by credit card. SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy  
Sex:  Male  Female  
Hair:  Black  Brown  Red  Grey  Other  
Eyes:  Blue  Green  Brown  Grey  Other  
Build:  Thin  Average  Heavy  
Complexion:  Clear  Fair  Tan  Dark  
Height:  5'0"  5'1"  5'2"  5'3"  5'4"  5'5"  5'6"  5'7"  5'8"  5'9"  5'10"  5'11"  6'0"  6'1"  6'2"  6'3"  6'4"  6'5"  6'6"  6'7"  6'8"  6'9"  6'10"  6'11"  7'0"

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

**United States District Court**  
**Violation Notice**

Esc. Code: **WNP**  
Violation No.: **P 384860**  
Offense No.: **03-0480**

Print Officer Name: **J. Duckett**  
Officer No.: **[REDACTED]**

Date and Time of Offense: **03-04-2003 07:00**  
Offense Charged: **VEHICLE CODE 36 CAL. V. SEC. 2.1**

Physical Description: **PERMANENTLY BLIND**  
Sex: **M**  
Hair: **BLK**  
Eyes: **BLK**  
Build: **AVG**  
Complexion: **FAIR**  
Height: **5'10"**  
Weight: **170**  
Age: **37**

Vehicle Description: **2001 FORD MUSTANG**  
Year: **2001**  
Make: **FORD**  
Model: **MUSTANG**  
Color: **BLK**

City: **IRVINE**  
State: **CA**  
Zip Code: **92614**  
Zone of Birth: **IRVINE, CA**

Driver's License No.: **[REDACTED]**  
Social Security Number: **[REDACTED]**

Vehicle Title No.: **[REDACTED]**  
Vehicle Make: **FORD**  
Vehicle Model: **MUSTANG**  
Vehicle Color: **BLK**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Collateral (if any): **\$100**  
No payment by credit card. SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy  
Sex:  Male  Female  
Hair:  Black  Brown  Red  Grey  Other  
Eyes:  Blue  Green  Brown  Grey  Other  
Build:  Thin  Average  Heavy  
Complexion:  Clear  Fair  Tan  Dark  
Height:  5'0"  5'1"  5'2"  5'3"  5'4"  5'5"  5'6"  5'7"  5'8"  5'9"  5'10"  5'11"  6'0"  6'1"  6'2"  6'3"  6'4"  6'5"  6'6"  6'7"  6'8"  6'9"  6'10"  6'11"  7'0"

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Loc. Code <b>WYMP</b>		<b>United States District Court Violation Notice</b>				<b>P</b>
Violation No. <b>P 114908</b>		Print Officer Name <b>Hubbard</b>				
<b>02-0328</b>		Officer No. <b>2234</b>				
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION						
Date and Time of Offense <b>2/2/02 11:50</b>		Offense Charged <b>36 CFR 9.13 (e)(4)</b>				
Place of Offense <b>Frontier Flights Grand Loop Road</b>						
Offense Description <b>Drivers Lic/Learners permit required -supervising adult</b>						
Defendant's Last Name <b>Keep</b>		First Name <b>Paul</b>		M.I. <b>J</b>		
Street Address [REDACTED]						
City [REDACTED]		State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]		
Driver's License No. [REDACTED]		D.L. State [REDACTED]	Social Security Number [REDACTED]			
VEHICLE DESCRIPTION						
Vehicle Tag No. <b>Snowmobile</b>	Vehicle Tag State [REDACTED]	Year <b>02</b>	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Black</b>		
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>						
YOUR COURT DATE						
Court Address				Date		
				Time		
Collateral ( <b>\$50</b> )		For payment by credit card, SEE INSTRUCTIONS.				
Physical Description						
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) <b>Adult</b> Juvenile
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Weather Conditions		<b>Clear</b>	Cloudy	Rain	Snow	Ice Fog
Traffic Conditions		<b>Light</b>	Medium	Heavy		

P114908

**United States District Court**  
**Violation Notice**

Loc. Code: **WVMP**  
Violation No.: **P 384810**  
Print Officer Name: **Michael R Eastman**  
Officer No.: **62757**  
Bad #: **02-0326**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **9/16/02**  
Offense Charged: **36CFR 422(b)(1)**  
Offense Description: **Swampable life jacket operation - operate in motor vehicle without the care or at a speed greater than reasonable considering weather, traffic, weather, road conditions and road character**

Offense Description: **Swampable life jacket operation - operate in motor vehicle without the care or at a speed greater than reasonable considering weather, traffic, weather, road conditions and road character**

Defendant's Last Name: **Smith** First Name: **Justin** MI: **MI**  
Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]** Driver's License No.: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Vehicle Tag State: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Plymouth** Vehicle Color: **Blue**

**VEHICLE DESCRIPTION**

Vehicle Tag No.: **[REDACTED]** Vehicle Tag State: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Plymouth** Vehicle Color: **Blue**

**A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collected fees: **9/16/02** For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVA Copy  
Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Hair: **[REDACTED]** Eyes: **[REDACTED]** (Check One)  
Wearer Condition: **[REDACTED]** Cloudy: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]** Ice: **[REDACTED]** Fog: **[REDACTED]**  
Traffic Condition: **[REDACTED]** Light: **[REDACTED]** Medium: **[REDACTED]** Heavy: **[REDACTED]**

NFS Form 10-90, Rev. 5/97

**United States District Court**  
**Violation Notice**

Loc. Code: **WVMP**  
Violation No.: **P 384811**  
Print Officer Name: **Michael R Eastman**  
Officer No.: **62757**  
Bad #: **02-0326**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **9/16/02**  
Offense Charged: **36CFR 422(b)(1)**  
Offense Description: **Swampable life jacket operation - operate in motor vehicle without the care or at a speed greater than reasonable considering weather, traffic, weather, road conditions and road character**

Offense Description: **Swampable life jacket operation - operate in motor vehicle without the care or at a speed greater than reasonable considering weather, traffic, weather, road conditions and road character**

Defendant's Last Name: **Smith** First Name: **Justin** MI: **MI**  
Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]** Driver's License No.: **[REDACTED]** Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Vehicle Tag State: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Plymouth** Vehicle Color: **Blue**

**VEHICLE DESCRIPTION**

Vehicle Tag No.: **[REDACTED]** Vehicle Tag State: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **Plymouth** Vehicle Color: **Blue**

**A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collected fees: **9/16/02** For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVA Copy  
Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Hair: **[REDACTED]** Eyes: **[REDACTED]** (Check One)  
Wearer Condition: **[REDACTED]** Cloudy: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]** Ice: **[REDACTED]** Fog: **[REDACTED]**  
Traffic Condition: **[REDACTED]** Light: **[REDACTED]** Medium: **[REDACTED]** Heavy: **[REDACTED]**

NFS Form 10-90, Rev. 5/97



**United States District Court  
Violation Notice**

Loc Code: **WVMP**

Violation No.: **P373000**  
# **02 0309**

Print Officer Name: **Carl R. Bennett**  
Officer No.: **1251**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: **01-31-02 - 1650** Offense Charged: **CFR - Title 36 - 4.21(c)**

Place of Offense: **West Va. Rd. - N.P. 3** **(12017)**

Offense Description: **(76-40-00) Speeding - 55/35**

Defendant's Last Name: **Brush** First Name: **Douglas** M.I.: **A.**

City: [Redacted] State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]

Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

VEHICLE DESCRIPTION

Vehicle Tag No.: [Redacted] Vehicle Tag State: [Redacted] Year: **01** Vehicle Make: **Polaris** Vehicle Color: **Blue**

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. *(www.mobilis)*  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the tollateral  enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address: **PAID -> 01-31-02 -> CRB**  
**-> with Visa Credit Card**  
**-> Total = \$80.00**

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fee): **\$30.00** For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)	
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Adult	Juvenile

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

P373000

NPS Form 10-50, Rev. 5/97



United States District Court  
Violation Notice

Loc. Code  
**WYNP**  
Violation No.  
**P 372866**  
# **02-0303**

Print Officer Name  
**Bonnie Gibson**  
Officer No.  
**1266**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense  
**1/30/02 1730 36 CFR 43161**  
Place of Offense  
**river pullout - W. Exit Road (201)**  
Offense Description  
**Speeding 50/35**

Defendant's Last Name  
**Walker** First Name  
**Frank** MI  
**J**  
Address  
[Redacted]  
City  
[Redacted] State  
[Redacted] Zip  
[Redacted]

Vehicle Reg. No. [Redacted] Vehicle Make  
[Redacted] Vehicle Model  
**POLARIS** Vehicle Color  
[Redacted]

**A** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
**X** I plead not guilty and promise to appear as required.  
YOUR COURT DATE  
Court Address  
**pd cook 13061** Date  
[Redacted] Time

Payment (Legal) **\$65** For payment by credit card, SEE INSTRUCTIONS.  
Physical Description  
Original - CVR Copy  
Height [Redacted] Weight [Redacted] Eyes [Redacted] Hair [Redacted]  
Build [Redacted] Sex [Redacted] Race [Redacted] Ethnicity [Redacted]  
Weather Conditions: Clear [Redacted] Rain [Redacted] Snow [Redacted] Ice [Redacted]  
Traffic Conditions: Light [Redacted] Heavy [Redacted]

United States District Court  
Violation Notice

Loc. Code  
**WYNP**  
Violation No.  
**P 372865**  
# **02-0302**

Print Officer Name  
**Bonnie Gibson**  
Officer No.  
**1266**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION  
Date and Time of Offense  
**1/30/02 1730 36 CFR 43161**  
Place of Offense  
**river pullout - W. Exit Road (201)**  
Offense Description  
**Speeding 70/35**

Defendant's Last Name  
**Bond** First Name  
**David** MI  
**B**  
Address  
[Redacted]  
City  
[Redacted] State  
[Redacted] Zip  
[Redacted]

Vehicle Reg. No. [Redacted] Vehicle Make  
[Redacted] Vehicle Model  
**700 BIK** Vehicle Color  
[Redacted]

**A** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
**X** I plead not guilty and promise to appear as required.  
YOUR COURT DATE  
Court Address  
**pd WCSS 13061** Date  
[Redacted] Time

Payment (Legal) **\$125** For payment by credit card, SEE INSTRUCTIONS.  
Physical Description  
Original - CVR Copy  
Height [Redacted] Weight [Redacted] Eyes [Redacted] Hair [Redacted]  
Build [Redacted] Sex [Redacted] Race [Redacted] Ethnicity [Redacted]  
Weather Conditions: Clear [Redacted] Rain [Redacted] Snow [Redacted] Ice [Redacted]  
Traffic Conditions: Light [Redacted] Heavy [Redacted]

CPD

**United States District Court  
Violation Notice**

Loc. Code: **WYNP**

Violation No.: **P 384769**

Print Officer Name: **DENNIS YOUNG**

Officer No.: **17368**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION **70-40-00**

Date and Title of Offense: **1-29-02 1673**

Offense Charged: **3602 CH. I SEC 215A**

Offense Description: **SNOW MOBILE - OPERATIONS IN EXCESS OF POSTED SPEED LIMIT OF 35 MPH TRAVELING 52 MPH**

Defendant's Last Name: **HAMILTON**

First Name: **REX**

State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]

Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

**VEHICLE DESCRIPTION**

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[Redacted]	[Redacted]	2002	POL	BLU

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.

B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.

I plead not guilty and promise to appear as required.

**YOUR COURT DATE**

Court Address: [Redacted] Date: [Redacted]

Time: [Redacted]

Collateral (fine): **\$71.00** For payment by credit card, SEE INSTRUCTIONS.

**Physical Description**

Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult / Juvenile
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	Adult

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

NPS Form 10-50, Rev. 5/97

**United States District Court**  
Violation Notice

Lic. Code: **WYAP**  
Violation No.: **P 384768**  
Officer No.: **02-0290**  
Officer Name: **D. GARDNER, YORK**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
1-2 (j) - 1-25-36 (a) - CHA - CC - 713  
SUSPENDED LICENSE - ALCOHOLIC  
DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL  
DATE: 10/10/01

Date and Time of Offense: **10-10-01**  
Officer's Name: **D. GARDNER**  
Officer's No.: **02-0290**

Defendant's Last Name: **TOFFEL**  
First Name: **JAMES**  
Middle Initial: **A**  
Date of Birth: **10/10/01**  
Sex: **M**  
Race: **E**  
Height: **5'10"**  
Weight: **175**  
Hair: **B**  
Eyes: **B**  
Complexion: **Fair**  
Build: **Slender**

Vehicle Tag No.: **02**  
Year: **2002**  
Make: **BMW**  
Model: **320I**  
Color: **Black**

Vehicle Description: **2002 BMW 320I**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Court Address: **PAID BY MASTERCARD**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Cost: **\$50**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - Copy  
Sex:  Male  Female  Other (Specify) \_\_\_\_\_  
Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_  
Complexion: \_\_\_\_\_ Build: \_\_\_\_\_  
Weather Conditions: \_\_\_\_\_  
Traffic Condition: \_\_\_\_\_  
Light: \_\_\_\_\_ Rain: \_\_\_\_\_ Snow: \_\_\_\_\_ Fog: \_\_\_\_\_  
Wind: \_\_\_\_\_

**United States District Court**  
Violation Notice

Lic. Code: **WYAP**  
Violation No.: **P 382238**  
Officer No.: **02-0286**  
Officer Name: **D. CANNICCA**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
1/20/02 1530 36 (a) 421 (c)  
SUSPENDED LICENSE - ALCOHOLIC  
DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL  
DATE: 10/20/02

Date and Time of Offense: **10-20-02**  
Officer's Name: **D. CANNICCA**  
Officer's No.: **02-0286**

Defendant's Last Name: **HARRIS**  
First Name: **DAVID S.**  
Middle Initial: **E**  
Date of Birth: **7-20-40-00**  
Sex: **M**  
Race: **E**  
Height: **5'10"**  
Weight: **175**  
Hair: **B**  
Eyes: **B**  
Complexion: **Fair**  
Build: **Slender**

Vehicle Tag No.: **02**  
Year: **2002**  
Make: **BMW**  
Model: **320I**  
Color: **Black**

Vehicle Description: **2002 BMW 320I**

**A**  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B**  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.  
I plead not guilty and promise to appear as required.

Court Address: **PAID BY MASTERCARD**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Cost: **\$50**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - Copy  
Sex:  Male  Female  Other (Specify) \_\_\_\_\_  
Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_  
Complexion: \_\_\_\_\_ Build: \_\_\_\_\_  
Weather Conditions: \_\_\_\_\_  
Traffic Condition: \_\_\_\_\_  
Light: \_\_\_\_\_ Rain: \_\_\_\_\_ Snow: \_\_\_\_\_ Fog: \_\_\_\_\_  
Wind: \_\_\_\_\_

(CED)

**United States District Court  
Violation Notice**

Loc. Code: WVMP

Violation No. P 384857      Print Officer Name: J. Duckett

Bt# 02-0203      Officer No. D7937

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense	Offense Charged
<u>01/20/02 1000</u>	<u>346 CER 2.18 (c)</u>
Place of Offense	
<u>West Entrance to Riverside Dr</u>	
Offense Description	
<u>Use snowmobile in undesignated area.</u>	<u>4-1-02</u>

P 384857

Defendant's Last Name	First Name	M.I.
<u>Reinert</u>	<u>Douglas</u>	<u>J</u>
Street Address	City	State
[REDACTED]	[REDACTED]	[REDACTED]
Zip Code	Date of Birth	
[REDACTED]	[REDACTED]	
Driver's License No.	DL State	Social Security Number
[REDACTED]	[REDACTED]	[REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	<u>02</u>	<u>Ford</u>	<u>blue</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address	Date
<u>Paid w/ visa \$10000.00</u>	
	Time

Collateral (\$500) 11000      For payment by credit card, SEE INSTRUCTIONS.

Physical Description						Original - CVB Copy	
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult    Juvenile	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		

Weather Conditions: Clear    Cloudy    Rain    Snow    Ice    Fog

Traffic Conditions: Light    Medium    Heavy

NPS Form 10-50, Rev. 5/97

**United States District Court**  
**Violation Notice**

Case Code: **WYMP**      Print Officer Name: **DAVID PHILLIPS**  
 Violation No.: **P 379009**      Officer No.: **1286**  
 Bond #: **02-0320**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
**7/1/02 1400 36 CFR 4.22 (b)(1)**  
**POWTH RAMPAGE ROAD**  
**UNSAFE OPERATION/OPERATING**  
**W/O DUE CARE PASSING ON C**

Offense Charged: **1286**  
 Date and Time at Office: **7/1/02 1400**  
 Date of Birth: **4-22-64**  
 Social Security Number: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**  
 State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 City: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Street Address: **[REDACTED]**      State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 City: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]**      Year: **[REDACTED]**      Vehicle Make: **[REDACTED]**      Vehicle Color: **RED**

VEHICLE DESCRIPTION: **[REDACTED]**

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **123**      Date: **[REDACTED]**  
 Court Address: **[REDACTED]**

Charges: **100.00**      For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex:  M  F      Hair:  Black  Brown  Grey  Other      Eyes:  Blue  Green  Brown  Other  
 Weather Condition:  Clear  Cloudy  Rain  Snow  Fog  
 Traffic Condition:  Light  Medium  Heavy

**United States District Court**  
**Violation Notice**

Case Code: **WYMP**      Print Officer Name: **L. M. [REDACTED]**  
 Violation No.: **P 197407 316**      Officer No.: **1280**  
 Bond #: **02-0316**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
**1/1/02 1400 36 CFR 2.116(4)**  
**North of Madison Rd**  
**Racing/Speed in excess of 45**

Offense Charged: **1280**  
 Date and Time at Office: **1/1/02 1400**  
 Date of Birth: **2-18-64**  
 Social Security Number: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**  
 State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 City: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Street Address: **[REDACTED]**      State: **[REDACTED]**      Zip Code: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 City: **[REDACTED]**      Date of Birth: **[REDACTED]**  
 Driver's License No.: **[REDACTED]**      Social Security Number: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]**      Year: **[REDACTED]**      Vehicle Make: **[REDACTED]**      Vehicle Color: **[REDACTED]**

VEHICLE DESCRIPTION: **[REDACTED]**

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **123**      Date: **[REDACTED]**  
 Court Address: **[REDACTED]**

Charges: **100.00**      For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 Sex:  M  F      Hair:  Black  Brown  Grey  Other      Eyes:  Blue  Green  Brown  Other  
 Weather Condition:  Clear  Cloudy  Rain  Snow  Fog  
 Traffic Condition:  Light  Medium  Heavy

P197407

**United States District Court Violation Notice**

Loc. Code: WYNY Violation No.: P 384809 Court Address: 121 court/office

Print Officer Name: MICHAEL R. EASTMAN Officer No.: E3757

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: 02-0309

Date and Time of Offense: 1/10/02 1705

Offense Charged: 36ER 421C

Offense Description: Speed in excess of posted speed limit

Offense No.: 55 mph in a posted 35mph limit

Offense Date: 8-10-00

Defendant's Last Name: ZALOWSKA First Name: ROSE MI: PA MA: PA

Street Address: [REDACTED] City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Date of Birth: [REDACTED] Social Security Number: [REDACTED]

Driver's License No.: [REDACTED]

VEHICLE DESCRIPTION

Vehicle No.: [REDACTED] Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: BUICK Vehicle Color: GRN BLK

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

Collateral (flat): \$ 80.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original, CVR Copy

Weight: [REDACTED] Height: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

**United States District Court Violation Notice**

Loc. Code: WYNY Violation No.: P 380973 Court Address: 121 court/office

Print Officer Name: C.R. DIMMICK Officer No.: 2045

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: 02-0305

Date and Time of Offense: 1/10/02 0925

Offense Charged: 36ER 713R

Offense Description: Allowing unlicensed/minor age operation of a snowmobile

Offense No.: 8 Mt Haynes

Offense Date: 01-01-11

Defendant's Last Name: ROB INSON First Name: RICHARD MI: PA MA: PA

Street Address: [REDACTED] City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Date of Birth: [REDACTED] Social Security Number: [REDACTED]

Driver's License No.: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.: [REDACTED] Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: Polaris Vehicle Color: Red

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

Collateral (flat): \$ 50.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original, CVR Copy

Weight: [REDACTED] Height: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

043

United States District Court  
Violation Notice

Loc. Code  
WYND

Violation No.  
P 384808

Print Officer Name  
MICHAEL REISHMAN

Officer No.  
02-0301 82757

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 1/20/02 1700  
Offense Charged: 26 CFR 4.22

Place of Offense: 2 miles East of W Entrance Gate

Offense Description: Unsafe Operation (Severely) operate a motor vehicle without due care or at a speed greater than reasonable considering wildlife, traffic, weather, road conditions, and road character

Defendant's Last Name: Gradowski  
First Name: Karen  
M.I.: Sue

Street Address: [Redacted]  
City: [Redacted] State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]  
Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

VEHICLE DESCRIPTION

Vehicle Tag No.: [Redacted] Vehicle Tag State: [Redacted] Year: 2002 Vehicle Make: B31 Vehicle Color: BLK

- A  YOU MUST APPEAR IN COURT SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

118 YOUR COURT DATE  
Court Address: [Redacted] Date: [Redacted]  
Time: [Redacted]

Collateral (fine): \$100.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVR Copy  
Sex: [Redacted] Race: [Redacted] Height: [Redacted] Weight: [Redacted] Hair: [Redacted] Eyes: [Redacted] (Circle One) Adult Juvenile  
Weather Conditions:  Cloudy Rain Snow Ice Fog  
Traffic Conditions: Light Medium Heavy

0070007

0048008

**United States District Court  
Violation Notice**

Loc. Code: WVNP Peer Officer Name: J. DANNES LEE KO  
 Violation No.: P 375007 Officer No.: 142  
 Date and Time of Offense: 01/24/02 1:50 Officer Charged: 36 CFR 42 N.S. 31-7105  
 Date of Offense: 01/24/02 USDO Offense Description: NO VALID DISCREAS LICENSE  
 Defendant's Last Name: GRAND First Name: WESLEY Sex: M Race: M  
 Street Address: WESLEY City: ██████████ State: ██ Zip Code: ██ Date of Birth: ██/██/██  
 Driver's License No.: ██████████ Social Security Number: ██████████

**VEHICLE DESCRIPTION**

Vehicle ID No.	Vehicle ID State	Year	Vehicle Make	Vehicle Color
<u>██████████</u>	<u>██</u>	<u>██</u>	<u>██</u>	<u>██</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required. --  
 YOUR COURT DATE: ATTN LEO  
 Court Address: ██████████ Date: ██/██/██  
 City: ██████████ State: ██ Zip: ██  
 Plaintiff: ██████████ Defendant: ██████████  
 Case No.: ██████████ File No.: ██████████  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 SER:  None  Hair  Eyes  (Circle One)  
 Weather Conditions:  Clear  Cloudy  Rain  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy

**United States District Court  
Violation Notice**

Loc. Code: WVNP Peer Officer Name: MICHAEL B. CASIMIRO  
 Violation No.: P 384807 Officer No.: ED 257  
 Date and Time of Offense: 1/24/02 1700 Officer Charged: 36 CFR 422  
 Date of Offense: 1/24/02 USDO Offense Description: FIRST OF CLASS STATE  
 Offense Description: WHITE OPERATOR GUNNABLE ABOVE A MOTOR VEHICLE WHICH IS IN OR AT A SPEED GREATER THAN PERMITTED FOR THAT CLASS OF TRAFFIC, WATER, ROAD OR AIRWAY, AND WHICH IS NOT A MOTORCYCLE  
 Defendant's Last Name: DEAN First Name: WILLIAM Sex: M Race: White  
 Street Address: ██████████ City: ██████████ State: ██ Zip Code: ██ Date of Birth: ██/██/██  
 Driver's License No.: ██████████ Social Security Number: ██████████

**VEHICLE DESCRIPTION**

Vehicle ID No.	Vehicle ID State	Year	Vehicle Make	Vehicle Color
<u>██████████</u>	<u>██</u>	<u>██</u>	<u>██</u>	<u>██</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.  
 YOUR COURT DATE: ██████████  
 Court Address: ██████████ Date: ██/██/██  
 City: ██████████ State: ██ Zip: ██  
 Plaintiff: ██████████ Defendant: ██████████  
 Case No.: ██████████ File No.: ██████████  
 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
 SER:  None  Hair  Eyes  (Circle One)  
 Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog  
 Traffic Conditions:  Light  Medium  Heavy



**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
Violation No.: **02-0287**  
P: **196942**

Plaintiff's Name: **JUSTIN IVANY**  
Officer No.: **19949**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **01/29/02 1445**  
Offense Charged: **36CFR 2.18(d)(4)**  
Field of Offense: **S. ENT. ROAD 0801**

Offense Description: **PACING - OPERATING IN EXCESS OF 45 MPH.**

Defendant's Last Name: **SHEPHERD**  
First Name: **ANTHONY**  
M.I.: **J**

Street Address: [REDACTED]  
City: [REDACTED]  
State: [REDACTED] Zip Code: [REDACTED] Date of Birth: [REDACTED]

Driver's License No.: [REDACTED] State: [REDACTED] Social Security Number: [REDACTED]

Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: **YAM** Vehicle Color: **BLU**

**VEHICLE DESCRIPTION**

Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: **YAM** Vehicle Color: **BLU**

**A. YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B. YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

**115** YOUR COURT DATE: [REDACTED]  
Date: [REDACTED] Time: [REDACTED]

Collateral (flat): **\$ 100** No payment by credit card. SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Set: [REDACTED] Weight: [REDACTED] (Check One) [REDACTED] [REDACTED] [REDACTED]  
Weather Conditions: [REDACTED] Rain: [REDACTED] Snow: [REDACTED] Ice: [REDACTED] Fog: [REDACTED]  
Traffic Conditions: Light [REDACTED] Heavy [REDACTED]

**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
Violation No.: **02-0287**  
P: **196943**

Plaintiff's Name: **JUSTIN IVANY**  
Officer No.: **19949**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: **01/29/02 1445**  
Offense Charged: **36CFR 2.18(d)(4)**  
Field of Offense: **S. ENT. ROAD 0801**

Offense Description: **PACING - OPERATING IN EXCESS OF 45 MPH (SNOWMOBILE)**

Defendant's Last Name: **SCARBOROUGH**  
First Name: **KEVIN**  
M.I.: **H**

Street Address: [REDACTED]  
City: [REDACTED]  
State: [REDACTED] Zip Code: [REDACTED] Date of Birth: [REDACTED]

Driver's License No.: [REDACTED] State: [REDACTED] Social Security Number: [REDACTED]

Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: **POL** Vehicle Color: **BLK**

**VEHICLE DESCRIPTION**

Vehicle Tag State: [REDACTED] Year: [REDACTED] Vehicle Make: **POL** Vehicle Color: **BLK**

**A. YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B. YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

**115** YOUR COURT DATE: [REDACTED]  
Date: [REDACTED] Time: [REDACTED]

Collateral (flat): **\$ 100** No payment by credit card. SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy

Set: [REDACTED] Weight: [REDACTED] (Check One) [REDACTED] [REDACTED] [REDACTED]  
Weather Conditions: [REDACTED] Rain: [REDACTED] Snow: [REDACTED] Ice: [REDACTED] Fog: [REDACTED]  
Traffic Conditions: Light [REDACTED] Heavy [REDACTED]

**United States District Court  
Violation Notice**

Lib. Code WUNP

Violation No. 020272 Print Officer Name 574 Cary Nelson  
 P 190935 Officer No. 07-04 514

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense 01/26/02 1130 Offense Charged 36CF 7-31  
 Location of Offense GRAND LOOP ROAD - MIDWAY COAST BASIN  
 Offense Description ALLOWING AN UNLICENSED DRIVER (M.NOR) TO OPERATE A SNOWMOBILE

Defendant's Last Name LAKE First Name DALE MI C  
 Street Address [REDACTED]  
 City [REDACTED] State [REDACTED] Zip Code [REDACTED] Date of Birth 61-01-10  
 Driver's License No. [REDACTED] DL State [REDACTED] Social Security Number [REDACTED]

**VEHICLE DESCRIPTION**

Vehicle Tag No. [REDACTED] Vehicle Tag State [REDACTED] Year 01 Vehicle Make ATV CO Vehicle Color GREEN

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

112 YOUR COURT DATE  
 Court Address [REDACTED] Date [REDACTED]  
 Time [REDACTED]

Collateral (Fine) \$ 50.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVR Copy  
 Sex [REDACTED] Race [REDACTED] Height [REDACTED] Weight [REDACTED] Hair [REDACTED] Eyes [REDACTED] (Circle One) Adult Juvenile  
 Weather Conditions: Clear Cloudy Rain Snow Ice Fog  
 Traffic Conditions: Light Medium Heavy

NPS Form 10-30 (Rev. 5/97)

P190935

**United States District Court  
Violation Notice**

Loc. Code: WYNP

Violation No.: P 380896      Print Officer Name: Michael C. Hardin  
 Officer No.: 02-0009      181

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense: 01/01/02 1515      Offense Charged: 30 CFR 7.13(1)  
 Place of Offense: Grant Loop Road at Black Sand  
 Offense Description: operating a snowmobile without a valid driver's license

Defendant's Last Name: Hurst      First Name: Alminda      M.I.: D.  
 Street Address: [REDACTED]  
 City: [REDACTED]      State: [REDACTED]      Zip Code: [REDACTED]      Date of Birth: [REDACTED]  
 Driver's License No.: [REDACTED]      D.L. State: [REDACTED]      Social Security Number: [REDACTED]

**VEHICLE DESCRIPTION**

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>2001</u>	<u>Polaris</u>	<u>Blue</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

32 YOUR COURT DATE

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Time: \_\_\_\_\_

Collateral (fine): \$50.00      For payment by credit card, SEE INSTRUCTIONS.

Physical Description      Original - CVR Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	Adult <input checked="" type="radio"/> Juvenile <input type="radio"/>

Weather Conditions:  Clear       Cloudy       Rain       Snow       Ice       Fog  
 Traffic Conditions:  Light       Medium       Heavy

NPS Form 10-50, Rev. 5/97

D 380896

P 380896

**United States District Court  
Violation Notice**

Loc. Code: WYND

Violation No.: P 382181

Print Officer Name: J. HAWKINS

Officer No.: 257

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 01/01/02, 17:15

Offense Charged: 30 CFR 4-21(c)

Place of Offense: WYOMING, RD - HP 3 (120)

Offense Description: STRETD - 60/35

Defendant's Last Name: (70400) COHEN

First Name: ROBERT G.

M.I.:

Street Address: [REDACTED]

City: [REDACTED]

State: [REDACTED]

Zip Code: [REDACTED]

Date of Birth: [REDACTED]

Driver's License No.: [REDACTED]

D.L. State: [REDACTED]

Social Security No.: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Type	Year	Vehicle Make	Vehicle Color
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>01</u>	<u>YAMAHA</u>	<u>PURPLE</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.

B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 30 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed. (600.00)

I plead not guilty and promise to appear as required.

35 YOUR COURT DATE

Court Address: \_\_\_\_\_ Date: \_\_\_\_\_

Time: \_\_\_\_\_

Collateral Due: 8/05 For payment by credit card, SEE INSTRUCTIONS.

Physical Description

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<input checked="" type="radio"/> Adult

Weather Conditions:  Clear     Cloudy     Rain     Snow     Ice     Fog

Traffic Conditions:  Light     Medium     Heavy

NPS Form 10-50, Rev. 5/97

**United States District Court  
Violation Notice**

Loc. Code: WYNT

Violation No. P 382180 Officer Name J. HANNAFORD

#02-0015 Officer No. 257

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense 3/10/02 - 151ST ST Offense Charged CFR 7.13 (L)

Place of Offense W. ENT RD, CMP 3 (120)

Offense Description DRIVERS LICENSE REQUIRED TO DRIVE (61-01-1.0) SNOWMOBILE

Defendant's Last Name FOSTER First Name SCOTT MI LEE

Street Address [REDACTED]

City [REDACTED] State [REDACTED] Date of Birth [REDACTED]

Driver's License No. [REDACTED] DL State [REDACTED] Social Security Number [REDACTED]

VEHICLE DESCRIPTION				
Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>01</u>	<u>POL</u>	<u>RED</u>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.

B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. GRAY WOLF SNOWMOBILE

I wish to terminate this matter by paying the collateral shown below enclosed.

I plead not guilty and promise to appear as required.

36 YOUR COURT DATE

Court Address \_\_\_\_\_ Date \_\_\_\_\_

Time \_\_\_\_\_

Collateral (fine) \$50 For payment by credit card, SEE INSTRUCTIONS.

Physical Description

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Adult
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Juvenile

Weather Conditions:  Snow  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

NPS Form 10-50, Rev. 5/97

United States District Court Violation Notice			
Loc. Code <b>WYND</b>	Print Officer Name <b>C.R. Dimmick</b>		
Violation No. <b>P 380968</b> <b>BD*02-0031</b>	Officer No. <b>2045</b>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>11/2/02 1450</b>	Offense Charged <b>36 CFR 7.132</b> <b>61-01-11</b>		
Place of Offense <b>TRUSS SLOPE - W. ENTR. RD.</b>			
Offense Description <b>Allowing unlicensed/unlicensed operation of a snowmobile (12 year old daughter)</b>			
Defendant's Last Name <b>HALL</b>	First Name <b>JOHN</b>	M.I. <b>G</b>	
Street Address [REDACTED]			
[REDACTED]	State / Zip Code	Date of Birth	
[REDACTED]	[REDACTED]	[REDACTED]	
Driver's License No. [REDACTED]	D.L. State	Social Security Number	
[REDACTED]	[REDACTED]	[REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State <b>02</b>	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Blue</b>
<input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. I wish to terminate this matter by paying the collateral shown below, enclosed. I plead not guilty and promise to appear as required.			
39 YOUR COURT DATE			
Court Address		Date	Time
[REDACTED]		[REDACTED]	[REDACTED]
Collateral (fine) <b>50.</b>	For payment by credit card, SEE INSTRUCTIONS.		
Physical Description Original - CVB Copy			
Sex <b>M</b>	Race <b>C</b>	Height <b>5'10"</b>	Weight <b>180</b>
Hair <b>B</b>	Eyes <b>B</b>	(Circle One) <b>Adult</b> Juvenile	
Weather Conditions: <b>Clear</b> Cloudy Rain Snow Ice Fog			
Traffic Conditions: <b>Light</b> Medium Heavy			

P380968

**United States District Court  
Violation Notice**

Loc. Code: **WYNP** Violation No.: **P 384763** First Officer Name: **DEANIS YOUNG**

Officer No.: **02-0049** 17368

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: **61-01-1**

Date and time of offense: **1-5-02 1606** Place or location of offense: **26 CAL ST SEE 7.13**

Offense Description: **MAXIMUM PENALTION**

Offense Description: **SNOWMOBILE - ALCOHOL UNLAWFUL REGISTRATION**

Offense Description: **REGISTRATION**

Offense Description: **PEET CHARLES**

City: [REDACTED] State: [REDACTED] Zip Code: **98101** Vehicle Color: **RED**

Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] Skin: [REDACTED]

Physical Description: [REDACTED]

Weather Conditions: [REDACTED]

Traffic Classification: [REDACTED]

Fee: **\$50**

Original - CIV Copy: [REDACTED]

For payment by credit card, SEE INSTRUCTIONS.

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.

I plead not guilty and promise to appear as required.

Court Address: **410** YOUR COURT DATE: [REDACTED]

Date: [REDACTED]

**United States District Court  
Violation Notice**

Loc. Code: **WYNP** Violation No.: **P 384764** First Officer Name: **DEANIS YOUNG**

Officer No.: **02-0049** 17368

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION: **57A-05**

Date and time of offense: **1-5-02 1606** Place or location of offense: **26 CAL ST SEE 1.66-2**

Offense Description: **MAXIMUM PENALTION**

Offense Description: **SNOWMOBILE - CURRENT REGISTRATION**

Offense Description: **REGISTRATION**

Offense Description: **PEET CHARLES**

City: [REDACTED] State: [REDACTED] Zip Code: **98101** Vehicle Color: **RED**

Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] Skin: [REDACTED]

Physical Description: [REDACTED]

Weather Conditions: [REDACTED]

Traffic Classification: [REDACTED]

Fee: **\$50**

Original - CIV Copy: [REDACTED]

For payment by credit card, SEE INSTRUCTIONS.

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below enclosed.

I plead not guilty and promise to appear as required.

Court Address: **410** YOUR COURT DATE: [REDACTED]

Date: [REDACTED]

**United States District Court  
Violation Notice**

Lic. Code: **WYMP**  
 Violation No.: **P 381759**  
 Offense Charged: **01-0056**

Date and Time of Offense: **11/02/01 07:49**  
 Plate No.: **366FH12**  
 Driver's License No.: **33014**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
**1762 - 01-49 - 366FH12**  
**OFFENSE DESCRIPTION: SEVERE WEATHER EXHIBIT**  
**38**  
**FAILURES TO COMPLY WITH THE**  
**DEVICES OF A TRAFFIC CONTROL**  
**1**  
**SYSTEMS THAT ARE INSTALLED BY THE**  
**STATE OF WYOMING.**  
**175**  
**175**

State: **WY** City: **[REDACTED]** Date of Birth: **[REDACTED]**  
 Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
 Eyes: **[REDACTED]** Hair: **[REDACTED]** Complexion: **[REDACTED]**  
 Vehicle Make: **[REDACTED]** Year: **[REDACTED]** Model: **[REDACTED]**  
 Vehicle Color: **GREEN**

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **42** Date: \_\_\_\_\_  
 Court Address: \_\_\_\_\_

Physical Description: **450**  
 Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
 Hair: **[REDACTED]** Eyes: **[REDACTED]** Complexion: **[REDACTED]**  
 Weather Conditions: **Clear** Wind: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]**  
 Traffic Conditions: **Light** Medium: **[REDACTED]** Heavy: **[REDACTED]**

**United States District Court  
Violation Notice**

Lic. Code: **WYMP**  
 Violation No.: **P 196934**  
 Offense Charged: **01-0064**

Date and Time of Offense: **01/02/02 1710**  
 Plate No.: **2186J14**  
 Driver's License No.: **1908**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
**01/02/02 1710 2186J14**  
**OFFENSE DESCRIPTION: OPERATE A VEHICLE**  
**19**  
**IN EXCESS OF 45 MPH**  
**08**  
**08**

State: **WY** City: **[REDACTED]** Date of Birth: **[REDACTED]**  
 Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
 Eyes: **[REDACTED]** Hair: **[REDACTED]** Complexion: **[REDACTED]**  
 Vehicle Make: **[REDACTED]** Year: **[REDACTED]** Model: **[REDACTED]**  
 Vehicle Color: **BLUE**

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: **43** Date: \_\_\_\_\_  
 Court Address: \_\_\_\_\_

Physical Description: **4100**  
 Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
 Hair: **[REDACTED]** Eyes: **[REDACTED]** Complexion: **[REDACTED]**  
 Weather Conditions: **Clear** Wind: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]**  
 Traffic Conditions: **Light** Medium: **[REDACTED]** Heavy: **[REDACTED]**



United States District Court  
Violation Notice

Loc Code: **WYNP**

Violation No: **02-0064**

Officer No: **P 196936**

Officer Name: **JUSTIN JUMBY**

Officer No: **F 9949**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date of Time of Offense: **01/07/02**

Place of Offense: **3662 R-218 (LX)**

Offense Description: **PARKING A SNOW MOBILE IN EXCESS OF 45MPH**

Offense No: **P 196936**

VEHICLE DESCRIPTION

Vehicle No.	Year	Make	Model	Color
[REDACTED]	02	YAMAHA	SNOW MOBILE	BLUE

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.

YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.

I plead not guilty and promise to appear as required.

YOUR COURT DATE: **44**

Court Address: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Collateral (USD): **\$100**

Physical Description: \_\_\_\_\_

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice

Original - CVR Copy

United States District Court  
Violation Notice

Loc Code: **WYNP**

Violation No: **02-0064**

Officer No: **P 196936**

Officer Name: **JUSTIN JUMBY**

Officer No: **F 9949**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date of Time of Offense: **01/07/02**

Place of Offense: **3662 R-218 (LX)**

Offense Description: **PARKING A SNOW MOBILE IN EXCESS OF 45MPH**

Offense No: **P 196936**

VEHICLE DESCRIPTION

Vehicle No.	Year	Make	Model	Color
[REDACTED]	02	YAMAHA	SNOW MOBILE	BLUE

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.

YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.

I plead not guilty and promise to appear as required.

YOUR COURT DATE: **45**

Court Address: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Collateral (USD): **\$100**

Physical Description: \_\_\_\_\_

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice

Original - CVR Copy

CRD

Loc. Code <b>WYMP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P384852</b>	Print Officer Name <b>J. Duckett</b>		
<b>Bd# 02-0068</b>	Officer No. <b>D7937</b>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>01/08/02 1250</b>	Offense Charged <b>36 CFR 4.22(b)(1)</b>		
Place of Offense <b>Madison Hill</b>			
Offense Description <b>Unsafe operation by passing on hill and curve and driving at a high rate of speed</b>			
Defendant's Last Name <b>Traxler</b>	First Name <b>Daniel</b>	M.I. <b>J</b>	
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number <b>Not given</b>	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State <b>02</b>	Year <b>02</b>	Vehicle Make <b>Pelaris</b>
			Vehicle Color <b>Black</b>
<p>A <input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p>B <input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
46 YOUR COURT DATE			
Court Address		Date	
		Time	
Collateral (fine) For payment by credit card, SEE INSTRUCTIONS.			
<b>\$100.00</b>			
Physical Description Original - CVB Copy			
Sex	Race	Height	Weight
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hair	Eyes	(Circle One) Adult Juvenile	
[REDACTED]	[REDACTED]	Adult	
Weather Conditions: Clear <input type="checkbox"/> Cloudy <input checked="" type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog <input type="checkbox"/>			
Traffic Conditions: Light <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Heavy <input type="checkbox"/>			

P384852

**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
Violation No.: **P 378019**

Print Offense Name: **Carpen Bars**  
Offense No.: **B85 36**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: **11:20 P. 2701 36 CER R. 18(D) (4)**  
Offense Description: **Operating Snowmobile in excess of posted limit**

Defendant's Last Name: **ALLEN** M.  
First Name: **JOSEPH** D.  
Street Address: [REDACTED]  
City: [REDACTED] State: [REDACTED] Zip: [REDACTED]

Vehicle Description: [REDACTED]

Vehicle Tag No.: [REDACTED] Year: **99** Vehicle Make: **Polaris** Vehicle Color: **Black**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **3/29**  
Date: **05 Magistrate's Courtroom**  
Time: **10:00 AM**

Physical Description: **to mail**  
Original - CWV Copy: **to mail**

Weather Conditions: **Clear** Light Medium Heavy  
Traffic Conditions: **Light** Light Medium Heavy

NSF Form 10-98, Rev. 9/97

**United States District Court**  
**Violation Notice**

Loc. Code: **WYNP**  
Violation No.: **P 372857**

Print Offense Name: **Brume Galey**  
Offense No.: **1866**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: **12:20 P. 2701 36 CER R. 18(D) (4)**  
Offense Description: **Operating Snowmobile in excess of posted limit**

Defendant's Last Name: **BRADY** M.  
First Name: **SCOTT** D.  
Street Address: [REDACTED]  
City: [REDACTED] State: [REDACTED] Zip: [REDACTED]

Vehicle Description: [REDACTED]

Vehicle Tag No.: [REDACTED] Year: **99** Vehicle Make: **Polaris** Vehicle Color: **Black**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

YOUR COURT DATE: **3/29**  
Date: **to mail**  
Time: **to mail**

Physical Description: **to mail**  
Original - CWV Copy: **to mail**

Weather Conditions: **Clear** Light Medium Heavy  
Traffic Conditions: **Light** Light Medium Heavy

NSF Form 10-98, Rev. 9/97

CPD  
**United States District Court**  
**Violation Notice**

Loc. Code: WV  
 Violation No.: P 384758  
 Officer No.: 17368

Officer Name: DENNIS YOUNG

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 OFFENSE CHARGED: 2-28-01 1346 36 CALIF. I. SEC 7131  
WEST CALIFORNIA - UNLAWFUL UPLAND  
SNOWMOBILE - ALLOW UNLAWFUL  
SNOWMOBILE OPERATION

City: 71020 State: CA Zip Code: 92701 Date of Birth: 1/1/71

Vehicle No.: 71020 Year: 2002 Make: YAMAHA Weight: 400 lbs

Vehicle Description: YAMAHA SNOWMOBILE

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: 3/29/02

Amount Due: \$ 50

Physical Description: Clear Original - CVR Copy None

Weather Conditions: Clear Rain None Snow None Fog None

Traffic Conditions: Light Medium None Heavy None

CPD  
**United States District Court**  
**Violation Notice**

Loc. Code: WV  
 Violation No.: P 384759  
 Officer No.: 17368

Officer Name: DENNIS YOUNG

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
 OFFENSE CHARGED: 2-28-01 1346 36 CALIF. I. SEC 7131  
WEST CALIFORNIA - UNLAWFUL UPLAND  
SNOWMOBILE - ALLOW UNLAWFUL  
SNOWMOBILE OPERATION

City: 71020 State: CA Zip Code: 92701 Date of Birth: 1/1/71

Vehicle No.: 71020 Year: 2002 Make: YAMAHA Weight: 400 lbs

Vehicle Description: YAMAHA SNOWMOBILE

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE: 3/29/02

Amount Due: \$ 50

Physical Description: Clear Original - CVR Copy None

Weather Conditions: Clear Rain None Snow None Fog None

Traffic Conditions: Light Medium None Heavy None

United States District Court  
Violation Notice

Loc. Code: **WYNP**  
Violation No.: **P 384761**  
Print Officer Name: **DENNIS YOUNG**  
Officer No.: **17368**

**01-4520**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:

Date and Time of Offense: **12-29-01 14:22**  
Offense Charged: **136 CAL CH I SEC 7131.1**  
Place of Offense: **WEST ENTRANCE RN @ FARMERS**  
Offense Description: **SNOWMOBILE - AT-LONG UNLICENSED OPERATOR TO OPERATE**

Defendant's Last Name: **MICHAEL S**  
First Name: **MICHAEL S**  
State: **CA** Zip Code: **94103** Date of Birth: **12/29/01**  
City: **San Francisco** Social Security Number: **[REDACTED]**  
Driving License No.: **[REDACTED]**

Vehicle Tax No.: **[REDACTED]** Vehicle Tax State: **CA** Year: **2002** Vehicle Make: **PO** Vehicle Color: **(BLU)**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

**3278** YOUR COURT DATE  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collateral: **\$50**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
Sex:  Male  Female Hair:  Black  Brown  Blond  Grey  Other (Specify) \_\_\_\_\_  
Eyes:  Blue  Green  Brown  Grey  Other (Specify) \_\_\_\_\_  
Weight:  Under 100  100-150  150-200  Over 200  
Build:  Slender  Average  Heavy  
Complexion:  Clear  Fair  Tan  Dark  
Tattoos:  None  Yes (Specify) \_\_\_\_\_  
Scars:  None  Yes (Specify) \_\_\_\_\_  
Other:  None  Yes (Specify) \_\_\_\_\_

United States District Court  
Violation Notice

Loc. Code: **WYNP**  
Violation No.: **P 384760**  
Print Officer Name: **DENNIS YOUNG**  
Officer No.: **17368**

**01-4510**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:

Date and Time of Offense: **12-28-01 15:54**  
Offense Charged: **36 CAL CH I SEC 7131.1**  
Place of Offense: **WILSON JUNCTION**  
Offense Description: **SNOWMOBILE - OPERATING UNLICENSED PERSON**

Defendant's Last Name: **BLANDON M**  
First Name: **BLANDON M**  
State: **CA** Zip Code: **94103** Date of Birth: **12/28/01**  
City: **San Francisco** Social Security Number: **[REDACTED]**  
Driving License No.: **[REDACTED]**

Vehicle Tax No.: **[REDACTED]** Vehicle Tax State: **CA** Year: **2002** Vehicle Make: **SKY-D** Vehicle Color: **YEL**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

**3297** YOUR COURT DATE  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Collateral: **\$50**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
Sex:  Male  Female Hair:  Black  Brown  Blond  Grey  Other (Specify) \_\_\_\_\_  
Eyes:  Blue  Green  Brown  Grey  Other (Specify) \_\_\_\_\_  
Weight:  Under 100  100-150  150-200  Over 200  
Build:  Slender  Average  Heavy  
Complexion:  Clear  Fair  Tan  Dark  
Tattoos:  None  Yes (Specify) \_\_\_\_\_  
Scars:  None  Yes (Specify) \_\_\_\_\_  
Other:  None  Yes (Specify) \_\_\_\_\_



United States District Court  
Violation Notice

Loc. Code  
WYNP

Violation No.  
P 380744  
BOND # 01-4459

Print Officer Name  
April Wood  
Officer No.  
W0350

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Type of Offense: 12/2/01 1700hrs  
Offense Charged: 36 CFR 4.22(b)(3)  
Place of Offense: Grand Loop Road, Tsa Lake  
Offense Description: Failure to maintain that degree of control of a motor vehicle (snowmobile) necessary to avoid danger to persons or property. 73-00-00

P 380744

Defendant's Last Name: VENKATARAMAN  
First Name: BALAJI  
M.I.:  
City: [Redacted]  
State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]  
Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

Snowmobile VEHICLE DESCRIPTION  
Vehicle Tag No.: [Redacted] Vehicle Tag State: [Redacted] Year: 02 Vehicle Make: Polaris Vehicle Color: Maroon

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

3308 YOUR COURT DATE  
Court Address: [Redacted] Date: [Redacted]  
Time: [Redacted]

Collateral (fine): \$100.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original:  X Copy  
Sex:  Male  Female Height: [Redacted] Weight: [Redacted] Race: [Redacted] (Circle One) Adult Juvenile  
Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog  
Traffic Conditions: Light  Medium  Heavy

**United States District Court**  
**Violation Notice**

Esc. Code: WYMP  
Violation No.: P 382164  
# 01-4501  
Print Other Name: Amy Fox  
Officer No.: E6996

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: 12/20/09 10:20  
Offense Charged: 36 CFR 212.13  
Place of Offense: Wash. Riv. Pt. - Mt. Z  
Offense Description: Off Bond Travel on A Snowmobile

Defendant's Last Name: Wilson First Name: Karen  
Street Address: [REDACTED]  
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]  
Driver's License No.: [REDACTED]  
Vehicle Tag No.: [REDACTED] Year: [REDACTED] Vehicle Make: [REDACTED] Vehicle Color: [REDACTED]

VEHICLE DESCRIPTION: [REDACTED]

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. Ground  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below:  
I plead not guilty and promise to appear as required.

3373 YOUR COURT DATE  
Cover Address: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Colateral (if any): \$ 700  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)  
Arrest: [REDACTED]  
Weather Conditions: Clear Cloudy Rain Snow Ice Fog  
Traffic Conditions: Light Heavy

**United States District Court**  
**Violation Notice**

Esc. Code: WYMP  
Violation No.: P 382165  
# 01-4511  
Print Other Name: Amy Fox  
Officer No.: E6996

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: 12/18/09 15:30  
Offense Charged: 36 CFR 433.6(b)(3)  
Place of Offense: Frank - 088000  
Offense Description: Unstable Operation - 5 miles West of Eugene  
Failure to maintain control

Defendant's Last Name: [REDACTED] First Name: [REDACTED]  
Street Address: [REDACTED]  
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]  
Driver's License No.: [REDACTED]  
Vehicle Tag No.: [REDACTED] Year: [REDACTED] Vehicle Make: [REDACTED] Vehicle Color: [REDACTED]

VEHICLE DESCRIPTION: [REDACTED]

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. Snowmobile  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below:  
I plead not guilty and promise to appear as required.

3314 YOUR COURT DATE  
Cover Address: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Colateral (if any): \$ 700  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVR Copy  
Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One)  
Arrest: [REDACTED]  
Weather Conditions: Clear Cloudy Rain Snow Ice Fog  
Traffic Conditions: Light Heavy



United States District Court  
Violation Notice

Loc. Code: **WYAT**  
Violator No.: **P 382166**  
# **01-4515**

Defendant's Last Name: **Amey, Erik**  
First Name: **Erik**  
Street Address: **66936**  
City: **36 CEE, WY**  
State: **WY**  
Zip Code: **82401**

Offense Description: **Driver's license Required**

Date and Time of Offense: **01-01-10 10:00 AM**  
Offense Charge: **36 CEE, WY (1)**

Defendant's Last Name: **Amey, Erik**  
First Name: **Erik**  
Street Address: **66936**  
City: **36 CEE, WY**  
State: **WY**  
Zip Code: **82401**

Vehicle No.: **3315**  
Year: **2007**  
Make: **Jeep**  
Model: **Grand Cherokee**  
Color: **Green**

Physical Description: **Male, 5'10", 170 lbs, Brown Eyes, Brown Hair**

Weather Conditions: **Clear**

Traffic Conditions: **Light**

Amount (Fee): **\$50**

Original - CVR Copy

For payment by credit card, SEE INSTRUCTIONS.

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (36 CEE, WY)

YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.

I plead not guilty and promise to appear as required.

YOUR COURT DATE: **01-01-10**

United States District Court  
Violation Notice

Loc. Code: **WYAT**  
Violator No.: **P 382232**  
# **01-4533**

Defendant's Last Name: **Cariccia, D**  
First Name: **D**  
Street Address: **6601**  
City: **36 CEE, WY**  
State: **WY**  
Zip Code: **82401**

Offense Description: **OPERATING A SNOWMOBILE WITHOUT A DRIVER'S LICENSE/LICENSE PERMIT**

Date and Time of Offense: **12/30/09 10:00 AM**  
Offense Charge: **36 CEE, WY (1)**

Defendant's Last Name: **Cariccia, D**  
First Name: **D**  
Street Address: **6601**  
City: **36 CEE, WY**  
State: **WY**  
Zip Code: **82401**

Vehicle No.: **3316**  
Year: **2007**  
Make: **Jeep**  
Model: **Grand Cherokee**  
Color: **Blue**

Physical Description: **Male, 5'10", 170 lbs, Brown Eyes, Brown Hair**

Weather Conditions: **Clear**

Traffic Conditions: **Light**

Amount (Fee): **\$50**

Original - CVR Copy

For payment by credit card, SEE INSTRUCTIONS.

YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (36 CEE, WY)

YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below.

I plead not guilty and promise to appear as required.

YOUR COURT DATE: **01-01-10**

**United States District Court**  
**Violation Notice**

Case Code: **WYNP** Violation No.: **P 384851** Plaintiff Name: **J. Duckett**  
 Officer No.: **D7987**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
 Date and Time of Offense: **12/30/01 1300** Offense Charged: **30 CFR 7.13 (1)**  
 City: **EMERALD** State: **AK** District: **101956-092**  
 Officer Description: **ALLOWING UNDERAGE / UNLICENSED DRIVER TO OPERATE SNOWMOBILE**

Defendant's Last Name: **HARTSHORN** First Name: **PATRICIA** MI: **A**  
 Address: **[REDACTED]** City: **[REDACTED]** State: **AK** Zip Code: **[REDACTED]**  
 Director's License No.: **[REDACTED]** DL State: **[REDACTED]** Social Security Number: **[REDACTED]**

**VEHICLE DESCRIPTION**  
 Vehicle Reg No.: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **[REDACTED]** Vehicle Color: **[REDACTED]**

**A. YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B. YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

**3317** YOUR COURT DATE: **[REDACTED]**

Collateral (fine): **\$50** For payment by credit card, SEE INSTRUCTIONS.  
 Original - CVR Copy

Physical Description: **[REDACTED]** Original - CVR Copy  
 Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** (Circle One)  
 Hair: **[REDACTED]** Complexion: **[REDACTED]** Birth Date: **[REDACTED]** (Circle One)  
 Weather Conditions: **[REDACTED]** County: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]** Ice: **[REDACTED]** Fog: **[REDACTED]**  
 Traffic Conditions: **[REDACTED]** Light: **[REDACTED]** Medium: **[REDACTED]** Heavy: **[REDACTED]**

**United States District Court**  
**Violation Notice**

Case Code: **WYNP** Violation No.: **P 384762** Plaintiff Name: **DENNIS YOUNG**  
 Officer No.: **17368**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:**  
 Date and Time of Offense: **12-31-01 1526** Offense Charged: **30 CFR 7.13 (1)**  
 City: **EMERALD** State: **AK** District: **101956-092**  
 Officer Description: **ALLOWING UNDERAGE / UNLICENSED DRIVER TO OPERATE SNOWMOBILE**

Defendant's Last Name: **STAINBACIS** First Name: **DAVID** MI: **A**  
 Address: **[REDACTED]** City: **[REDACTED]** State: **AK** Zip Code: **[REDACTED]**  
 Director's License No.: **[REDACTED]** DL State: **[REDACTED]** Social Security Number: **[REDACTED]**

**VEHICLE DESCRIPTION**  
 Vehicle Reg No.: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **[REDACTED]** Vehicle Color: **[REDACTED]**

**A. YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.**  
**B. YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.**  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

**3318** YOUR COURT DATE: **[REDACTED]**

Collateral (fine): **\$50** For payment by credit card, SEE INSTRUCTIONS.  
 Original - CVR Copy

Physical Description: **[REDACTED]** Original - CVR Copy  
 Sex: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]** Eyes: **[REDACTED]** (Circle One)  
 Hair: **[REDACTED]** Complexion: **[REDACTED]** Birth Date: **[REDACTED]** (Circle One)  
 Weather Conditions: **[REDACTED]** County: **[REDACTED]** Rain: **[REDACTED]** Snow: **[REDACTED]** Ice: **[REDACTED]** Fog: **[REDACTED]**  
 Traffic Conditions: **[REDACTED]** Light: **[REDACTED]** Medium: **[REDACTED]** Heavy: **[REDACTED]**

Loc. Code <b>02XHP</b>		<b>United States District Court Violation Notice</b>				
Violation No. <b>P 382179</b> <b>01-4560</b> <del>#20007</del>		Print Officer Name <b>J. HANNAFORD</b> Officer No. <b>#257</b>				
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION						
Date and Time of Offense <b>02/31/01, 5:45P</b>		Offense Charged <b>36 CFR 218(C)</b>				
Place of Offense <b>W. ENT. RD., MP 2 (1200)</b>						
Offense Description <b>USE IN UNDESIGNATED AREA - OFF ROAD</b>						
Defendant's Last Name <b>MONSEN</b>		M.I. <b>ANNA</b>	M.I. <b>E.</b>			
Street Address [REDACTED]						
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]			
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]				
VEHICLE DESCRIPTION						
Vehicle Tag No. [REDACTED]	Vehicle Tax State [REDACTED]	Year <b>97</b>	Vehicle Make <b>POL</b>			
			Vehicle Color <b>GRN</b>			
<input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. <b>JUDY</b> <input checked="" type="checkbox"/> B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <b>Following</b> <input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.						
<b>3319</b>		YOUR COURT DATE				
[REDACTED]		Date				
[REDACTED]		Time				
Collateral (fine) <b>\$100.00</b>	For payment by credit card, SEE INSTRUCTIONS.					
Physical Description Original - CVB Copy						
Sex	Race	Height	Weight	Hair	Eyes	(Circle One) Adult Juvenile
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Adult
Weather Conditions: <b>Clear</b>		Cloudy	Rain	Snow	Ice	Fog
Traffic Conditions: <b>Light</b>		Medium	Heavy			

P382179

United States District Court  
Violation Notice

Loc. Code <b>WYNP</b>	Print Officer Name <b>Curt R. Bennett</b>
Violation No. <b>P 372988</b> <b># 020190</b>	Officer No. <b>1251</b>

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>01-16-02 1615</b>	Offense Charged <b>CFR Title 36-4.21(c)</b>
Place of Offense <b>Walt Entrance - Red</b>	<b>(1201)</b>
Offense Description <b>676-46-007</b> <b>Speeding - 54/35</b>	

P 372988

Defendant's Last Name <b>Driscoll</b>	First Name <b>Madin</b>	M.I. <b>K.</b>
Street Address <b>[REDACTED]</b>	State <b>[REDACTED]</b>	Zip Code <b>[REDACTED]</b>
Date of Birth <b>[REDACTED]</b>	D.I. State <b>[REDACTED]</b>	Social Security Number <b>[REDACTED]</b>

VEHICLE DESCRIPTION

Vehicle Tag No. <b>[REDACTED]</b>	Vehicle Tag State <b>[REDACTED]</b>	Year <b>02</b>	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Red</b>
--------------------------------------	--	-------------------	--------------------------------	-----------------------------

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile)  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below enclosed.  
 I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address <b>F400-1-1502-CRB</b>	Date <b>[REDACTED]</b>
<b>with Lock</b> <b>Fee = \$77.00</b>	Time <b>[REDACTED]</b>

Collateral (fee): **\$77.00** For payment by credit card, SEE INSTRUCTIONS.

Physical Description	Original - CVB Copy
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile
Weather Conditions: <input checked="" type="checkbox"/> Cloudy <input type="checkbox"/> Cloudy <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Ice <input type="checkbox"/> Fog	
Traffic Conditions: <input type="checkbox"/> Light <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Heavy	

**United States District Court  
Violation Notice**

Loc. Code: **WYNP**

Violation No: **02-01594**  
**P 196938 (0159)**  
**02-**

Print Officer Name: **JUSTIN IVARY**

Officer No.: **19949**

**YOU ARE CHARGED WITH THE FOLLOWING VIOLATION**

Date and Time of Offense	Offense Charged
<b>01/17/02 1050</b>	<b>30 CFR 2.18 (C)</b>
Place of Offense	
<b>SOUTH ONT ROAD - SOUTH 0901</b>	
Offense Description	
<b>OPERATING A SNOWMOBILE IN A UNDESIGNATED AREA</b>	

P196938

Defendant's Last Name	First Name	M.I.
<b>GRIFFITH</b>	<b>CHELTON</b>	<b>H</b>
Street Address		
[REDACTED]		
City	State	Zip Code
[REDACTED]	[REDACTED]	[REDACTED]
Defendant's License No.	Social Security Number	
[REDACTED]	[REDACTED]	

**VEHICLE DESCRIPTION**

Vehicle Reg No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
[REDACTED]	[REDACTED]	<b>01</b>	<b>MERC CAT</b>	<b>WHITE</b>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

**YOUR COURT DATE**

**9**

Court Address	Date
<b>PAYD \$100 - CASH</b>	
<b>Q.I. RETURNED 01/17</b>	Time

Collateral (Fnc): **\$100** For payment by credit card, SEE INSTRUCTIONS.

Physical Description: Original - CVB Copy

Sex	Race	Height	Weight	Hair	Eyes	(Circle One)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	<input checked="" type="radio"/> Adult <input type="radio"/> Juvenile

Weather Conditions:  Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions:  Light  Medium  Heavy

**DGP**  
NPS Form 10-50, Rev. 5/97

United States District Court  
Violation Notice

Loc. Code: **WYMP**  
Violation No: **P 372997 #020174**  
Print Officer Name: **Carl R. Bennett**  
Officer No.: **129**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: **01-18-02 - 1000**  
Offense Charged: **CFR-Title 36-7.13(L)**  
Place of Offense: **West End Station - West End Road (12017)**  
Offense Description: **(61-01-1b) Drivers License - Learners Permit Required**

Defendant's Last Name: **Thinks**  
First Name: **Jason**  
M.I.: **K.**

City: [Redacted]  
State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]  
Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

VEHICLE DESCRIPTION:  
Vehicle Tag No.: [Redacted] Vehicle Tag State: [Redacted] Year: **99** Vehicle Make: **Polaris** Vehicle Color: [Redacted]

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile)  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

**11** YOUR COURT DATE

Court Address: **PAID - 01-18-02 - CRP**  
**with cash - Total = \$50.00**  
Date: [Redacted] Time: [Redacted]

Collateral (fee): **\$50.00**  
For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy

Sex: [Redacted] Race: [Redacted] Height: [Redacted] Weight: [Redacted] Hair: [Redacted] Eyes: [Redacted] (Circle One) Adult  Juvenile

Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog

Traffic Conditions: Light  Medium  Heavy

P372997



Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382211</b>		Print Officer Name <b>Barland-Liles</b>	
Bond # <b>020214</b>		Officer No. <b>2080</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>01-21-02 1230</b>		Offense Charge <b>4.22 (b) (3) 36 CFR 2.187(a)</b>	
Place of Offense <b>West Cent Road - Main I.S. (12a)</b>			
Offense Description <b>snowmobile Failure to maintain control</b>		<b>P382211</b>	
Defendant's Last Name <b>Koska</b>		First Name <b>Eric</b>	M.I. <b>W.</b>
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]		Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tkg No. [REDACTED]	Vehicle Tkg State [REDACTED]	Year <b>2005</b>	Vehicle Make <b>Polaris Polaris</b>
			Vehicle Color <b>Blue</b>
<input type="checkbox"/> A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile) <input checked="" type="checkbox"/> B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear if required.			
<b>29</b>		YOUR COURT DATE	
Court Address <b>Paid by Master Card</b>		Date Time	
Collateral (Fee) <b>7100</b>		For payment by credit card, SEE INSTRUCTIONS.	
Physical Description		Original - CVR Copy	
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]	Eyes [REDACTED]	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Weather Conditions: Clear Cloudy Rain Snow Ice Fog			
Traffic Conditions: Light <input checked="" type="radio"/> Medium <input type="radio"/> Heavy			



Lab. Code <b>WYMP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382259</b>	Print Officer Name <b>J. Stobinski</b>		
# <b>02-0203</b>	Officer No. <b>896</b>		
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>1-20-02 0958</b>	Offense Charged <b>36 CFR 4.22(h)(3)</b>		
Place of Offense <b>W. 3rd Rd. - Riverside Park (201)</b>	Offense Description <b>Failure to maintain control (73-00-00)</b>		
Defendant's Last Name <b>Reinert</b>	First Name <b>Debra</b>	M.I. <b>C.</b>	
Street Address [REDACTED]			
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Date of Birth [REDACTED]
Driver's License No. [REDACTED]	D.L. State [REDACTED]	Social Security Number [REDACTED]	
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>02</b>	Vehicle Make <b>Ski-doo</b>
		Vehicle Color <b>Blu</b>	
<input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> YOU MUST MAKE ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS. <input checked="" type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed. <input type="checkbox"/> I plead not guilty and promise to appear as required.			
<b>28</b>		YOUR COURT DATE	
Court Address <b>Paid - Visa - \$100.00</b>		Date Time	
Collateral (fine) <b>\$100.00</b>	[For payment by credit card, SEE INSTRUCTIONS.]		
Physical Description Original - CVB Copy			
Sex <b>M</b>	Race <b>[REDACTED]</b>	Height <b>[REDACTED]</b>	Weight <b>[REDACTED]</b>
Hair <b>[REDACTED]</b>	Eyes <b>[REDACTED]</b>	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Weather Conditions: <input checked="" type="radio"/> Clear <input type="radio"/> Cloudy <input type="radio"/> Rain <input type="radio"/> Snow <input type="radio"/> Ice <input type="radio"/> Fog			
Traffic Conditions: <input type="radio"/> Light <input type="radio"/> Medium <input checked="" type="radio"/> Heavy			

P 382259

United States District Court  
Violation Notice

Loc. Code <b>WYNP</b>	Violation No. <b>P 372858</b> <b># 01-4503</b>	Print Officer Name <b>Bonnie Coffey</b>	Officer No. <b>1266</b>
--------------------------	--	--	----------------------------

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>12/28/01-0145</b>	Offense Charged <b>36 CFR 2.18(c)</b>
Place of Offense <b>W-ENT Rd Mad. River pull out (1200)</b>	
Offense Description <b>SNOWmobile - use in undesignated area</b>	

Defendant's Last Name <b>SIDORENKO</b>	First Name <b>Alex</b>	M.I. <b>-</b>
State <b>VT</b>	Zip Code <b>05601</b>	Date of Birth <b>01-01-01</b>
D.I. State <b>VT</b>	Social Security Number <b>[REDACTED]</b>	

VEHICLE DESCRIPTION			
Vehicle Tag State <b>VT</b>	Year <b>00</b>	Vehicle Make <b>POLARIS</b>	Vehicle Color <b>Blue</b>

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS **(Snowmobile)**  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

**3247** YOUR COURT DATE

Court Address <b>po cash B6 12/28/01</b>	Date
	Time

Collateral fees? **\$100** For payment by credit card, SEE INSTRUCTIONS.

Sex	Race	Hair	Weight	Height	Eyes	(Circle One) Adult Juvenile
						Adult
Weather Conditions:	Clear	Cloudy	Rain	Snow	Ice	Fog
Traffic Conditions:	Light	Medium	Heavy			

**United States District Court**  
**Violation Notice**

Lic. Code: **NYNP**  
Violation No.: **P 382226**  
Print Officer Name: **D. CALEON**  
Officer No.: **C6051**

# **01-4471**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: **12/16/01 1230**  
Offense Charged: **WEST ENTRANCE ROAD - MILE 5 (180D)**  
Time of Offense: **12/16/01 1230**  
Offense Location: **DUNBAR'S PLAZA WEST ENTRANCE ROAD**  
Officer Description: **116042**

Defendant's Last Name: **MVERS** First Name: **DOUGLAS** M.I.: **13**  
Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
Hair Color: **[REDACTED]** Eye Color: **[REDACTED]**  
Special Security Number: **[REDACTED]**  
Vehicle Make: **[REDACTED]** Year: **1001** Model: **PONTIAC** Color: **BLUE**  
Vehicle Description: **[REDACTED]**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Summable)  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collaterals shown below.  
I plead not guilty and promise to appear as required.  
YOUR COURT DATE: **3253** Date: **PAID WITH VISA \$50.00** Time: **JK**

Collateral (fee): **\$ 50.00**  
For payment by credit card, SEE INSTRUCTIONS.

Original - CVN Copy  
Physical Description:  Male  Female  Other  Unknown  Other  
Weight:  100  125  150  175  200  225  250  275  300  325  350  375  400  425  450  475  500  525  550  575  600  625  650  675  700  725  750  775  800  825  850  875  900  925  950  975  1000  
Weather Condition:  Clear  Partly Cloudy  Cloudy  Rain  Snow  Ice  
Traffic Condition:  Light  Heavy

**United States District Court**  
**Violation Notice**

Lic. Code: **W7NP**  
Violation No.: **P 382230**  
Print Officer Name: **D. CALEON**  
Officer No.: **C6051**

# **01-4486**

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
Date and Time of Offense: **12/16/01 1401**  
Offense Charged: **WEST ENTRANCE ROAD - MI 3 (180D)**  
Time of Offense: **12/16/01 1401**  
Offense Location: **SPRING 6/635**  
Officer Description: **116042**

Defendant's Last Name: **FUST** First Name: **CHRISTOPHER** M.I.: **[REDACTED]**  
Street Address: **[REDACTED]** City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]**  
Date of Birth: **[REDACTED]**  
Sex: **[REDACTED]** Race: **[REDACTED]** Height: **[REDACTED]** Weight: **[REDACTED]**  
Hair Color: **[REDACTED]** Eye Color: **[REDACTED]**  
Special Security Number: **[REDACTED]**  
Vehicle Make: **[REDACTED]** Year: **2000** Model: **PONTIAC** Color: **BLU**  
Vehicle Description: **[REDACTED]**

A YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Summable)  
 B YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collaterals shown below.  
I plead not guilty and promise to appear as required.  
YOUR COURT DATE: **3253** Date: **PAID WITH VISA \$99.00** Time: **[REDACTED]**

Collateral (fee): **\$ 99.00**  
For payment by credit card, SEE INSTRUCTIONS.

Original - CVN Copy  
Physical Description:  Male  Female  Other  Unknown  Other  
Weight:  100  125  150  175  200  225  250  275  300  325  350  375  400  425  450  475  500  525  550  575  600  625  650  675  700  725  750  775  800  825  850  875  900  925  950  975  1000  
Weather Condition:  Clear  Partly Cloudy  Cloudy  Rain  Snow  Ice  
Traffic Condition:  Light  Heavy

United States District Court  
Violation Notice

Loc. Code  
WYNP

Violation No.  
P382231  
# 01-4490

Print Officer Name:  
D. CANICIA  
Officer No.  
C6051

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 12/27/01 - 1440  
Offense Charged: 3C CFR 4.21 (C)

Place of Offense: WEST ENTRANCE ROAD - MI 3 (120)

Offense Description: SPEEDING 55/35  
(70-40-00)

Defendant's Last Name: SIEBER  
First Name: CARTER  
M.I.: E.

Street Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED] Date of Birth: [REDACTED]

Driver's License No.: [REDACTED] D.L. State: [REDACTED] Social Security Number: [REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.: [REDACTED] Vehicle Tag State: [REDACTED] Year: 2001 Vehicle Make: PISCARIS Vehicle Color: 810

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile)  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

X I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

3254 YOUR COURT DATE

Court Address: PAID \$80.00 WITH VISA DC  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Collateral (fine): \$80.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy

Sex: [REDACTED] Race: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Hair: [REDACTED] Eyes: [REDACTED] (Circle One) Adult Juvenile

Weather Conditions: Clear Cloudy Rain Snow Ice Fog

Traffic Conditions: Light Medium Heavy

P382231

United States District Court  
Violation Notice

Loc. Code  
WYNP

Violation No.  
P 372859  
# 01-4512

Print Officer Name  
Bonnie Coffey  
Officer No.  
1266

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense: 12/28/01 1640  
Offense Charged: 36 CFR 218(d)(4)  
Place of Offense: WENT. Rd., Madison River putout (1201)  
Offense Description: Racing, in excess of 45 mph.  
#61-01-058  
372859

Defendant's Last Name: TABAL  
First Name: Phillip  
M.I.: H.

Street Address: [Redacted]  
City: [Redacted] State: [Redacted] Zip Code: [Redacted] Date of Birth: [Redacted]

Driver's License No.: [Redacted] D.L. State: [Redacted] Social Security Number: [Redacted]

VEHICLE DESCRIPTION

Vehicle Tag No.: [Redacted] Vehicle Tag State: [Redacted] Year: [Redacted] Vehicle Make: Polaris 550  
Vehicle Color: Blue

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.

I wish to terminate this matter by paying the collateral shown below, enclosed.  
 I plead not guilty and promise to appear as required.

3256 YOUR COURT DATE

Court Address: [Redacted] Date: 12/28/01  
# 7932 BB 12/28/01

Collateral (\$): \$100 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVE Copy  
Sex: [Redacted] Race: [Redacted] Height: [Redacted] Weight: [Redacted] Hair: [Redacted] Eyes: [Redacted] (Circle One) Adult  Juvenile   
Weather Conditions: Clear  Cloudy  Rain  Snow  Ice  Fog   
Traffic Conditions: Light  Medium  Heavy

CAD

United States District Court  
Violation Notice

Loc. Code  
WYNP

Violation No.  
P381756  
01-4430

Print Officer Name  
T. SELIGA  
Officer No.  
53014

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense  
12/19/01 16:40  
Offense Charged  
36 CFR 4.21(c)

Place of Offense  
WEST OF WILDLIFE POND, MADISON

Offense Description  
OPERATE A MOTOR VEHICLE  
AT A SPEED IN EXCESS OF  
THE POSTED SPEED LIMIT TO  
WITH 60 MPH IN 35 SPEED ZONE.

P381756

Defendant's Last Name  
ROBINSON  
First Name  
KYLE  
M.I.  
L.

Street Address  
[REDACTED]

City  
[REDACTED] State  
[REDACTED] Zip Code  
[REDACTED] Date of Birth  
[REDACTED]

Driver's License No.  
[REDACTED] D.L. State  
[REDACTED] Social Security Number  
[REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.	Vehicle Tag State	Year	Vehicle Make	Vehicle Color
			ARCTIC CAT	GREEN

- A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.
- B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.
- I wish to terminate this matter by paying the collateral shown below, enclosed.
- I plead not guilty and promise to appear as required.

3272 YOUR COURT DATE

Court Address  
Date  
Time

Material (fine)  
\$95 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy

Sex Race Height Weight Hair Eyes (Circle One) Adult Juvenile

Weather Conditions: Clear Cloudy Rain Snow Ice Fog

Traffic Conditions: Light Medium Heavy

Loc. Code  
WYNP

United States District Court  
Violation Notice

Violation No.  
P 378018  
01-4441

Print Officer Name  
Colleen Boes  
Officer No.  
B8536

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense  
10:30 12-22-01  
Offense Charged  
36 CFR 7.13 (1)

Place of Offense  
1/4 mi. South W. Thumb Junction 1303

Offense Description  
Snowmobile Lic/Permit Required  
01-01-16 Supervising Adult

Defendant's Last Name  
Cooper  
First Name  
Robert  
M.I.  
E

Street Address  
[REDACTED]

City  
[REDACTED] State  
[REDACTED] Zip Code  
[REDACTED] Date of Birth  
[REDACTED]

Driver License No.  
[REDACTED] D.L. State  
[REDACTED] Social Security Number  
[REDACTED]

VEHICLE DESCRIPTION

Vehicle Tag No.  
-  
Vehicle Tag State  
WY  
Year  
-  
Vehicle Make  
Polaris  
Vehicle Color  
Red

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed.  
I plead not guilty and promise to appear as required.

3275 YOUR COURT DATE

Court Address  
US Magistrate's Courtroom  
Merrimeth, WY 82190  
307-344-7381  
Date  
Time

Collateral (fine)  
\$50.00 For payment by credit card, SEE INSTRUCTIONS.

Physical Description Original - CVB Copy  
Sex [REDACTED] Race [REDACTED] Height [REDACTED] Weight [REDACTED] Hair [REDACTED] Eyes [REDACTED] (Circle One) Adult Juvenile  
Weather Conditions: Clear Cloudy Rain Snow Ice Fog  
Traffic Conditions: Light Medium Heavy

Loc. Code <b>WYNE</b>	<b>United States District Court Violation Notice</b>	
Violation No. <b>P 382156</b> <b># 01-4474</b>	Print Officer Name <b>Amy F. Ink</b> Officer No. <b>56496</b>	

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense <b>12/26/01 15:54</b>	Offense Charged <b>36 CFR 4.21 (2)</b>
Place of Offense <b>Madison Fair Ground - XI ENT. (1201)</b>	Offense Description <b>Road</b> <b>Speed 56/35 mph</b> <b>(70-40-00)</b>

Defendant's Last Name <b>Choquette</b>	First Name <b>Matthew</b>	M.I. <b>C.</b>
Street Address [REDACTED]		
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]
Date of Birth [REDACTED]	Driver License No. [REDACTED]	
D.L. State [REDACTED]	Social Security Number [REDACTED]	

VEHICLE DESCRIPTION

Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year [REDACTED]	Vehicle Make <b>Polaris</b>	Vehicle Color <b>Red</b>
-------------------------------	---------------------------------	--------------------	--------------------------------	-----------------------------

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS. (Snowmobile)  
 B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
 \_\_\_\_\_ I wish to terminate this matter by paying the collateral shown below, enclosed.  
 \_\_\_\_\_ I plead not guilty and promise to appear as required.

**3280** YOUR COURT DATE

Court Address [REDACTED]	Date
	Time

Collateral (fine) <b>\$ 83.00</b>	For payment by credit card, SEE INSTRUCTIONS.
--------------------------------------	---

Physical Description						Original - CVB Copy	
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]	(Circle One) <input checked="" type="radio"/> Adult <input type="radio"/> Juvenile	
Weather Conditions:		<input checked="" type="radio"/> Clear	<input type="radio"/> Cloudy	<input type="radio"/> Rain	<input type="radio"/> Snow	<input type="radio"/> Ice	<input type="radio"/> Fog
Traffic Conditions:		<input checked="" type="radio"/> Light	<input type="radio"/> Medium	<input type="radio"/> Heavy			

P382156



**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP** (CRD)  
Violation No.: **P 381758**  
Print Officer Name: **T. SELIGA**  
Officer No.: **S. 5014**

**# 01-4480**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
DATE AND TIME OF OFFENSE: **12/10/12 36 CFR 472(B)**  
OFFENSE CHARGE: **HARBORING WILDLIFE, AND/OR SHOOTING OR ATTEMPTING TO SHOOT WILDLIFE**  
OFFENSE DESCRIPTION: **TRAILS TO MAINTAIN TRAIL BEHINDS OF COURSE AND DANGER TO OTHERS. TRAIL TO MAINTAIN TRAIL BEHINDS OF COURSE AND DANGER TO OTHERS.**

Defendant's Last Name: **SELTON** First Name: **ELSE** Sex: **M**  
Street Address: **758**  
City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Year: **[REDACTED]** Vehicle Make: **[REDACTED]** Vehicle Color: **GREEN**

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed. I plead not guilty and promise to appear as required.

**3285** YOUR COURT DATE: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Colateral (Fee): **\$100** For payment by mail, call SEE INSTRUCTIONS.  
Physical Description: Original - CVJ Copy  
Weather Conditions: **Clear** (Circle One) Partly Cloudy Rain Snow Fog  
Traffic Conditions: **Light** (Circle One) Medium Heavy

**United States District Court**  
**Violation Notice**

Loc. Code: **WYMP**  
Violation No.: **P 382227**  
Print Officer Name: **D. CAMICIA**  
Officer No.: **C. 6051**

**# 01-4481**  
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION:  
DATE AND TIME OF OFFENSE: **12/21/12 36 CFR 2.186(a)**  
OFFENSE CHARGE: **WEST ENTRANCE R.O.M. 3 (180)**  
OFFENSE DESCRIPTION: **POSS IN UNDESIGNATED AREAS SNOWMOBILE**

Defendant's Last Name: **LOESTROM** First Name: **ERIC** Sex: **M**  
Street Address: **[REDACTED]**  
City: **[REDACTED]** State: **[REDACTED]** Zip Code: **[REDACTED]** Date of Birth: **[REDACTED]**

Vehicle Tag No.: **[REDACTED]** Year: **2001** Vehicle Make: **FORD** Vehicle Color: **BLU**

**A** YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
**B** YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below, enclosed. I plead not guilty and promise to appear as required.

**3286** YOUR COURT DATE: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Colateral (Fee): **\$100** For payment by mail, call SEE INSTRUCTIONS.  
Physical Description: Original - CVJ Copy  
Weather Conditions: **Clear** (Circle One) Partly Cloudy Rain Snow Fog  
Traffic Conditions: **Light** (Circle One) Medium Heavy

United States District Court  
Violation Notice

Loc. Code: WYMP  
Violation No: P 382229

First Officer Name: D CANALEIA  
Officer No: 66051  
Date and Time of Offense: 12/27/01 1005  
Place of Offense: WEST ENTRANCE RD MI 3 (1201)  
Offense Charged: UNDESIGNATED AREA

Defendant's Last Name: BOUTARO  
Street Address: [REDACTED]  
City: [REDACTED]  
State: [REDACTED] Zip Code: [REDACTED]  
Date of Birth: [REDACTED]  
D.L. No: [REDACTED] Social Security Number: [REDACTED]  
Driver's License No: [REDACTED]

Vehicle No. [REDACTED] Year: 2004 Vehicle Make: PONTIAC Vehicle Color: BLUE  
VEHICLE DESCRIPTION: [REDACTED]

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.

Amount of fine and penalty to appear as required: \$3888  
YOUR COURT DATE: TO MAIL  
Date: [REDACTED] Time: [REDACTED]

Collateral (fine) \$1000  
Physical Description: Original - CVR Copy  
Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] (Circle One)  
Weather Conditions: [REDACTED] County: [REDACTED] State: [REDACTED] Zip: [REDACTED] (Circle One)  
Traffic Conditions: [REDACTED] Light: [REDACTED] Medium: [REDACTED] Heavy: [REDACTED]

United States District Court  
Violation Notice

Loc. Code: WYMP  
Violation No: P 382228

First Officer Name: D CANALEIA  
Officer No: 66051  
Date and Time of Offense: 12/27/01 1005  
Place of Offense: WEST ENTRANCE RD MI 3 (1201)  
Offense Charged: UNDESIGNATED AREA

Defendant's Last Name: BOUTARO  
Street Address: [REDACTED]  
City: [REDACTED]  
State: [REDACTED] Zip Code: [REDACTED]  
Date of Birth: [REDACTED]  
D.L. No: [REDACTED] Social Security Number: [REDACTED]  
Driver's License No: [REDACTED]

Vehicle No. [REDACTED] Year: 2004 Vehicle Make: PONTIAC Vehicle Color: BLUE  
VEHICLE DESCRIPTION: [REDACTED]

A  YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.  
B  YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.  
I wish to terminate this matter by paying the collateral shown below.

Amount of fine and penalty to appear as required: \$3887  
YOUR COURT DATE: TO MAIL  
Date: [REDACTED] Time: [REDACTED]

Collateral (fine) \$1000  
Physical Description: Original - CVR Copy  
Sex: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Eyes: [REDACTED] Hair: [REDACTED] (Circle One)  
Weather Conditions: [REDACTED] County: [REDACTED] State: [REDACTED] Zip: [REDACTED] (Circle One)  
Traffic Conditions: [REDACTED] Light: [REDACTED] Medium: [REDACTED] Heavy: [REDACTED]

Loc. Code <b>WYNP</b>		<b>United States District Court Violation Notice</b>	
Violation No. <b>P 196933</b>		Print Officer Name <b>JUSTIN IVARY</b>	
Offense No. <b>01-4494</b>		Officer No. <b>19949</b>	
YOU ARE CHARGED WITH THE FOLLOWING VIOLATION			
Date and Time of Offense <b>12/27/01 11:00</b>		Offense Charged <b>36 CFR 4.22 (b)(1)</b>	
Place of Offense <b>2 MILE S. OF S. ENROUTE OSC</b>		Offense Description <b>73-00-00</b>	
<b>UNSAFE OPERATION - JUMPING</b>			
<b>BORN W/ EXCESSIVE SPEED W/O</b>			
<b>(SUSPENSION OF TRAVEL) ROAD CONDI</b>			
Defendant's Last Name <b>ORT</b>		First Name <b>KENNETH</b>	M.I. <b>2000W</b>
Street Address [REDACTED]			
City [REDACTED]		State [REDACTED]	Zip Code [REDACTED]
Date of Birth [REDACTED]		[REDACTED]	
Driver's License No. [REDACTED]		D.L. State [REDACTED]	Social Security Number [REDACTED]
VEHICLE DESCRIPTION			
Vehicle Tag No. [REDACTED]	Vehicle Tag State [REDACTED]	Year <b>99</b>	Vehicle Make <b>YAM</b>
[REDACTED]	[REDACTED]	[REDACTED]	Vehicle Color <b>BLUE</b>
<p><input type="checkbox"/> YOU MUST APPEAR IN COURT. SEE INSTRUCTIONS.</p> <p><input checked="" type="checkbox"/> YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. SEE INSTRUCTIONS.</p> <p><input type="checkbox"/> I wish to terminate this matter by paying the collateral shown below, enclosed.</p> <p><input type="checkbox"/> I plead not guilty and promise to appear as required.</p>			
<b>3290</b>		YOUR COURT DATE	
Court Address [REDACTED]		Date [REDACTED]	
[REDACTED]		Time [REDACTED]	
Collateral (fine) <b>\$100</b>		For payment by credit card, SEE INSTRUCTIONS.	
Physical Description			
Original		CVB Copy	
Sex [REDACTED]	Race [REDACTED]	Height [REDACTED]	Weight [REDACTED]
Hair [REDACTED]	Eyes [REDACTED]	(Circle One) Adult Juvenile	
Weather Conditions: <b>Clear</b>		Cloudy Rain Snow Ice Fog	
Traffic Conditions: Light		<b>Medium</b> Heavy	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION VIII  
 999 18th STREET - SUITE 500 (SEPR-EP)  
 DENVER, COLORADO 80202-2466

Clifford Hawkes  
 National Park Service  
 Denver Service Center  
 12795 West Alameda Parkway  
 Lakewood, Colorado 80228

Re: Draft EIS for Winter Use Plans,

Yellowstone

and Grand Teton National Parks and John  
 D. Rockefeller Jr. Memorial Parkway  
 CEQ # 990340

Mr. Hawkes:

The U.S. Environmental Protection Agency Region VIII (EPA) has reviewed the draft environmental impact statement (DEIS) on the Yellowstone and Grand Teton National Parks and John D. Rockefeller Jr. Memorial Parkway. Our review of this project was conducted in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

Our review has identified several positive steps taken by the National Park Service (NPS) toward improved environmental conditions in the project area. Specifically, EPA supports the increased protection provided to wildlife winter habitat through road- and trail-use policies that limit off-trail non-motorized or off-highway vehicles (OHV) use in these critical areas. EPA also supports implementation of emissions and noise controls on OHVs in the project area to better protect against the on-going impacts to human health, air and water quality, and the scenic and aesthetic values for which these Parks were created. However, we stress that without restrictions on the number of vehicles, any environmental gains from improved engine technology could easily be negated by increased numbers and density of vehicles.

This DEIS includes extensive analysis of the effects from current winter use and that analysis demonstrates significant environmental and human health impacts. We encourage NPS to take the steps necessary to protect human health and the environment immediately rather than to depend on future regulation of OHV engines from EPA. We would like to point out that this DEIS includes among the most thorough and substantial science base that we have seen supporting a NEPA document. While any land management decision can benefit from having more data available, NPS clearly has the science-based information at hand to make a decision on this Plan that will protect both human health and the natural resources in these Parks.

The remainder of our comments and recommendations on this DEIS will focus on three areas: air quality and human health effects from OHV emissions; deficiencies in the adaptive management provisions of the Plan; and compliance with Executive Order 11644.

First, EPA concludes that Alternatives A through F do not assure compliance with National Ambient Air Quality Standards (NAAQS) with respect to carbon monoxide (CO). The standard for CO is based on protection of human health. Despite data indicating existing significant impacts from CO in the Parks, this DEIS defers the decision on reducing human exposure to high CO levels in the Parks through "adaptive management" and through OHV emission controls that would not take effect until at least 2008. The NPS has available management tools that could address these impacts through *this* action including limiting numbers and density of OHVs in the Parks, and it is not clear why these or other measures are not being proposed in the preferred alternative.

Section 169(A)(a)(1) of the Clean Air Act (The Act) states that "Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution." This DEIS describes man-made impairments to both air quality and visibility from winter use in the project area. The Act specifically delegates the responsibility to protect air quality and related values (visibility, odor) in Class I areas to the Federal Land Manager. The decision for this Management Plan *must* therefore be protective of Class I air quality and visibility standards and values.

Second, the adaptive management procedures included in Alternatives B and E are not well defined in this DEIS. EPA has included in the enclosed "Specific Comments" our detailed concerns and recommendations regarding the description and application of adaptive management for this action. We are concerned that the adaptive management process described in this action could unnecessarily result in the need for additional, costly NEPA processes and delayed environmental protection.

Finally, as referenced in the Purpose and Need for this action, Executive Order 11644 (as amended) states that off-road vehicles shall be permitted in National Parks "only if...that off-road vehicle use will not adversely affect natural, aesthetic, or scenic values." EPA has reviewed this DEIS in detail, and concludes that the analysis provided clearly and convincingly demonstrates current snowmobile use is indeed adversely affecting the natural (wildlife, air quality), aesthetic (noise), and scenic (visibility) values in these Parks. Further, Alternatives A through F presented in this document would result in continued adverse impacts to these resources from off-road vehicles. The DEIS specifically addresses resource impacts from the Alternatives A through F as "adverse" and "compromised." Ten of the eleven management prescriptions listed in Table 2 indicate that "visitor use may compromise resource values." The summary of effects in Table 4 indicate varying levels of "adverse" effects for each alternative with respect to public health, public safety, water quality, air quality, and wildlife. It is evident that Alternatives A through F in this DEIS would not comply with Executive Order 11644. E.O.

11644 therefore requires the NPS to restrict OHV use in these areas immediately to protect human health and Park resources.

Based on impacts to human health, air quality, water quality and visibility, EPA has identified Alternative G as the "environmentally preferred alternative." Alternative G could easily be improved to be more protective of winter wildlife habitat by including the "areas of designated use" from Alternatives B, D and E.

Based primarily on the likelihood that this action will result in noncompliance with air quality standards and that air quality could negatively impact human health, EPA is rating the Draft EIS for Winter Use Plans, Yellowstone and Grand Teton National Parks and John D. Rockefeller Jr. Memorial Parkway as EO - 2 (Environmental Objections, Insufficient Information). "EO" indicates that the EPA review has identified environmental impacts including possible violation of environmental regulations that can and should be avoided in order to fully protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of additional project alternatives. The identified additional information, data, analyses or discussion should be included in the Final EIS (FEIS). A full description of EPA's EIS rating system is enclosed.

Because this action has the potential to exceed NAAQS, it is essential that EPA and NPS take steps to work together to assure that air quality and human health are protected in the near term and beyond through this project. We offer to meet with you and your staff to work these issues out between now and the publication of the FEIS. We appreciate the opportunity to review this project and provide comments. Thank you for your willingness to consider our comments at this stage of the process, and we hope they will be useful to you. Should you have any questions regarding these comments, you may contact Phil Strobel of my staff at (303) 312-6704.

Sincerely,

Cynthia G. Cody, Chief  
NEPA Unit

Enclosures

cc: Elaine Suriano, EPA Office of Federal Activities

Secretary Gale Norton  
Department of the Interior  
1849 C Street N.W.  
Washington, D.C. 20240

October 17, 2001

Dear Secretary Norton:

In 1916, the United States Congress demonstrated considerable foresight in establishing the National Park Service (NPS). In so doing, Congress established a unique classification of lands to be managed in essentially a natural condition—where the preservation of nature takes precedence. Thus, Congress declared that the mission of the NPS is to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same [so as to] leave them *unimpaired* for the enjoyment of future generations.” 16 U.S.C. §1 (emphasis added).

To protect national park wildlife and other values, Congress has consistently reaffirmed the core mission contained in the NPS Organic Act that activities within our national parks “shall not be exercised in derogation of the values and purposes for which these various areas have been established.” 16 U.S.C. §1a-1.

Presidents also underscored the obligation to protect national parks and other publicly-owned lands when off-road vehicles began causing increasing damage in the 1970s. Presidents Nixon and Carter issued Executive Orders to control and limit ORV use “to minimize harassment of wildlife or significant disruption of wildlife habitats,” and to provide land managers with the authority to prohibit ORV use when necessary to protect natural values. (E.O. 11644, as amended by E.O. 11989). ORV use and adverse impacts of such use on our publicly-owned lands, however, have continued to escalate.

In recent years, the impact of snowmobiles within our national parks has come under increased scrutiny. National Park Service regulations prohibit snowmobiling except where designated and “only when their use is consistent with the park’s natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and *will not disturb wildlife or damage park resources*,” 36 C.F.R. §2.18(c) (emphasis added).

In late 2000, the NPS published a final Environmental Impact Statement (EIS) and Record of Decision (ROD) which demonstrated the necessity of phasing out snowmobile use in order to uphold laws and protect Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. The EIS was the product of over ten years of analysis and substantial public involvement. Most importantly, the conclusions drawn in the EIS and ROD were based on substantial, credible, and the best available scientific evidence documenting the adverse impact of snowmobiles on wildlife, air quality, natural quiet and other park values. The Environmental Protection Agency observed that the EIS “includes among the most thorough and substantial science base” ever seen in a planning document. (EPA Comments to NPS on the draft EIS, December 1999).

Based on the scientific evidence, it is our professional opinion that snowmobiling results in significant direct, indirect, and cumulative impacts on wildlife, their behavior and environment. As documented in the scientific literature and the Park Service's EIS and ROD, impacts to wildlife include harassment, displacement from important or critical habitats, disruption of feeding activities, alteration in habitat use and distribution patterns, and depletion of critical energy supplies in individual animals potentially resulting in increased mortality or reduced productivity. Such impacts are magnified in the severe winter climate of the Greater Yellowstone Ecosystem where energy is a critical factor in determining survival.

Given the nature preservation mandate of the NPS, the harassment, degradation, and disruption of park wildlife attributable to snowmobiling clearly violate the NPS impairment standard. Ignoring this information would not be consistent with the original vision intended to keep our national parks unimpaired for future generations.

Sincerely,

David Wilcove, Ph.D.  
Arlington, Virginia

Michael Soule, Ph.D.  
Professor Emeritus  
University of California, Santa Cruz

Fred Allendorf, Ph.D.  
Division of Biological Sciences  
University of Montana  
Missoula, Montana

Tim W. Clark, Ph.D.  
Adjunct Professor, Wildlife Biology and Policy  
Yale School of Forestry and Environmental Studies  
New Haven, Connecticut

Stuart Pimm, Ph.D.  
Professor of Conservation Biology  
Center for Environmental Research and Conservation  
Columbia University  
New York, New York



John Harte, Ph.D.  
Professor, Energy and Resources Group  
University of California  
Berkeley, California

Ted J. Case, Ph.D.  
Professor of Biology  
University of California at San Diego  
La Jolla, California

P. Dee Boersma, Ph.D.  
Professor of Zoology  
Department of Zoology  
University of Washington  
Seattle, Washington

Paul C. Paquet, Ph.D.  
Faculty of Environmental Design  
University of Calgary  
Calgary, Alberta  
Canada

Joel Berger, Ph.D.  
Wildlife Conservation Society  
Kelly, Wyoming

Peter Brussard, Ph.D.  
Department of Biology  
University of Nevada, Reno

Franz Camenzind, Ph.D.  
Jackson, Wyoming

Reed F. Noss, Ph.D.  
Conservation Science, Inc.  
Corvallis, Oregon

Jay Anderson, Ph.D.  
Professor Emeritus  
Idaho State University  
Driggs, Idaho

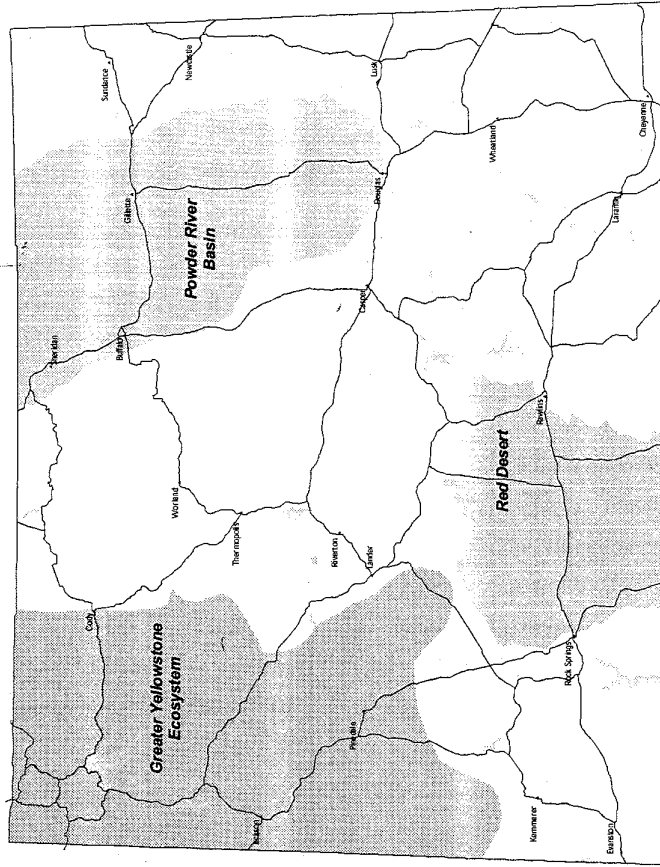
Pamela Matson, Ph.D.  
Department of Geological and Environmental Sciences  
Stanford University  
Palo Alto, California

Kenton Miller, Ph.D.  
World Resources Institute  
Washington, D.C.

Lee Talbot, Ph.D.  
Department of Environmental Science and Policy  
George Mason University  
Fairfax, Virginia

Steven R. Beissinger, Ph.D.  
Chairman and Professor of Conservation Biology  
Department of Environmental Science, Policy and Management  
University of California, Berkeley

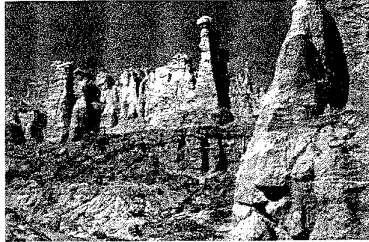
**Sensitive  
Wyoming Landscapes  
Threatened by  
Energy Development**  
(Draft)



Map by  
Biodiversity Associates  
([www.biodiversityassociates.org](http://www.biodiversityassociates.org))  
with support from  
Wyoming Outdoor Council  
([www.wyomingoutdoorcouncil.org](http://www.wyomingoutdoorcouncil.org))  
Oil and Gas Accountability Project  
([www.oil.org](http://www.oil.org))



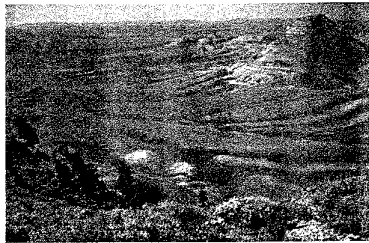
Wyoming' Greater Red Desert Region



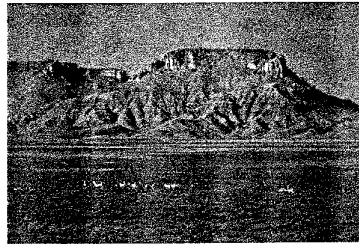
**Adobe Town Wilderness Study Area**  
Photo by Erik Molvar



**Honeycomb Buttes**  
Photo by Mike McClure



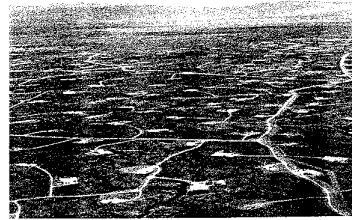
**Oregon Buttes Wilderness Study Area**  
Photo by Erik Molvar



**Oregon Buttes with Pronghorn**  
Photo from Biodiversity Associates



**Sweetwater Canyon Wilderness Study Area**  
Photo by Erik Molvar



**Drill Pads in the Upper Green River Basin, WY**  
Photo by Peter Aengst



Drill pads in the Upper Green River Basin, WY. / Photo by Peter Aengst

**The Wyoming Bureau of Land Management's  
Management of Areas with Wilderness Values**

contacts: Erik Molvar, Biodiversity Associates  
307-742-7978  
Catherine Johnson, National Wildlife Federation  
303 786-8001  
Mac Blewer, Wyoming Outdoor Council  
307-332-7031

**Background on Citizens' Proposed Wilderness in Wyoming**

In the late 1970s, the Bureau of Land Management conducted its Wilderness Intensive Inventories. In the early 1980s, BLM established a number of Wilderness Study Areas in accordance with section 603 of the Federal Land Policy and Management Act (FLPMA), totalling 594,279 acres statewide. Unfortunately, many areas were never evaluated for wilderness qualities.

In 1994, the Wyoming conservation community, led by the Wyoming Outdoor Council and the Sierra Club, released a publication, *Wilderness at Risk*, outlining citizens' proposed wilderness over and above the existing Wilderness Study Areas. This proposal nominated 475,844 acres of additional lands for protection. However, these inventories were not comprehensive in scope.

In autumn of 2000, Biodiversity Associates, a Wyoming-based conservation organization, began intensively inventorying BLM lands in Wyoming that potentially possessed wilderness qualities. To date, nine units have been inventoried, encompassing 540,452 acres of citizens' proposed wilderness (compared to BLM WSAs of 113,500 acres in the same area).

**BLM Response to Citizens' Wilderness Proposals**

Following the submission of the original citizens' wilderness proposal, *Wilderness at Risk*, in 1994, BLM took no discernible action. Even with the adoption of the new Wilderness Inventory and Study Procedures Handbook (BLM Handbook H-6310-1) in February of 2001, BLM continued to ignore this early proposal. This inaction contradicts the handbook which states, "Other Public Lands That May Require a Wilderness Inventory. This includes...lands within externally generated proposals that document new or supplemental information regarding resources uses and condition of the lands not addressed in current land use plans and/or prior wilderness inventories." (H-6310-1.06D)

While BLM has begun to respond in various ways to the later, more data-intensive proposals submitted in 2000-2002, in most cases BLM has failed to follow through, as required by the handbook, by making "a preliminary determination whether the conclusion reached in previous BLM inventories that the area in question lacked wilderness characteristics remains

On July 26th of the same year, BLM released a Draft Environmental Analysis (EA) for the Veritas Haystacks Seismic Project, an extensive oil and gas exploration project that would cover 133 square miles, including approximately 50,000 acres of citizens' proposed wilderness encompassing the scenic Haystacks formation at the north end of Adobe Town. Under the proposed action, seismic cables were to be hand-laid and drills were to be transported by helicopter to minimize impacts within Adobe Town WSA, but no such measures would be applied within the 50,000 acres of citizens' proposed wilderness. In these areas, trucks and buggies would be allowed to drive cross-country at will, crushing shrubs and damaging biological soil crusts. Both of these types of damage can take decades to recover. In the EA, BLM made no mention of citizens' proposed wilderness, and offered no mitigation measure for wilderness qualities outside the established WSA.

In its Decision Record, BLM dismissed the submission of the Citizens' Wilderness Inventory of Adobe Town, noting "No substantive comments, comments providing data to support claims, were received that require further analysis or selection of the No Action alternative." (Decision Record at p.6) This claim was made despite the receipt of more than 400 pages of documentation supporting the presence of wilderness qualities within the project area; this is a depth of analysis that BLM itself never approached in its original "Wilderness Intensive Inventories." Later in the same document, the agency admitted that "BLM has not verified that wilderness characteristics do or do not exist in the area inventoried in the submission."

In their comments on the draft EA, the conservation community asked BLM to extend the same protections (i.e. hand-laying of geophone lines and helicopter transport) to citizens' proposed wilderness as were required within the established WSA, as such actions are consistent with the handbook. (H-6310-1.06F). But, BLM refused to consider an alternative to minimize impacts to the citizens' proposed wilderness, and instead approved the project without meaningful modifications. Interestingly, although BLM determined that hand-laying of geophone lines and helicopter transport were necessary to prevent impairment of wilderness characteristics *inside* Adobe Town WSA, the agency argued that the unregulated off-road driving inherent to the project *outside* the WSA "will not cause irreversible effects or undue or unnecessary degradation to the resources in the project area, including any potential wilderness characteristics." (Decision Record at p. 6). Thus, the BLM has sought to escape from its responsibility to alter or delay projects that might affect wilderness qualities by denying that projects will impact wilderness qualities arbitrarily and without supporting information or analysis.

Following BLM's decision to implement the project in full scale, even in citizens' proposed wilderness, the conservation groups brought a legal challenge against the project in the Interior Board of Land Appeals (IBLA), an administrative law court within the Department of Interior. IBLA failed to rule on our stay request until after the project was completed, and denied the stay in this ruling. The merits of the case are still under review at IBLA.

Long after the project was completed, on February 5, 2002, the BLM Rawlins Field Office released an analysis of lands in the Citizens' Wilderness Inventory of Adobe Town. This analysis was based on helicopter- and vehicle-based review of these lands. In the cover letter by

WSAs in the Jack Morrow Hills area during the NEPA process for the Jack Morrow Hills Coordinated Activity Plan.

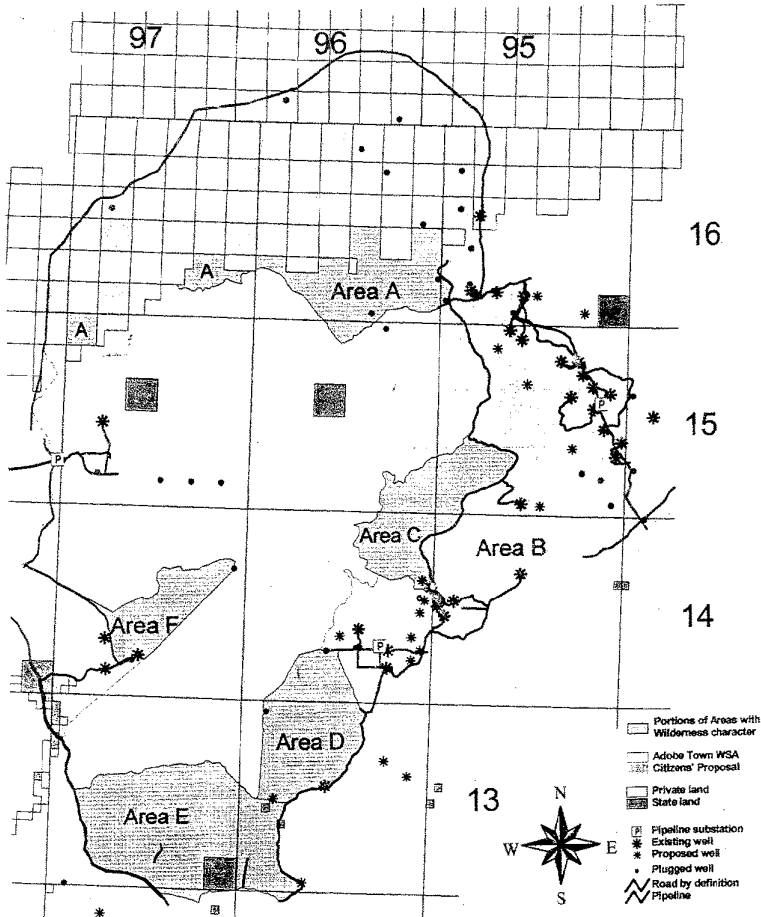
#### Vermillion Basin

In the southwestern Red Desert, two large roadless units have been subject to recent incursions from the Vermillion Basin Natural Gas Project. Although roadless qualities were formally identified to BLM during the comment phase of this project, BLM chose to ignore the roadless qualities of these lands. Biodiversity Associates and other conservation groups won an appeal of this project in IBLA because BLM refused to consider directional drilling and well spacing alternatives which would have kept the wellfields out of the roadless area. Biodiversity Associates subsequently researched and submitted an intensive wilderness inventory for the Kinney Rim North and South Units, comprising more than 200,000 acres of potential wilderness and incorporating parts of the Vermillion Basin Project Area. BLM has presently suspended all activities on the Vermillion Basin Project pending compliance with the IBLA's order. It is unclear at this point whether BLM will draft a supplemental NEPA document to evaluate a directional drilling alternative protecting the proposed wilderness, or whether the agency will attempt merely to make *post hoc* rationalizations to justify its original decision without giving directional drilling any additional consideration.

#### Conclusions

BLM's response to citizens' wilderness proposals was completely absent for the *Wilderness at Risk* proposal of 1994 and tardy and incomplete in the case of more intensive inventories and proposals that have been submitted over the past several years. BLM maintains that all lands outside established WSAs will be managed for "multiple use" until they receive more stringent formal protections. The agency has shown a willingness to approve projects inside citizens' proposed wilderness without giving the same protection as is accorded to WSA lands. But, in many cases, BLM's policy toward these areas will be measured by their final decisions on projects like Vermillion Basin, and the Jack Morrow Hills and Great Divide plans. Given the priority that the Administration has placed on removing obstacles to full-scale oil and gas development, additional protection for wilderness-quality lands would seem unlikely.





### Adobe Town Citizens' Proposal Portions with Wilderness Character

Map 1

**Senator Craig Thomas Statement**  
**Senate Government Affairs Committee Hearing**  
**"Public Health and Natural Resources: A review of the Implementation of Our**  
**Environmental Laws"**  
**March 13, 2002**

Mr. Chairman, thank you for the opportunity to provide comment during today's hearing. When we talk about natural resources and public land decisions we refer to a process. This process in theory anchors itself in the assurance that public values are interwoven with sound land management policies. After all, these ARE "public" lands. Unfortunately, in recent years the decision-making process has been hijacked by Washington edicts and small groups of very vocal and well organized individuals advocating their own extreme agendas. As a Senator that represents a state, half of which is owned by the federal government, I can assure you that folks in Wyoming are growing weary of attempts to hold federal lands hostage and eliminate multiple-use activities, which are a large part of our western culture and economy.

I am concerned that some statements at today's hearing regarding federal land areas in Wyoming will include distortions of the truth and may attempt to mislead members of the Committee. Specifically, the Bureau of Land Management (BLM) area called Jack Morrow Hills, or sometimes referred to as the Red Desert, has provided compatible and responsible oil and gas development, grazing and other approved multiple uses since the 1950's. Elk, deer, pronghorn antelope and other wildlife continue to thrive in the Hills. In fact, elk populations are currently three times their target level.

The BLM began developing a new Environmental Impact Statement (EIS) for Jack Morrow Hills in February 1997. The agency had a goal of completing this public process by December 2000. In November 2000, Secretary Babbitt made his first visit to the area and attempted to develop a directive outside the public process by inserting his own preferred alternative. This action ignored his own agency's resource recommendations, and imposed new restrictions and mandates. The very act of dictating a preferred alternative is a violation of NEPA and placed the agency in indefensible legal territory. The Solicitor General reviewed Babbitt's directive and advised the agency to include his alternative in a Supplemental EIS with new surveys, hydrology information and environmental documentation. Interesting to note, the Secretary made his announcement while facing the Wind River mountain range directly opposite from Jack Morrow Hills.

The current version of the plan includes numerous protections and restrictions regarding uses during all, or designated, times of the year -- including seven Wilderness Study Areas, four Areas of Critical Environmental Concern and historical landscapes. There are no accelerated energy extractions occurring in this area due to President Bush's Executive Order. The BLM is not allowing any new leases until the EIS is completed. To date, there has been no determination in the Supplemental EIS regarding the number of wells or future development to occur in the area. It is untrue and inaccurate to say that the Bush Administration has placed energy over environmental protection regarding Jack Morrow Hills. I am encouraged by the great lengths being taken by the Wyoming BLM officials to include the best available science for environmental protection while incorporating the public in this decision making process.

Mr. Chairman, imposing new decisions independent from the critique and review of agency officials and the concerned public amounts to elitist management, which tears down the NEPA public process. It is critical to the future of our national rangelands and forests that we return to the thoughtful and inclusive land management processes that have served us so well in the past. Thank you again for the opportunity to provide comment for today's discussion.

Materials Presented as New Information, Provider, and Location in SEIS	Adds information that is likely to make a difference in analysis from FEIS.
1. ISMA Letter of Aug. 7 - Promotional material on 4-stroke snowmobiles. See Appendix C.	Letter submitted in response to ISMA commitment under the settlement agreement. It does not provide sufficient information for modeling purposes.
2. ISMA Letter of September 23 - Response to NPS letter of 9/10. See Appendix C.	Letter submitted as part of ISMA commitment under the settlement agreement. It does not provide sufficient information for modeling purposes.
3. ISMA Letter of October 9 - Emissions data on prototype 4-stroke snowmobiles. See Appendix C.	Letter submitted as part of ISMA commitment under the settlement agreement. Information on emissions is within FEIS parameters. No noise or particulates data is provided.
4. ISMA Letter of November 8 - Data on production model 4-stroke snowmobiles. See Appendix C.	Letter submitted as part of ISMA commitment under the settlement agreement. Emissions information is used in SEIS model, but is within FEIS parameters. No noise or particulates data provided. Indicates that some FEIS alternative objectives could feasibly be met by production machines.
5. "Determination of Snowcoach Emission Factors" (SwRI) 12/5. See Appendix D. Provided by the State of Wyoming.	Information was used to the degree possible in SEIS model. Inputs are essentially within parameters used in the FEIS.
6. "American Voters Views on Snowmobiles in National Parks" (ISMA). Provided by the State of Wyoming.	Does not provide information on new snowmobile technology. Does not add to information that already exists in the FEIS. Survey is not credible.
7. "The 2000-2001 Wyoming Snowmobile Survey" (UW). See summary in Appendix D. Provided by the State of Wyoming.	Information used to modify affected environment discussion for socioeconomic, social and economic impacts do not vary substantially from FEIS.
8. "Review of Research related to the Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway" (Institute for Environment and Natural Resources, 2000). Provided by the State of Wyoming.	Information is not new. It was considered prior to the publication of a decision in Nov. 2000. It does not provide information on new snowmobile technology. It does not add to or provide information that is better than that used in the FEIS.
9. "Review of Documents and Recommendations of the Winter Use Plans Final Environmental Impact Statement" (Western EcoSystems Technology, Inc. 2001). Provided by the State of Wyoming.	Does not provide information on new snowmobile technology. It does not add to or provide information that is better than that used in the FEIS.
10. "Oversnow Vehicle Sound Level Measurements" 10/30. JHSI. See Appendix D. Provided by the State of Wyoming.	Data is not significantly different from inputs in FEIS model. Results of modeling not substantially changed from those of FEIS.
11. "An Expert Opinion on the Reasonableness of the Cooperating Agencies' Alternative #2 for Inclusion in the Yellowstone Winter Use SEIS" (Haas, 2001). Provided by the State of Wyoming.	Does not provide information on new snowmobile technology. Does not add to best available information used in the FEIS. Is used by Wyoming to support inclusion of Alternative 3.
12. Proposed EPA Rule. Provided by EPA.	Outcome is distant and uncertain. Rule making is discussed in SEIS, along with several caveats for any assumptions based on the rule.
13. "After-Market Improvement of 2-stroke Snowmobiles". See Appendix D. Provided by Jerry Jardine.	Information is within FEIS parameters.

Materials Presented as New Information, Provider, and Location in SEIS	Adds information that is likely to make a difference in analysis from FEIS
14. "Status and Potential of 2-stroke Technology in Montana" (MDEQ). See Appendix D. Provided by the State of Montana.	Information is within FEIS parameters.
15. "Comparison of CO Emissions from Snowcoaches, 1997 and 2001 Snowmobiles, and 2001 Clean Snowmobile Challenge New Technology and Applications" (MDEQ). See Appendix D. Provided by the State of Montana.	Information is within FEIS parameters, or is the same as that provided in other references.
16. The Electric Snowmobile Demonstration Project. See Appendix D. Provided by the State of Montana.	Information, though interesting, is speculative and insufficient for analysis purposes.
17. "Society of Automotive Engineers 2001 Clean Snowmobile Challenge". See summary in Appendix D. Provided by the State of Montana and Teton County, WY	Information is within FEIS parameters. Indicates that some FEIS alternative objectives could feasibly be met using both 2 and 4-stroke technologies. Does not reflect on production capability. May point to emerging best available technology.
18. MSU-Billings Poll. 12/6. Provided by the State of Montana.	Does not provide information on new snowmobile technology. Does not add to information about public preferences that already exists in the FEIS.
19. "Economic Importance of the Winter Season to Park County, Wyoming" (UW). See Appendix D. Provided by the Park County, WY.	Does not collect or evaluate new data and does not provide new input estimates that could be used in SEIS economic modeling.

Table 15. Listing of materials presented as new information, and a summary of how each was considered.

Materials Presented as New Information	Location of Information	Description of Information and its Use
ISMA Letter of Aug. 7 - Promotional material on 4-stroke snowmobiles.	DSEIS Appendix C	Letter submitted by ISMA to meet settlement agreement commitment. No data sufficient for changing emission/sound model inputs.
ISMA Letter of September 28 - Response to NPS letter of 9/10.	DSEIS Appendix C	Letter submitted by ISMA to meet settlement agreement commitment. No data sufficient for changing emission/sound model inputs.
ISMA Letter of October 9 - Emissions data on prototype 4-stroke snowmobiles	DSEIS Appendix C	Letter submitted by ISMA to meet settlement agreement commitment. Prototype information for HC and CO. No noise or particulates data.
ISMA Letter of November 8 - Data on production model 4-stroke snowmobiles	DSEIS Appendix C Model inputs Ch. IV Air	Letter submitted by ISMA to meet settlement agreement commitment. Production model information for HC and CO. No noise or particulates data provided.
"Determination of Snowcoach Emission Factors" (SwRI) 12/5. Provided by the State of Wyoming.	DSEIS Appendix D Model inputs Ch. IV Air	Information was considered, but not used in its entirety for the DSEIS due to lack of time. It will be reviewed further and used as revised model inputs for the FSEIS.
"American Voters Views on Snowmobiles in National Parks" (ISMA). Provided by the State of Wyoming.	Planning Record	Does not provide information on new snowmobile technology, and does not add to data for other analyses.
"The 2000-2001 Wyoming Snowmobile Survey" (UW). Provided by the State of WY.	DSEIS Chapter III, Summary in Appendix D	Information used to modify affected environment discussion for socioeconomics.
"Review of Research related to the Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway" (Institute for Environment and Natural Resources, 2000). Provided by the State of Wyoming.	Planning Record	Information is not new. It was considered prior to the publication of a decision in Nov. 2000. It does not provide information on new snowmobile technology. It does not provide alternative methodologies, literature, or basic data that would lead to new conclusions (per 40CFR1503.3b).
"Review of Documents and Recommendations of the Winter Use Plans Final Environmental Impact Statement" (Western EcoSystems Technology, Inc. 2001. Provided by the State of Wyoming.	Planning Record	Does not provide information on new snowmobile technology. It does not provide information on alternative methodologies, literature, or basic data that would lead to new conclusions (per 40CFR1503.3b).
"Oversnow Vehicle Sound Level Measurements" 10/30. JHSI. Provided by the State of WY.	DSEIS Appendix D Model inputs Ch. IV Sound	Information was used to a degree, but not used in its entirety in the DSEIS considered, but not used for the DSEIS due to technical disagreement and lack of time. NPS and Wyoming agreed to perform more comprehensive sound

CHAPTER III  
AFFECTED ENVIRONMENT

Materials Presented as New Information	Location of Information	Description of Information and its Use
		measurements for FSEIS in February 2002.
"An Expert Opinion on the Reasonableness of the Cooperating Agencies' Alternative #2 for Inclusion in the Yellowstone Winter Use SEIS" (Haas, 2001). Provided by the State of Wyoming.	Planning Record	Does not provide information on new snowmobile technology. Is used by Wyoming in developing the features of its "cooperating agency alternative" (alternative 2 in this SEIS).
Proposed EPA Rule. Provided by EPA.	Planning Record DSEIS Chapter III	Rule making is discussed in SEIS, along with EPA concerns regarding any SEIS assumptions based on the rule. Outcome of rule-making process is distant and uncertain.
"After-Market Improvement of Z-stroke Snowmobiles". Provided by Jerry Jardine, Dubois, WY.	DSEIS Appendix D	Supports concept that 2-stroke machines can be cleaner and quieter.
"Status and Potential of 2-stroke Technology in Montana" (MDEQ). Provided by the State of Montana.	DSEIS Appendix D	Supports concept that 2-stroke machines can be cleaner and quieter.
"Comparison of CO Emissions from Snowcoaches, 1997 and 2001 Snowmobiles, and 2001 Clean Snowmobile Challenge New Technology and Applications" (MDEQ). Provided by the State of MT.	DSEIS Appendix D	Supports concept that snowmobiles can be cleaner and quieter.
The Electric Snowmobile Demonstration Project. Provided by the State of Montana.	DSEIS Appendix D	Information, though interesting, is speculative and insufficient for analysis purposes.
"Society of Automotive Engineers 2001 Clean Snowmobile Challenge". Provided by the State of Montana and Teton County, WY	DSEIS Summary in Appendix D	Indicates that some FEIS alternative objectives could feasibly be met using both 2 and 4-stroke technologies. Does not reflect on production capability. May point to emerging best available technology.
MSU-Billings Poll. 12/6. Provided by the State of Montana.	Planning Record	Does not provide information on new snowmobile technology. Does not add to information about public preferences that already exists in the FEIS.
"Economic Importance of the Winter Season to Park County, Wyoming" (UW). Provided by the Park County, WY.	DSEIS Appendix D	Does not collect or evaluate new data and does not provide new input estimates that could be used in SEIS economic modeling.