



**U.S. House of Representatives
Committee on Energy and Commerce
Minority Staff
December 15, 2011**

**The Anti-Environment Record of the U.S. House of Representatives
112th Congress, 1st Session**

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Table of Contents

Executive Summary	2
I. Blocking Efforts to Prevent Climate Change	10
A. Votes to Reject Scientific Findings	10
B. Votes to Block Action to Reduce Carbon Pollution	14
C. Votes to Block International Action on Climate Change	16
D. Votes to Block Adaptation Planning	17
II. Undermining the Clean Air Act.....	19
A. Vote to Repeal the Clean Air Act’s Health-Based Standards.....	19
B. Votes to Block Regulation of Emissions from Power Plants	19
C. Votes to Block Regulation of Emissions from Incinerators and Industrial Boilers.....	22
D. Votes to Block Regulation of Emissions from Cement Plants	24
E. Votes to Curtail Regulation of Emissions from Offshore Drilling Operations.....	25
F. Votes to Block Regulation of Particulate Emissions from Mines and Other Sources	27
III. Undermining the Clean Water Act.....	29
A. Votes to Repeal EPA’s Authority to Set Water Quality Standards and Enforce Discharge Limits.....	29
B. Votes to Block Oversight of Mountaintop Removal Coal Mining	30
C. Votes to Block Protections for Wetlands and Tributaries	31
D. Votes to Block Other Pollution Protection Initiatives	32
E. Votes to Cut Water Quality Funding.....	33
IV. Removing Protections for Public Lands, Fish, and Wildlife.....	34
A. Votes to Block Protection of Forests and Other Wilderness Areas.....	34
B. Votes to Block Protection of Salmon and Other Wildlife	34
C. Votes to Transfer Federal Lands to a Private Mining Company	36
V. Weakening Safety Requirements for Offshore Drilling.....	37
A. Votes to Expedite Drilling without Regard to Safety	37
B. Votes to Approve New Offshore Drilling without Environmental Review	37
C. Votes to Preserve an Oil Royalty Loophole and Cut Funding for Drilling Oversight	38
VI. Cutting Support for Clean Energy Technologies and Programs.....	40
A. Votes to Cut Funding for Clean Energy Programs	40
B. Votes to Block Energy Efficiency Standards	42
VII. Allowing Unsafe Disposal of Toxic Coal Ash	43
VIII. Curtailing Review of the Keystone XL Pipeline.....	45
IX. Reducing Funding for Environmental Protection.....	47
A. H.R. 1, Full-Year Continuing Appropriations Act of 2011	47
B. The Ryan Budget	48
C. FY2012 Appropriations Bills.....	49
X. Obstructing the Regulatory Process	50
A. The Regulatory Accountability Act (H.R. 3010).....	50
B. The REINS Act (H.R. 10).....	50
C. The Regulatory Flexibility Improvements Act (H.R. 527)	51
XI. Conclusion	52

Executive Summary

The House of Representatives in 2011 is the most anti-environment House in the history of Congress. So far this year, the House has voted 191 times to undermine protection of the environment.

House Republicans have repeatedly voted to undermine basic environmental protections that have existed for decades. They have voted to block actions to prevent air pollution; to strip the Environmental Protection Agency of authority to enforce water pollution standards; to halt efforts to address climate change; to stop the Department of the Interior from identifying lands suitable for wilderness designations; to allow oil and gas development off the coasts of Florida, California, and other states opposed to offshore drilling; and to slash funding for the Department of Energy, including funding to support renewable energy and energy efficiency, by more than 80%.

The House of Representatives averaged more than one anti-environmental vote for every day the House was in session in 2011. Of the 770 legislative roll call votes taken in the House this year, 22% – more than one out of every five – were votes to undermine environmental protection. During these roll calls, 94% of Republican members voted for the anti-environment position, while 86% of Democratic members voted for the pro-environment position.

The Environmental Protection Agency was the most popular target of House Republicans. Of the 191 anti-environment votes, 114 targeted EPA; 35 targeted the Department of the Interior; and 31 targeted the Department of Energy.

This analysis, prepared at the request of ranking members Henry A. Waxman, Edward J. Markey, and Howard L. Berman, provides a summary of the 191 times that House Republicans have voted to weaken environmental protections in 2011. Among these votes are:

- **27 votes to block action to address climate change**, including votes to overturn EPA's scientific findings that climate change endangers human health and welfare; to block EPA from regulating carbon pollution from power plants, oil refineries, and vehicles; to prevent the United States from participating in international climate negotiations; and even to cut funding for basic climate science.
- **77 votes to undermine Clean Air Act protections**, including votes to repeal the health-based standards that are the heart of the Clean Air Act and to block EPA regulation of toxic mercury and other harmful emissions from power plants, incinerators, industrial boilers, cement plants, and mining operations.
- **28 votes to undermine Clean Water Act protections**, including votes to strip EPA of authority to set water quality standards and enforce limits on industrial discharges; to repeal EPA's authority to stop mountaintop removal mining disposal; and to block EPA from protecting headwaters and wetlands that flow into navigable waters.
- **47 votes to weaken protection of public lands and coastal waters**, including votes to curtail environmental review of offshore drilling; to halt reviews of public lands for possible wilderness designations; and to remove protections for salmon, wolves, and other species.

House Republicans also voted to allow unsafe disposal of toxic coal ash; to short-circuit environmental review of the Keystone XL pipeline; to erect barriers to promulgation of new regulations that protect health and the environment; and to cut funding for environmental protection. House Republicans voted to reduce EPA's budget by 29% and the Department of Energy's budget for renewable energy and energy efficiency by 35% in 2011. They have proposed to cut funding for the Land and Water Conservation Fund, which acquires new lands for recreation and wildlife protection, by 78% in 2012. And they voted to slash funding for the Department of Energy, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission by more than 80% by 2020.

Often House Republicans bypassed regular order to expedite the repeal of environmental protections. An egregious example is the vote to repeal the health-based standards of the Clean Air Act. This fundamental change to the Act was never considered in hearings or marked up in committee, and the House allowed only five minutes of debate on the floor in opposition to the provision.

The rest of this executive summary provides a brief overview of the 191 anti-environmental votes taken by House Republicans. The body of the report provides more details about many of these votes.

Blocking Efforts to Prevent Climate Change

Climate change is a major threat to the health and welfare of the United States and the rest of the world. The threat is imminent, and the potential consequences severe. In November, the International Energy Agency reported:

We cannot afford to delay further action to tackle climate change if the long-term target of limiting the global average temperature increase to 2 degrees Celsius ... is to be achieved. ... If stringent new action is not forthcoming by 2017, the energy-related infrastructure then in place will generate all the CO₂ emissions allowed, ... leaving no room for additional power plants, factories, and other infrastructure unless they are zero-carbon.¹

Despite the magnitude of the risks and the economic costs of delay, the House voted 27 times this year to block action to address the threat of climate change. House Republicans voted to overturn the scientific findings of the Environmental Protection Agency that climate change endangers human health and welfare. They voted to block EPA from regulating carbon pollution from large stationary sources such as power plants and oil refineries. They even voted to block EPA from working with the Department of Transportation and the automobile industry to develop harmonized greenhouse gas and fuel economy standards for vehicles.

In opposing EPA action to reduce carbon pollution, some members, such as Energy and Commerce Committee Chairman Fred Upton (R-MI) and Subcommittee Chairman Ed Whitfield (R-KY), argued that "unilateral" action by the United States could put domestic companies at a

¹ International Energy Agency, *World Energy Outlook 2011* (Nov. 2011) at 2 (Executive Summary).

competitive disadvantage.² Yet House Republicans, including Mr. Upton and Mr. Whitfield, voted to stop U.S. participation in international action to address climate change. House Republicans voted to block funding for the State Department's Special Envoy for Climate Change, who represents the United States in international climate negotiations, and to eliminate U.S. funding for the Intergovernmental Panel on Climate Change (IPCC), which is the international body created "to provide the world with a clear scientific view on the current state of knowledge in climate change and its potential environmental and socio-economic impacts."³ They also voted to prohibit U.S. carriers from complying with European requirements to reduce carbon pollution on flights to Europe. The House Foreign Affairs Committee reported legislation that would bar U.S. funding for the Global Climate Change Initiative, which provides assistance to developing countries dealing with the impacts of climate change.

In other votes, the House voted to cut funding for climate science. In February 2011, House Republicans passed an appropriations bill for FY2011 that cut climate change funding by more than \$100 million. This bill cut funding for EPA's Global Change Research Program, which assesses the impacts of climate change on air and water quality, aquatic ecosystems, and human health in the United States. House Republicans also eliminated funding for EPA's Greenhouse Gas Reporting Program, which requires the largest sources of carbon pollution to disclose their annual emissions. In addition to cutting funding for EPA's work on climate change, the bill eliminated funding for work at other agencies, such as prohibiting the National Oceanic and Atmospheric Administration from establishing a climate service to provide reliable and authoritative climate data.

The House even voted to prevent federal agencies from spending money to prepare for the effects of climate change. House Republicans voted to prohibit the Department of Homeland Security from using any funds to participate in the Climate Change Adaptation Task Force, which is charged with improving the federal response to climate disasters. Similarly, House Republicans voted to block the Department of Agriculture from implementing its climate change adaptation program, even though climate change is reducing the yields of important food crops in the United States.

Undermining the Clean Air Act

The Clean Air Act has been extraordinarily successful in reducing air pollution, protecting the health of American families, and supporting economic growth. Since President Nixon signed the original Clean Air Act into law in 1970, the Act has reduced air pollution by more than 70%.

² See Statement of Chairman Ed Whitfield, *Markup on H.R. 910, The Energy Tax Prevention Act of 2011*, Subcommittee on Energy and Power, Committee on Energy and Commerce, 112th Cong. (Mar. 10, 2011) (saying "why should we act unilaterally and place our employers and our businesses in America in an unfair disadvantage to manufacturers in China and India?"); Statement of Chairman Fred Upton, *Markup on H.R. 910, The Energy Tax Prevention Act of 2011*, Subcommittee on Energy and Power, Committee on Energy and Commerce, 112th Cong. (Mar. 10, 2011) (saying "EPA's regs unilaterally raise energy and operating cost on American manufacturers" and that nations like China "have no intention of burdening their industry with similar restrictions").

³ Intergovernmental Panel on Climate Change, "Organization" (online at www.ipcc.ch/organization/organization.shtml) (accessed Nov. 7, 2011).

During this same period, the economy has grown by more than 200% and the number of vehicle miles traveled by 170%.⁴ According to EPA:

Just last year, the Clean Air Act is estimated to have saved over 160,000 lives; avoided more than 100,000 hospital visits; prevented millions of cases of respiratory problems, including bronchitis and asthma; enhanced productivity by preventing 13 million lost workdays; and kept kids healthy and in school, avoiding 3.2 million lost school days due to respiratory illness and other diseases caused or exacerbated by air pollution.⁵

The benefits of the Act have greatly outweighed its costs. By 2020, the net economic benefits of the Act are projected to reach \$2 trillion per year, a benefit to cost ratio of more than 30 to 1.⁶ Investments in pollution control also create jobs. The Institute for Clean Air Companies, which represents manufacturers of air pollution control equipment, estimates that over the last seven years, an EPA rule to curb interstate air pollution resulted in the creation of 200,000 jobs.⁷

Despite these proven benefits, House Republicans repeatedly sought to block EPA clean air protections and repeal provisions central to the success of the Act. In total, House Republicans voted 77 times to undermine implementation of the Act.

House Republicans voted to repeal the health-based standards that are the heart of the Clean Air Act. They voted to block EPA regulation of toxic mercury emissions from the largest source of mercury emissions in the United States (power plants) and other major sources (industrial boilers and cement plants). They voted to block EPA regulation of toxic emissions from solid waste incinerators. And they voted to weaken EPA's authority to reduce emissions from oil and gas drilling on the Outer Continental Shelf.

When Rep. Waxman offered an amendment to prevent delay in the regulation of solid waste incinerators and industrial boilers that are emitting mercury at levels harming brain development or causing learning disabilities in infants and children, House Republicans voted 228 to 2 to defeat the amendment. When he offered a similar amendment to prevent any delay in regulation of cement plants with mercury emissions that are harming children, House Republicans voted 234 to 6 to defeat the amendment.

House Republicans even voted to rescind EPA's regulation to reduce emissions of sulfur dioxide and nitrogen oxides from power plants that cause ozone and particulate matter violations in downwind states. This EPA rule will prevent up to 34,000 deaths, 15,000 heart attacks, 400,000

⁴ U.S. EPA, *Air Quality Trends, Comparison of Growth Areas and Emissions: 1970-2010* (online at www.epa.gov/airtrends/images/comparison70.jpg) (accessed Nov. 30, 2011).

⁵ U.S. EPA, *Empirical Evidence Regarding the Effects of the Clean Air Act on Jobs and Economic Growth* (Feb. 8, 2011) at 2.

⁶ *Id.*

⁷ *Id.* at 6.

cases of aggravated asthma, and 1.8 million lost work days each year and produce health benefits of up to \$280 billion annually, outweighing its estimated annual costs by as much as 350 to 1.⁸

Undermining the Clean Water Act

In 1972, Congress enacted – with bipartisan support – the Federal Water Pollution Control Act, better known as the Clean Water Act. The goal of the Clean Water Act is to make all waterways safe for fishing and swimming. Before the Clean Water Act was enacted, water quality in many rivers and streams was abysmal. The Cuyahoga River in Cleveland actually caught fire. Although many pollution challenges remain, the Clean Water Act has improved water quality significantly. Over the last 20 years, industrial polluters have reduced their direct discharge of 300 toxic chemicals into waterways by more than 70%.⁹

Despite the benefits of the Clean Water Act, House Republicans voted 28 times this year to undermine key provisions of the Act. They voted to strip EPA of authority to set water quality standards or enforce discharge limits in states that fail to implement the Clean Water Act. They voted to repeal EPA’s authority to prevent coal companies from using mountaintop removal mining. And they voted to deny EPA funding to protect wetlands and tributaries that flow into navigable waters. They even voted to block EPA from using the Clean Water Act to regulate the discharge of pesticides into rivers, lakes, and streams.

Removing Protections for Public Lands

America’s public lands and national forests are a treasured source of open space and outdoor recreation. They contain scenic wonders and wilderness areas and provide crucial habitat to fish and wildlife, including endangered species. America’s public lands and resources also supported two million jobs and generated \$363 billion in revenue in 2010.¹⁰ Yet House Republicans voted 20 times to weaken environmental protections on public lands.

House Republicans voted three times to stop the Secretary of the Interior from reviewing untrammeled public lands for possible wilderness designations. They voted to block implementation of a Bush Administration policy that restricts motorized vehicles from using hiking trails in national forests. And they voted on multiple occasions to remove protections for salmon, wolves, and other endangered species. House Republicans also voted to transfer federal lands with significant cultural value to Indian tribes to a foreign-owned copper mining company.

⁸ U.S. EPA, *Fact Sheet: The Cross-State Air Pollution Rule: Reducing the Interstate Transport of Fine Particulate Matter and Ozone* (July 18, 2011).

⁹ U.S. EPA, Toxics Release Inventory. We looked only at the core chemicals reported in 1988 and compared the volume discharged directly to surface waters in 1988 (41.6 million pounds) with the volume discharged in 2010 (12.3 million pounds).

¹⁰ Department of the Interior, *The Department of the Interior’s Economic Contributions* (June 21, 2011) at i.

Weakening Safety Requirements for Offshore Drilling

Offshore oil and gas drilling can cause massive environmental damage if not well-regulated and safely operated. Just last year, the explosion and blowout on the Deepwater Horizon oil rig drilling BP's Macondo well in the Gulf of Mexico killed 11 workers and released more than four million barrels of oil into the surrounding waters, polluting coastal beaches and closing prime fishing grounds. To address these risks, President Obama established a bipartisan National Commission on the BP Deepwater Horizon Oil Spill, which concluded that "decades of inadequate regulation" was one of the causes of the spill.¹¹ The Department of the Interior also issued new rules strengthening requirements for safety equipment, well control systems, and blowout prevention practices on offshore oil and gas operations.

Last Congress, the House of Representatives passed bipartisan legislation to address the lessons learned from the Deepwater Horizon accident.¹² But this Congress, the House Republican majority voted 30 times against drilling safety standards and to allow drilling in new offshore areas. House Republicans voted to give safety regulators just 60 days to review complex offshore drilling applications. They voted against new standards for blowout preventers and well casing and cementing. And they voted in favor of drilling in the coastal waters off of Florida, California, and other states that have long opposed such activities.

They even voted against closing a loophole that has allowed oil and gas companies to avoid paying billions of dollars in royalty payments on leases in the Gulf of Mexico.

Cutting Support for Clean Energy Technologies and Programs

The United States needs an energy policy dedicated to promoting clean, renewable energy, increasing energy efficiency, and reducing dependence on oil, coal, and other fossil fuels. In September 2011, the American Energy Innovation Council – led by business executives such as Microsoft founder Bill Gates and General Electric CEO Jeff Immelt – urged the federal government to invest in clean energy technologies. Their report, *Catalyzing Ingenuity*, stated:

Innovation is the core of America's economic strength and future prosperity. New ideas ... are the key to fostering sustained economic growth, creating jobs in new industries, and continuing America's global leadership. ... [O]f all the sectors in the economy where innovation has a critical role to play, the energy sector stands out. Ready access to reliable, affordable forms of energy is not only vital for the functioning of the larger economy, it is vital to people's everyday lives. It also significantly impacts the country's national security, environmental well-being and economic competitiveness.¹³

¹¹ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* (Jan. 2011) at 56.

¹² H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act, passed the House by a vote of 209 to 193 on July 20, 2010.

¹³ American Energy Innovation Council, *Catalyzing American Ingenuity: The Role of Government in Energy Innovation* (Sep. 2011).

Despite the urgent need to fund and develop new energy technologies, House Republicans voted 26 times to oppose clean energy and energy efficiency initiatives. House Republicans voted to cut funding for renewable energy and energy efficiency by 35% in 2011, 27% in 2012, and more than 80% by 2020. At the same time, they voted to increase funding for fossil fuels such as coal and oil. They also voted to block DOE from implementing energy efficiency programs and new light bulb efficiency standards.

Allowing Unsafe Disposal of Toxic Coal Ash

On December 22, 2008, a Tennessee Valley Authority coal ash impoundment in Kingston, Tennessee, ruptured, releasing more than five million cubic yards of toxic sludge and blanketing the Emory River and 300 acres of surrounding land.¹⁴ As this episode demonstrated, improper disposal of the combustion wastes produced by coal-burning electric utilities can pose a threat to human health and safety. EPA considers 49 coal ash impoundments in 12 states as having “high hazard potential,” which means that a failure in the impoundment is likely to cause loss of human life.¹⁵ Unsafe disposal of coal ash can also threaten drinking water by leaching arsenic and other toxic chemicals into drinking water from unlined surface impoundments.¹⁶

Despite these significant risks, House Republicans voted eight times to allow unsafe disposal of toxic coal ash. They voted to block EPA from regulating coal ash as a hazardous waste, to turn regulation of coal ash over to the states, and to defeat amendments that would have ensured that state programs protect human health and the environment. House Republicans voted to prevent EPA from enforcing the requirements of state coal ash programs if the state fails to do so, and they opposed an amendment to require existing impoundments to retrofit to meet modern safety standards.

Curtailing Review of the Keystone XL Pipeline

TransCanada’s proposed Keystone XL pipeline would transport up to 830,000 barrels per day of tar sands crude oil from Alberta, Canada, to refineries in the Gulf Coast. This pipeline, which would almost double the quantity of tar sands fuel currently imported to the United States, raises serious environmental concerns because of the risks of leaks and spills and its implications for climate change. Extracting oil from tar sands is significantly more energy-intensive than producing a barrel of conventional oil, resulting in substantially higher greenhouse gas emissions than conventional fuel.¹⁷

¹⁴ U.S. EPA Region 4, *EPA’s Response to the TVA Kingston Fossil Plant Fly Ash Release: Basic Information* (online at www.epa.gov/region4/kingston/basic.html) (accessed Nov. 23, 2011).

¹⁵ U.S. EPA, *Fact Sheet: Coal Combustion Residues (CCR)—Surface Impoundments with High Hazard Potential Ratings* (Aug. 2009) (online at www.epa.gov/osw/nonhaz/industrial/special/fossil/ccrs-fs/) (accessed Dec. 12, 2011).

¹⁶ RTI International, *Human and Ecological Risk Assessment of Coal Combustion Wastes (Draft)*, Prepared for U.S. EPA, Office of Solid Waste (Aug. 6, 2007).

¹⁷ Natural Resources Defense Council, *GHG Emission Factors for High Carbon Intensity Crude Oils* (Sept. 2010).

House Republicans voted ten times to curtail or weaken environmental review of the Keystone XL pipeline. In July, House Republicans passed H.R. 1938 to force the Obama Administration to make a decision on the Keystone XL permit by November 1, 2011, and to short-circuit the existing State Department review process. They voted against amendments to require TransCanada to demonstrate an ability to respond to a worst-case pipeline spill; to examine whether current pipeline safety regulations are sufficient to address the risks of transporting tar sands oil; and to require a study of the potential health impacts of air pollution from refineries that increase their processing of tar sands oil. House Republicans voted again in December to direct the President to approve or disapprove the Keystone XL pipeline within 60 days and without further environmental review.

Slashing Funding for Environmental Protection

In addition to voting to weaken the Clean Air Act, Clean Water Act, and other important environmental laws, House Republicans voted for three appropriations and budget bills that would cut funding for key programs at EPA, the Department of Energy, the Department of the Interior, and other agencies. These drastic budget cuts threaten the ability of each agency to enforce existing law, conduct scientific research, and implement initiatives designed to protect the environment and public health.

House Republicans voted to cut EPA's FY2011 budget by \$3 billion (29%) and proposed cutting it by \$1.5 billion (18%) in FY2012. They voted to cut \$775 million (35%) from Department of Energy efficiency and renewable energy programs in FY2011 and \$487 million (27%) from the same programs in FY2012. The FY2012 Interior appropriations bill that House Republicans brought to the floor slashed the Land and Water Conservation Fund, which funds the acquisition of new lands for recreation and wildlife protection, by 78%. And the Ryan budget, the ten-year fiscal blueprint adopted by House Republicans, would cut funding for DOE, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and other energy programs by more than 80% by FY2020.

Obstructing the Regulatory Process

In late November and early December, House Republicans used a new strategy to undermine environmental laws: passage of legislation that makes the issuance of new regulations more difficult, if not impossible. They brought to the floor and passed with unanimous Republican support three bills that would require agencies to use time-consuming quasi-judicial procedures to issue major rules, add more than 60 new requirements to agency rulemaking, prevent new rules from going into effect unless approved by both the House and Senate, and subject the rules to new judicial challenges, such as lawsuits contesting the agency's cost-benefit analysis.

I. Blocking Efforts to Prevent Climate Change

A. Votes to Reject Scientific Findings

In December 2009, EPA made a scientific finding that “elevated concentrations of greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations.”¹⁸ The world’s leading scientific organizations have all reached similar conclusions. In 2010, the National Academy of Sciences, the premier scientific organization in the United States, released a report reviewing what the scientific community has learned about climate change and its impacts. The Academy found: “Climate change is occurring, is caused largely by human activities, and poses significant risks for – and in many cases is already affecting – a broad range of human and natural systems.”¹⁹ The national academies of all of the world’s major economies (including China) issued a similar warning in 2009, saying that the “need for urgent action to address climate change is now indisputable.”²⁰

Notwithstanding this scientific consensus that climate change is occurring and is a serious threat, the Republicans introduced a bill, H.R. 910, to overturn EPA’s scientific endangerment finding. That bill passed the House on April 7, 2011, with unanimous Republican support.²¹ During the floor debate on H.R. 910, Rep. Henry Waxman (D-CA) offered an amendment that stated, “Congress accepts the scientific findings of the Environmental Protection Agency that climate change is occurring, is caused largely by human activities, and poses significant risks for public health and welfare.” All but one House Republican voted to reject these scientific findings.²²

Many House Republicans explained their rejection of EPA’s scientific findings by stating their view that the science is “not settled.” On the Energy and Commerce Committee, at least 12 Republican members have made public statements indicating that they question or reject the scientific consensus on climate change:

¹⁸ U.S. EPA, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66496-66546 (Dec. 15, 2009) (final rule).

¹⁹ National Research Council, *Advancing the Science of Climate Change* (2010).

²⁰ *G8+5 Academies’ joint statement: Climate change and the transformation of energy technologies for a low carbon future*, Academia Brasileira de Ciências, Brazil; Indian National Science Academy, India; Academy of Science of South Africa, South Africa; Royal Society of Canada, Canada; Accademia Nazionale dei Lincei, Italy; Royal Society, United Kingdom; Chinese Academy of Sciences, China; Science Council of Japan, Japan; National Academy of Sciences, United States of America; Académie des Sciences, France; Academia Mexicana de Ciencias, Mexico; Deutsche Akademie der Naturforscher Leopoldina, Germany; Russian Academy of Sciences, Russia (May 2009) (online at www.nationalacademies.org/includes/G8+5energy-climate09.pdf).

²¹ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 910 (Apr. 7, 2011) (Roll Call No. 249).

²² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.245, Waxman Amendment No. 6 to H.R. 910 (Apr. 6, 2011) (Roll Call No. 236).

- Chairman Fred Upton (R-MI) stated that while he accepts that 2010 was one of the warmest years in the last decade, “I do not say that it is man-made.”²³
- Chairman Emeritus Joe Barton (R-TX) stated that “the science is not settled and the science is actually going the other way.”²⁴
- Rep. Ed Whitfield (R-KY), the Chairman of the Subcommittee on Energy and Power, called on Al Gore to “come clean about the real science surrounding climate change and let the American people come to their own conclusions on global warming.”²⁵
- Rep. John Shimkus (R-IL), the Chairman of the Subcommittee on Environment and the Economy, rejected the dire warnings of climate scientists and said the Earth “will end only when God declares it is time to be over. Man will not destroy this earth. This earth will not be destroyed by a flood.”²⁶
- Rep. John Sullivan (R-OK), vice-chair of the Subcommittee on Energy and Power, stated, “I don’t think anyone could come to any conclusion whether it is real or not. Until we can see sound science that’s truthful, I don’t think anyone can make a decision based on that.”²⁷
- Rep. Michael Burgess (R-TX) stated that “no one knows” whether man is responsible for climate change. He said it is “just the height of chutzpah for us to be claiming that man-

²³ *Conversations with the Chair: Energy and Commerce Chairman Fred Upton*, National Journal Live (Feb. 8, 2011). Mr. Upton’s 2011 statements on the science of climate change conflict with his earlier views. In 2009, when praising a Michigan wind project in a press release, Mr. Upton stated that climate change is “a serious problem that necessitates serious solutions.” *Upton bails KVCC wind energy program as Congress debates climate change bill*, River Country Journal (Apr. 24, 2009) (online at www.rivercountryjournal.com/?p=7369). This article is based on a news release from Rep. Fred Upton. This news release is no longer posted on Rep. Upton’s website.

²⁴ Statement of Chairman Emeritus Joe Barton, *Markup on H.R. 910, The Energy Tax Prevention Act of 2011*, Committee on Energy and Commerce, 112th Cong. (Mar. 15, 2011).

²⁵ Office of Rep. Ed Whitfield, *Whitfield Blasts Use of False Science in Copenhagen* (Dec. 15, 2009) (online at <http://whitfield.house.gov/2009/12/whitfield-blasts-use-of-false-science-in-copenhagen.shtml>) (accessed Dec. 12, 2011).

²⁶ Statement of Rep. John Shimkus, *Preparing for Climate Change: Adaptation Politics and Programs*, Hearing Before the Subcommittee on Energy and Environment, Committee on Energy and Commerce, 111th Cong. (Mar. 25, 2009).

²⁷ Statement of Rep. John Sullivan at a press conference organized by Rep. Joe Barton, Rep. Fred Upton, Rep. Shelley Moore Capito, Rep. John Sullivan, Rep. Marsha Blackburn, and Rep. Jim Sensenbrenner. United Nations Climate Change Conference, Copenhagen, Denmark (Dec. 18, 2009).

made effects can change something as profound as the climate on this planet. The climate has changed over eons. Man has had nothing to do with it.”²⁸

- Rep. Marsha Blackburn (R-TN) told reporters that she does not believe that the science behind climate change is “settled.”²⁹
- Rep. Steve Scalise (R-LA) said that the “debate on the causes of climate change are [*sic*] far from settled.”³⁰
- Rep. David McKinley (R-WV) stated that “anthropogenic global warming is still an issue that the scientists are still debating.”³¹
- Rep. Morgan Griffith (R-VA) called it “reckless” to cut greenhouse gas emissions “in order to address a scientific theory — man-made global warming — that many scientists do not even believe is happening.”³²
- Rep. Cory Gardner (R-CO) admitted that the climate is changing but said that he does not “believe humans are causing that change to the extent that’s been in the news.”³³
- Rep. Bill Cassidy (R-LA) said that the cause of climate change “could just be a shift on the axis.”³⁴

At the same time that many House Republican members publicly assert that the science of climate change is not settled, they have voted to cut funding for climate research that could provide more insight into the pace and likely impacts of climate change.

²⁸ Southern California Public Radio, *Patt Morrison: Things get hot for the EPA* (Mar. 9, 2011) (online at <http://66.226.4.226/programs/patt-morrison/2011/03/09/things-get-hot-for-the-epa/>) (accessed Nov. 7, 2011).

²⁹ Statement of Rep. Marsha Blackburn at a press conference organized by Rep. Joe Barton, Rep. Fred Upton, Rep. Shelley Moore Capito, Rep. John Sullivan, Rep. Marsha Blackburn, and Rep. Jim Sensenbrenner, United Nations Climate Change Conference, Copenhagen, Denmark (Dec. 18, 2009).

³⁰ Statement of Rep. Steve Scalise, *The American Clean Energy and Security Act of 2009: Day 1*, Hearing Before the Committee on Energy and Commerce, 111th Cong. (Apr. 21, 2009).

³¹ Statement of Rep. David McKinley, *H.R. ___, The Energy Tax Prevention Act of 2011*, Hearing Before the Subcommittee on Energy and Power, Committee on Energy and Commerce, 112th Cong. (Feb. 9, 2011).

³² *10 to watch: GOP freshmen on energy*, Politico (Dec. 28, 2010) (online at www.politico.com/news/stories/1210/46778.html) (quoting Morgan Griffith’s campaign website).

³³ *Energy bill polarizes candidates*, Fort Collins Coloradoan (Sept. 19, 2010).

³⁴ Statement of Rep. Bill Cassidy, *Markup of H.R. 910, The Energy Tax Prevention Act of 2011*, Committee on Energy and Commerce, 112th Cong. (Mar. 15, 2011).

In February 2011, the House passed H.R. 1, the Full-Year Continuing Appropriations Act of 2011, with near unanimous Republican support.³⁵ The Chairman of the House Appropriations Committee boasted that “the bill cuts climate change funding bill-wide by \$107 million, or 29%, from the fiscal year 2010 enacted level.”³⁶ This bill included significant cuts for EPA’s Global Change Research Program, which examines the potential consequences of global climate change on air and water quality, aquatic ecosystems, human health, and socioeconomic systems in the United States. The bill also included cuts for scientific endeavors at other agencies, including climate change research at the U.S. Forest Service, the National Park Service’s climate change monitoring system, and the U.S. Geological Survey’s Climate Effects Network, a consortium of research programs designed to collect and share data in order to identify climate-related impacts to ecosystems.³⁷

As part of the debate over appropriations for FY2011, the House Republicans voted 228 to 9 to eliminate funding for EPA’s Greenhouse Gas Reporting Program.³⁸ This program requires the largest sources of carbon pollution – such as power plants, refineries, and large factories – to report how much they pollute. Rep. Mike Pompeo (R-KS), the sponsor of this effort, claimed that this data serves as the “very foundation of the EPA’s effort to pursue its radical anti-jobs agenda” and that funding the registry would allow EPA to keep its “regulatory nose inside the job-destroying tent.”³⁹ Rep. Jim Moran (D-VA) called this vote “part of an effort to ignore what scientists tell us is the most serious environmental problem of our time – climate change.”⁴⁰

The House Republicans also voted to prohibit the National Oceanic and Atmospheric Administration (NOAA) from using any funds to establish a Climate Service.⁴¹ This prohibition would block NOAA’s plans to consolidate the management of its climate-related programs, labs, and data centers in a new Climate Service, with the goal of improving NOAA’s ability to produce reliable short-term weather data and long-term climate data.⁴² In November, this funding

³⁵ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147).

³⁶ U.S. House Appropriations Committee, *Summary: Fiscal Year 2011 Continuing Resolution* (Feb. 11, 2011) (online at http://republicans.appropriations.house.gov/_files/SummaryFiscalYear2011ContinuingResolutionCR.doc) (accessed Dec. 14, 2011).

³⁷ U.S. House of Representatives, Committee on Appropriations, *FY2011 Continuing Resolution Reductions* (online at http://appropriations.house.gov/_files/ProgramCutsFY2011ContinuingResolution.pdf) (accessed Dec. 12, 2011).

³⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.47, Pompeo Amendment No. 84 to H.R. 1 (Feb. 16, 2011) (Roll Call No. 64).

³⁹ Statement of Rep. Mike Pompeo, *Congressional Record*, H989 (Feb. 16, 2011).

⁴⁰ Statement of Rep. Jim Moran, *Congressional Record*, H989 (Feb. 16, 2011).

⁴¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.148, Hall Amendment No. 495 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 127).

prohibition was included in the Consolidated and Further Continuing Appropriations Act, which was enacted into law.⁴³

In July, the Republicans again voted to significantly cut funding for EPA's greenhouse gas registry, with only 13 Republicans voting in opposition.⁴⁴ Rep. Moran, speaking in opposition to this proposal, called it "the 'ignorance is bliss' amendment."⁴⁵

B. Votes to Block Action to Reduce Carbon Pollution

In February 2011, all but three House Republicans voted to pass a budget for EPA that prohibited the agency from spending any funds to enforce or promulgate regulations related to climate change.⁴⁶ Specifically, the FY2011 funding bill prohibited EPA from using any funds for the purposes of "enforcing or promulgating any regulation ... or order, taking action relating to, or denying approval of state implementation plans or permits because of the emissions of greenhouse gases due to concerns regarding possible climate change."⁴⁷ EPA currently plans to set federal performance standards for the two largest sources of carbon pollution, power plants and refineries.⁴⁸ This language would prevent EPA from proposing these standards.

During the debate on the FY2011 funding bill, Rep. Ted Poe (R-TX) offered an amendment with Rep. Joe Barton (R-TX) and Rep. John Carter (R-TX) to block EPA's greenhouse gas emissions regulations. This amendment replicates the language in the underlying bill as described above but, in the words of Rep. Poe, goes "a step further, prohibiting the EPA from enforcing national regulation of greenhouse gases."⁴⁹ Rep. Barton, speaking in support of the amendment, argued that carbon dioxide is "not a pollutant" and dismissed most climate science as a "theory." He said there is "nobody in this country or anywhere in the world who has been harmed because of manmade CO₂."⁵⁰ Rep. Poe argued that "there is no evidence at all that it is manmade CO₂ that

⁴² National Oceanic and Atmospheric Administration, *A Climate Service in NOAA* (online at www.noaa.gov/climate.html) (accessed Nov. 8, 2011); NOAA, *Proposed Climate Service in NOAA* (Feb.2011) (online at www.noaa.gov/climateresources/resources/ProposedClimateServiceinNOAA_Feb15rev.pdf) (accessed Nov. 8, 2011).

⁴³ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55.

⁴⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.757, Pompeo Amendment No. 39 to H.R. 2584 (July 27, 2011) (Roll Call No. 661).

⁴⁵ Statement of Rep. Jim Moran, *Congressional Record*, H5630 (July 27, 2011).

⁴⁶ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147).

⁴⁷ Section 1746, H.R. 1, the Full-Year Continuing Appropriations Act of 2011.

⁴⁸ U.S. EPA, *EPA to Set Modest Pace for Greenhouse Gas Standards* (Dec. 23, 2010).

⁴⁹ Statement of Rep. Ted Poe, *Congressional Record*, H1186 (Feb. 17, 2011).

⁵⁰ Statement of Rep. Joe Barton, *Congressional Record*, H1188-H1189 (Feb. 17, 2011).

causes the climate to change.”⁵¹ The House passed this amendment with only two Republicans voting in opposition.⁵²

House Republicans included similar language in the FY2012 appropriations bill for EPA reported by the Appropriations Committee. This language would preclude EPA from proposing or issuing any regulation regarding the emissions of greenhouse gases from stationary sources or new motor vehicles after model year 2016.⁵³

The House Republicans also introduced stand-alone legislation to achieve these objectives. On March 3, 2011, Energy and Commerce Committee Chairman Fred Upton (R-MI) introduced H.R. 910, the Energy Tax Prevention Act of 2011.⁵⁴ In addition to overturning EPA’s endangerment finding, the Upton bill broadly eliminates EPA’s authority to address emissions of greenhouse gases and the danger of climate change. The bill overturns the Supreme Court’s opinion finding that EPA has the authority to regulate greenhouse gases under the Clean Air Act. It also prohibits EPA from requiring stationary sources such as power plants to reduce greenhouse gas emissions and achieving additional emissions reductions from mobile sources, including cars, planes, boats, and other vehicles. The bill even prohibits EPA from enforcing existing greenhouse gas reporting requirements to collect information on the largest sources of global warming pollution in the United States.

During the floor debate about the Upton bill, the House Republicans voted against several Democratic amendments to restore EPA’s authority to address climate change. Only one Republican supported an amendment offered by Rep. Jared Polis (D-CO) to allow the EPA Administrator to suspend the bill’s prohibitions if impacts from climate change affect public health.⁵⁵ Scientists at the U.S. Global Change Research Program have found that climate change “poses unique challenges to human health.”⁵⁶ In particular, they have concluded that “increases in the risk of illness and death related to extreme heat and heat waves are very likely” and that it will become “more challenging to meet air quality standards necessary to protect public health.”⁵⁷ During the debate, however, Rep. Michael Burgess (R-TX) stated that “greenhouse gases do not have a health impact.”⁵⁸

⁵¹ Statement of Rep. Ted Poe, *Congressional Record*, H1189 (Feb. 17, 2011).

⁵² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.101, Poe Amendment No. 466 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 96).

⁵³ Sections 431 and 453 of H.R. 2584 (112th Cong.).

⁵⁴ For a full analysis of H.R. 910, see Memorandum from Ranking Members Henry Waxman and Bobby Rush to Democratic Members of the Subcommittee on Energy and Power (Mar. 10, 2011) (online at <http://democrats.energycommerce.house.gov>).

⁵⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.247, Polis Amendment No. 8 to H.R. 910 (Apr. 6, 2011) (Roll Call No. 237).

⁵⁶ U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* (June 2009) at 89.

⁵⁷ *Id.* at 90, 92.

⁵⁸ Statement of Rep. Michael Burgess, *Congressional Record*, H2379 (Apr. 6, 2011).

Rep. Ed Markey (D-MA) offered an amendment to allow EPA to take action to reduce greenhouse gas emissions if those actions also reduce demand for oil. Rep. Bobby Rush (D-IL) offered an amendment to delay implementation of the bill until EPA and the Department of Defense certify that the consequences of climate change, such as an increased severity and frequency of natural disasters, do not jeopardize U.S. security at home or abroad. These amendments also failed, with Republicans voting unanimously against them.⁵⁹

The Upton bill passed 255-172 on April 7, 2011, with unanimous Republican support.⁶⁰ If the Upton bill had passed the Senate and been enacted into law, the bill would have blocked EPA and the Department of Transportation from working with the automobile industry and the state of California to develop harmonized greenhouse gas and fuel economy standards. These standards, which were proposed on November 16, 2011, are projected to save four billion barrels of oil and avoid two billion metric tons of greenhouse gas emissions, while providing consumers with net savings of up to \$4,400 over the lifetime of each vehicle.⁶¹

C. Votes to Block International Action on Climate Change

In February 2011, House Republicans voted to prevent the State Department from using any funds to employ a Special Envoy for Climate Change, who represents the United States internationally in climate-related negotiations. Only one Republican voted against this proposal.⁶² Only three House Republicans voted against a proposal to zero out the United States' contribution to the Intergovernmental Panel on Climate Change (IPCC), the world's leading authority on climate change science and the recipient of the 2007 Nobel Peace Prize.⁶³ Rep. Blaine Luetkemeyer (R-MO) stated on the House floor that the IPCC is "an entity that is fraught with waste and engaged in dubious science."⁶⁴ Rep. Waxman called this proposal to defund the work of the world's premier climate scientists the equivalent of "putting our heads in the sand."⁶⁵

⁵⁹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.248, Markey Amendment No. 9 to H.R. 910 (Apr. 6, 2011) (Roll Call No. 238); Roll Call Vote on Agreeing to H.AMDT.249, Rush Amendment No. 10 to H.R. 910 (Apr. 6, 2011) (Roll Call No. 239).

⁶⁰ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 910 (Apr. 7, 2011) (Roll Call No. 249).

⁶¹ U.S. EPA and U.S. Department of Transportation, *Fact Sheet: EPA and NHTSA Propose to Extend the National Program to Reduce Greenhouse Gases and Improve Fuel Economy for Cars and Trucks* (Nov. 2011).

⁶² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.89, Scalise Amendment No. 204 to H.R. 1 (Feb. 17, 2011) (Roll Call No. 87).

⁶³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.154, Luetkemeyer Amendment No. 149 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 132).

⁶⁴ Statement of Rep. Blaine Luetkemeyer, *Congressional Record*, H1315 (Feb. 18, 2011).

⁶⁵ Statement of Rep. Henry Waxman, *Congressional Record*, H1316 (Feb. 18, 2011).

In October, the House voted to prohibit U.S. airlines from complying with European requirements to reduce carbon pollution on flights to Europe.⁶⁶ The European Union plans to require airlines flying to and from Europe to purchase carbon permits under the EU emissions trading scheme. The EU climate commissioner said that the European Union decided to include airlines in its emissions trading system after more than a decade of international talks failed to produce a plan to cut greenhouse gas emissions from this sector.⁶⁷ Rep. Markey spoke in opposition to this legislation, noting that the “Europeans are taking climate change seriously. We shouldn’t undermine their efforts by legislating that our airlines break the law.”⁶⁸

At the Committee level, the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs reported a funding bill for FY2012 that would zero out funding for both the IPCC and United Nations Framework Convention on Climate Change, the international body charged with developing a global response to climate change.⁶⁹ Similarly, the House Foreign Affairs Committee reported a bill that would bar U.S. funding for the Global Climate Change Initiative, which provides bilateral assistance to help developing countries address the effects of climate change.⁷⁰ The Committee’s ranking member, Rep. Berman, criticized the bill because “to rule out – for ideological reasons – an entire category of activities that are essential to the success of our overall development strategy is both shortsighted and wasteful.”⁷¹

D. Votes to Block Adaptation Planning

In June, all but two Republicans voted to prohibit the Department of Homeland Security (DHS) from using any funds for the Climate Change Adaptation Task Force.⁷² This interagency task force, which began meeting in the spring of 2009, has been examining how to respond to climate change impacts that are occurring already in the United States and how to prepare for future climate conditions. Rep. John Carter (R-TX) called this a “waste of time and resources” that should be devoted to “ensuring the safety of our homeland.”⁷³ Rep. David Price (D-NC), speaking in opposition to this proposal, noted that DHS, in fact, has identified “specific climate change-related impacts on DHS missions. These include ... disaster response activities and the protection of critical infrastructure.”⁷⁴

⁶⁶ H.R. 2594, the European Union Emissions Trading Scheme Prohibition Act, passed by a voice vote on October 24, 2011.

⁶⁷ *UN Body Urges Europe to Omit Foreign Airlines From CO2 Curbs*, Bloomberg (Nov. 3, 2011).

⁶⁸ Statement of Rep. Ed Markey, *Congressional Record*, H7000 (Oct. 24, 2011).

⁶⁹ The Subcommittee marked up this bill on July 27, 2011. The Appropriations Committee did not hold a full committee markup on the legislation.

⁷⁰ Section 925, H.R. 2583 (112th Cong.).

⁷¹ Dissenting Views, *Report to Accompany H.R. 2583* (112th Cong.) at 222.

⁷² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.378, Carter Amendment No. 1 to H.R. 2017 (June 2, 2011) (Roll Call No. 392).

⁷³ Statement of Rep. John Carter, *Congressional Record*, H3891 (June 1, 2011).

⁷⁴ Statement of Rep. David Price, *Congressional Record*, H3891 (June 1, 2011).

Also in June, all but five House Republicans voted to prohibit the U.S. Department of Agriculture from using any funds to implement its climate change adaptation program.⁷⁵ Recent studies show climate change is already adversely affecting crop yields.⁷⁶

⁷⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.467, Scalise Amendment to H.R. 2112 (June 16, 2011) (Roll Call No. 448).

⁷⁶ See, e.g., David Lobell, Wolfram Schlenker and Justin Costa-Roberts, *Climate trends and Global Crop Production Since 1980*, Science (May 5, 2011) (finding that global wheat yields have dropped by more than 5% compared with what would have been expected without rising temperatures).

II. Undermining the Clean Air Act

A. Vote to Repeal the Clean Air Act's Health-Based Standards

Since 1970, the core of the Clean Air Act has been a set of standards called the national ambient air quality standards (NAAQS). The NAAQS are “health-based” standards because they are set by EPA at a level adequate to protect public health, including the health of sensitive groups such as children and the elderly. Essentially, the NAAQS determine what level of air pollution is “safe” to breathe.

Under the Clean Air Act, economic costs come into play when EPA and the states develop deadlines and plans for achieving the health-based standards. EPA sets deadlines for compliance, which take into account costs and can vary according to difficulty of achieving the standards. The states take costs into account when they develop their plans to control air pollution and attain compliance with the standards. EPA takes costs into account when reviewing these state plans.

This approach has been extraordinarily successful in cleaning the air. EPA has set NAAQS for six air pollutants: ozone, nitrogen dioxide (NO₂), sulfur dioxide (SO₂), carbon monoxide (CO), lead, and particulate matter (PM). Between 1980 and 2010, emissions of these six air pollutants dropped by 67%. During the same time period, the nation's gross domestic product increased 127%, vehicle miles traveled increased 96%, energy consumption increased 25%, and U.S. population grew by 36%.⁷⁷

In September, Rep. Robert Latta (R-OH) offered an amendment on the House floor that rewrote 40 years of clean air policy by requiring EPA to consider industry costs when determining what level of air pollution is “safe.” Under the Latta amendment, NAAQS would cease to be health-based standards and would instead be set in part based on economic costs to polluters. The Energy and Commerce Committee held no hearings on the Latta amendment and never considered the amendment in Committee. The House allowed only ten minutes of debate, divided equally between proponents and opponents, on this fundamental change to the Clean Air Act. The Latta amendment passed with only 11 Republicans voting in opposition.⁷⁸

B. Votes to Block Regulation of Emissions from Power Plants

Power plants, especially old coal-burning power plants, are the single largest source of air pollution in the United States. They are the largest source of sulfur dioxide (SO₂) emissions, the largest source of nitrogen oxide (NO_x) emissions, and the largest source of toxic mercury emissions. Regardless, House Republicans voted repeatedly to block EPA regulation of emissions from power plants.

⁷⁷ U.S. EPA, *Air Quality Trends, Comparison of Growth Areas and Emissions, 1980-2010* (online at www.epa.gov/airtrends/aqtrends.html#comparison) (accessed Dec. 13, 2011).

⁷⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.800, Latta Amendment No. 11 to H.R. 2401 (Sept. 23, 2011) (Roll Call No. 738).

Two EPA regulations have been the target of these Republican votes. On March 16, 2011, EPA proposed the Mercury and Air Toxics Standards (MATS) Rule to reduce power plant emissions of hazardous air pollutants, including mercury.⁷⁹ This proposed rule would reduce emissions of mercury, preventing more than 90% of the mercury in the coal from being emitted into the air and cutting emissions of other toxic substances.⁸⁰ Mercury is a particular concern for women of childbearing age, infants, and children because studies have linked mercury exposure to nervous system damage, which can impair children's ability to think and learn.⁸¹ The rule will also reduce fine particle emissions by 29% in 2015, producing significant health benefits.⁸² According to EPA, this rule will prevent up to 17,000 premature deaths, 120,000 cases of aggravated asthma, and 850,000 days when people miss work each year.⁸³ Its annual health benefits are estimated at \$59 billion to \$140 billion per year compared with economic costs of \$11 billion.⁸⁴

On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule, which requires 27 states in the eastern, central, and southern U.S. to reduce sulfur dioxide and nitrogen oxide emissions from power plants that cause ozone and particulate matter violations in downwind states.⁸⁵ EPA estimates that by 2014, the Cross-State Air Pollution Rule will reduce sulfur dioxide emissions in the 27-state region by 73% from 2005 levels and nitrogen oxides by 54% from 2005 levels.⁸⁶ Each year, this rule will prevent up to 34,000 premature deaths, 400,000 cases of aggravated asthma, and 1.8 million days when people miss work or school due to illness.⁸⁷ Its annual benefits are estimated at between \$120 billion and \$280 billion compared with its estimated annual costs of \$800 million.⁸⁸

Despite the overwhelming benefits of these two rules, House Republicans passed H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act, to nullify them and make it difficult, if not impossible, for EPA to issue new standards that are protective of public health. In the case of the MATS Rule, the TRAIN Act requires EPA to discard its March proposal, prohibits EPA from issuing a new rule for at least two years, and bars enforcement for at least five

⁷⁹ U.S. EPA, *National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule*, 76 Fed. Reg. 24976-25147 (May 3, 2011) (hereinafter "Proposed Air Toxics Rule").

⁸⁰ U.S. EPA, *Fact Sheet: Proposed Mercury and Air Toxics Standards* (May 4, 2011).

⁸¹ National Research Council, National Academy of Sciences, *Toxicological Effects of Methylmercury* (2000).

⁸² Proposed Air Toxics Rule at 25073.

⁸³ U.S. EPA, *Fact Sheet: Proposed Mercury and Air Toxics Standards* (May 4, 2011).

⁸⁴ *Id.*

⁸⁵ U.S. EPA, *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule*, 76 Fed. Reg. 48208 (Aug. 8, 2011).

⁸⁶ U.S. EPA, *Fact Sheet, The Cross-State Air Pollution Rule: Reducing the Interstate Transport of Fine Particulate Matter and Ozone* (July 18, 2011).

⁸⁷ *Id.*

⁸⁸ *Id.*

more years, ensuring that no reductions in mercury emissions from power plants are required for at least seven years. The bill also rewrites the standards that EPA must apply in any regulation reducing mercury and other toxic emissions from power plants, making them less protective of public health.⁸⁹

Throughout the debate, House Republicans argued that this rule is too expensive for industry and would cost jobs. In fact, EPA assessed the impacts of the MATS Rule on jobs and the economy, finding that more jobs will be created in the air pollution control technology production field than may be lost as the result of compliance with this proposed rule.⁹⁰

In the case of the Cross-State Air Pollution Rule, the bill nullifies the final rule issued in July, prohibits EPA from issuing a new rule for at least five years, and bars enforcement for an additional three years, ensuring that no new SO₂ or NO_x emission reductions are required for at least eight years. The bill also bars EPA from using air pollution modeling to determine when emissions from an upwind power plant cause pollution problems in a downwind state, a provision that EPA says will likely block EPA from ever successfully issuing a new rule.

In addition to nullifying EPA's power plant regulations, the TRAIN Act establishes an interagency committee to assess the cumulative impacts of EPA regulations on the economy. House Republicans defeated several Democratic amendments to ensure that the analysis of EPA regulations mandated by the bill provides a balanced picture of both the costs and the benefits of EPA actions. Rep. Peter Welch (D-VT) introduced an amendment to ensure that the interagency committee would include members with health expertise, including the Secretary of Health and Human Services and Director of the Centers for Disease Control. This amendment also would require the committee to examine the benefit of EPA rules on air quality, water quality, and public health, not just their economic costs. The Welch amendment failed with only seven Republicans voting in support.⁹¹ House Republicans also opposed amendments to require the interagency committee to estimate the impacts of delaying the rules on the incidence of birth and developmental defects and infant mortality;⁹² to study the impact of EPA regulations on clean energy jobs and

⁸⁹ Since 1990, EPA has set numeric emissions limits under section 112 of the Clean Air Act on a pollutant-by-pollutant basis for more than 100 industrial source categories. This approach has been a major success, reducing emissions of carcinogens and other highly toxic chemicals by 1.7 million tons each year. H.R. 2401 would effectively rewrite section 112 for power plants to require EPA to select the regulatory option that is least burdensome to industry, even if another option is feasible, cost-effective, and offers better public health protections. The bill also abandons the proven pollutant-by-pollutant approach in favor of an untried methodology that would require EPA to make subjective decisions about whether emitting more mercury but less lead is better or worse for public health than the reverse. These statutory changes are unlikely to be workable and guarantee years of litigation.

⁹⁰ Proposed Air Toxics Rule at 24979.

⁹¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.790, Welch Amendment No. 1 to H.R. 2401 (Sept. 23, 2011) (Roll Call No. 728).

⁹² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.793, Capps Amendment No. 4 to H.R. 2401 (Sept. 23, 2011) (Roll Call No. 731).

companies that export clean energy technology;⁹³ and to identify new opportunities to boost domestic clean energy technology development and manufacturing.⁹⁴

The TRAIN Act passed on September 23, 2011, with only four Republicans voting in opposition.⁹⁵ House Republicans included a version of the TRAIN Act in the FY2012 funding bill for EPA reported by the Appropriations Committee.⁹⁶

C. Votes to Block Regulation of Emissions from Incinerators and Industrial Boilers

After power plants, solid waste incinerators and industrial boilers are among the largest sources of mercury emissions in the United States. They also emit other hazardous air pollutants, such as cadmium, benzene, and dioxins. Acting under a court-ordered deadline, EPA promulgated standards in February to reduce toxic air pollutants from these sources. After considering additional comments from stakeholders, EPA proposed revisions to these rules on December 2, 2011. The proposed revised rules would avoid up to 8,100 premature deaths, 52,000 cases of aggravated asthma, and 5,100 heart attacks.⁹⁷ EPA estimated the value of these health benefits at between \$27 billion and \$67 billion annually compared with costs of \$1.5 billion.⁹⁸

Rep. Morgan Griffith (R-VA) introduced H.R. 2250, the EPA Regulatory Relief Act, to nullify the boiler and incinerator rules and to prohibit EPA from finalizing new standards for at least 15 months after enactment. The bill also prohibits EPA from requiring facilities to comply with any new standards for at least an additional five years and sets no final compliance deadline, allowing for indefinite delay. In addition, the legislation changes the standards that EPA must apply in any future regulation reducing mercury and other toxic emissions from incinerators and boilers, making them less protective of public health.⁹⁹

During the debate on H.R. 2250, Rep. Waxman offered an amendment to prevent any delay in reducing toxic mercury emissions from waste incinerators and industrial boilers at large chemical

⁹³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.791, McNerney Amendment No. 2 to H.R. 2401 (Sept. 23, 2011) (Roll Call No. 729).

⁹⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.797, Connolly Amendment No. 8 to H.R. 2401 (Sept. 23, 2011) (Roll Call No. 735).

⁹⁵ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2401 (Sept. 23, 2011) (Roll Call No. 741).

⁹⁶ Section 462 of H.R. 2584 (112th Cong.).

⁹⁷ U.S. EPA, *EPA's Air Toxics Standards, Major and Area Source Boilers and Certain Incinerators, Overview of Changes and Impacts* (Dec. 2, 2011).

⁹⁸ U.S. EPA, *National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters* (Dec. 2, 2011) (proposed rule; reconsideration of final rule).

⁹⁹ H.R. 2250 would effectively rewrite sections 112 (for boilers) and 129 (for incinerators). See *supra* note 89.

and manufacturing facilities if such emissions are harming brain development or causing learning disabilities in infants or children. This amendment was defeated, with Republican members voting 228 to 2 in opposition.¹⁰⁰

House Republicans rejected similar amendments preventing delays in reducing toxic emissions from incinerators and boilers that are causing respiratory and cardiovascular illnesses and deaths, including cases of heart attacks, asthma attacks, and bronchitis,¹⁰¹ or that are increasing the risk of cancer.¹⁰² Only one Republican supported an amendment to prevent delays in reducing these toxic emissions from incinerators located within five miles of a nursing home, assisted living facility, or hospital.¹⁰³

Rep. Jan Schakowsky (D-IL) proposed adding a congressional finding stating that mercury released into the ambient air from incinerators and boilers is a potent neurotoxin that can damage the development of an infant's brain. The National Academy of Sciences has stated that prenatal mercury exposure has "the potential to cause irreversible damage to the developing central nervous system."¹⁰⁴ The House defeated this amendment, with only two Republicans voting in support.¹⁰⁵

Rep. Mike Doyle (D-PA) offered an amendment to limit the compliance deadline to five years at most, which is two years more than the three-year deadline in current law. Rep. Doyle stated that "depending on who the administrator is at the time these rules are finalized, compliance could be required in 5 years, in 10 years, in 50 years, in 105 years. That's just unacceptable."¹⁰⁶ This amendment failed, with no Republicans supporting the amendment.¹⁰⁷

H.R. 2250 passed on October 13, 2011, without any Republican opposition.¹⁰⁸ In December, House Republicans added the text of H.R. 2250 to a bill to extend the payroll tax cut.¹⁰⁹

¹⁰⁰ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.820, Waxman Amendment No. 9 to H.R. 2250 (Oct. 6, 2011) (Roll Call No. 766).

¹⁰¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.826, Connolly Amendment No. 18 to H.R. 2250 (Oct. 11, 2011) (Roll Call No. 773).

¹⁰² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.827, Markey Amendment No. 7 to H.R. 2250 (Oct. 11, 2011) (Roll Call No. 774).

¹⁰³ U.S. House of Representatives, Roll Call Vote on Motion to Recommit H.R. 2250 (Oct. 13, 2011) (Roll Call No. 790).

¹⁰⁴ National Academy of Sciences, *Toxicological Effects of Methylmercury* (2000) at 17.

¹⁰⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.829, Schakowsky Amendment No. 1 to H.R. 2250 (Oct. 11, 2011) (Roll Call No. 776).

¹⁰⁶ Statement of Rep. Mike Doyle, *Congressional Record*, H6654 (Oct. 6, 2011).

¹⁰⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.824, Doyle Amendment No. 4 to H.R. 2250 (Oct. 6, 2011) (Roll Call No. 770).

¹⁰⁸ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2250 (Oct. 13, 2011) (Roll Call No. 791).

D. Votes to Block Regulation of Emissions from Cement Plants

Along with power plants, solid waste incinerators, and industrial boilers, cement plants are one of the largest sources of mercury emissions in the United States. They also emit other hazardous air pollutants, such as lead, cadmium, benzene, and dioxins.

On August 6, 2010, EPA finalized new rules to reduce emissions of toxic air pollutants from cement kilns. These rules also will reduce emissions of pollutants that cause ozone and fine particle pollution, preventing up to 2,500 premature deaths, 17,000 asthma attacks, and 130,000 days when people miss work each year.¹¹⁰ EPA estimates that these rules will generate \$7 billion to \$18 billion in health benefits annually, compared with annual compliance costs of \$350 million, and create a net gain of up to 1,300 jobs.¹¹¹

In February 2011, during the debate on the FY2011 appropriations, Rep. John Carter (R-TX) offered an amendment to block EPA from spending any money to implement or enforce these new cement plant rules. Only seven Republicans voted against this proposal.¹¹² House Republicans included similar language blocking the cement rules in the FY2012 appropriations bill for EPA reported by the Appropriations Committee.¹¹³

Rep. John Sullivan (R-OK) then introduced H.R. 2681, the Cement Sector Regulatory Relief Act, to nullify the cement rules and prohibit EPA from finalizing new standards for at least 15 months after enactment. The bill also prohibits EPA from requiring facilities to comply with any new standards for at least an additional five years and sets no final compliance deadline, allowing for indefinite delay. In addition, the legislation changes the standards that EPA must apply in any future regulation reducing mercury and other toxic emissions from cement plants, making them less protective of public health.¹¹⁴

During the debate on H.R. 2681, Rep. Waxman offered an amendment to prevent any delay in reducing toxic mercury emissions from cement plants that have emissions that are harming brain development or causing learning disabilities in infants or children. This amendment was defeated, with Republican members voting 234 to 6 against the amendment.¹¹⁵

¹⁰⁹ Subtitle B of Title I, H.R. 3630 (112th Cong.). U.S. House of Representatives, Roll Call Vote on Passage of H.R. 3630 (Dec. 13, 2011) (Roll Call No. 923).

¹¹⁰ U.S. EPA, *Fact Sheet: Final Amendments to National Air Toxics Emission Standards and New Source Performance Standards for Portland Cement Manufacturing* (Aug. 9, 2010).

¹¹¹ *Id.*; U.S. EPA, *Regulatory Impact Analysis: Amendments to the National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards (NSPS) for the Portland Cement Manufacturing Industry* (Aug. 6, 2010).

¹¹² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.88, Carter Amendment No. 165 to H.R. 1 (Feb. 17, 2011) (Roll Call No. 86).

¹¹³ Section 448 of H.R. 2584 (112th Cong.).

¹¹⁴ H.R. 2681 would effectively rewrite section 112 for cement plants. See *supra* note 89.

¹¹⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.802, Waxman Amendment No. 11 to H.R. 2681 (Oct. 5, 2011) (Roll Call No. 747).

House Republicans rejected similar amendments preventing delays in reducing toxic emissions from cement plants that are causing respiratory and cardiovascular illnesses and deaths, including cases of heart attacks, asthma attacks, and bronchitis,¹¹⁶ or that are increasing the risk of cancer.¹¹⁷ Only one Republican supported an amendment to prevent delays in reducing these toxic emissions from cement kilns located within five miles of a school, day care center, playground, or hospital.¹¹⁸

Rep. Jan Schakowsky (D-IL) proposed adding a congressional finding to the bill stating that mercury released into the ambient air from cement kilns is a potent neurotoxin that can damage the development of an infant's brain. Rep. Waxman argued for including this finding because the science supports it and the House "can't wish that away. You can't vote it down and say that it's not true."¹¹⁹ The House defeated this amendment, with Republicans voting 238 to 2 against the amendment.¹²⁰

Rep. Bill Keating (D-MA) offered an amendment to limit the compliance deadline for cement kilns to five years at most, which is two years more than the three-year deadline in current law. This amendment failed, with Republicans voting unanimously in opposition.¹²¹

H.R. 2681 passed on October 6, 2011, with only two Republicans opposing final passage.¹²²

E. Votes to Curtail Regulation of Emissions from Offshore Drilling Operations

Under the Clean Air Act, companies that want to conduct new exploratory drilling operations in the U.S. Outer Continental Shelf (OCS) must obtain permits under the Clean Air Act if the operations will emit significant air pollution. Permit applicants and others can appeal a permit decision by EPA to the Environmental Appeals Board prior to any review by the courts. In 2010, Native Alaskans and environmental groups filed a successful appeal with the Board to overturn a permit issued by EPA to Shell for exploratory drilling in the Chukchi and Beaufort Seas off Alaska's coast.

¹¹⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.811, Connolly Amendment No. 18 to H.R. 2681 (Oct. 5, 2011) (Roll Call No. 756).

¹¹⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.810, Quigley Amendment No. 8 to H.R. 2681 (Oct. 5, 2011) (Roll Call No. 755).

¹¹⁸ U.S. House of Representatives, Roll Call Vote on Motion to Recommit H.R. 2681 (Oct. 6, 2011) (Roll Call No. 763).

¹¹⁹ Statement of Rep. Henry Waxman, *Congressional Record*, H6593 (Oct. 5, 2011).

¹²⁰ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.805, Schakowsky Amendment No. 1 to H.R. 2681 (Oct. 5, 2011) (Roll Call No. 750).

¹²¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.816, Keating Amendment No. 5 to H.R. 2681 (Oct. 6, 2011) (Roll Call No. 761).

¹²² U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2681 (Oct. 6, 2011) (Roll Call No. 764).

During the debate over FY2011 appropriations, Rep. Don Young (R-AK) proposed to block the Appeals Board from using any funds to invalidate a permit issued by EPA for offshore drilling in the Arctic. Rep. Young said the Board was comprised of “bureaucrats who don’t want to issue the permits.”¹²³ Rep. Jim Moran (D-VA) said that the Board is an “impartial board that looks out for the regular citizen” and argued that it had identified flaws in EPA’s analysis of Shell’s impact on the health of Alaskan Native communities.¹²⁴ The House passed this amendment to the appropriations bill with only nine Republicans voting in opposition.¹²⁵

Rep. Cory Gardner (R-CO) then introduced H.R. 2021, the Jobs and Energy Permitting Act, which makes significant revisions to Clean Air Act provisions relating to OCS activities. The bill limits EPA review of a permit application to six months; it eliminates any appeal to the Board, forcing all appeals to be brought in federal court in Washington, DC; it blocks EPA from requiring pollution reductions from support vessels, which often comprise the bulk of emissions from a drilling operation; and it provides that the impact of emissions from OCS sources must be measured at the shoreline, where the emissions are diluted, rather than at the source, as current law provides.

Although House Republicans said the purpose of H.R. 2021 was to accelerate the permitting process in the Arctic Ocean, the bill was drafted so that it also applied to both the Pacific and Atlantic coasts. California, which has been regulating offshore oil and gas drilling for decades, warned that the bill “could have far-reaching unintended consequences on existing effective protections for public health in California,” including protections that are more stringent than federal law.¹²⁶ Delaware stated that the “proposed constraints placed on states’ rights and authorities will adversely affect our state’s ability to protect public health and welfare from harmful effects of air pollution.”¹²⁷ Despite these comments, House Republicans rejected an amendment from Reps. Lois Capps (D-CA), John Carney (D-DE), and Kathy Castor (D-FL) to allow states to set more protective standards for offshore drilling. Only ten Republicans voted in support of the states’ rights amendment.¹²⁸

¹²³ Statement of Rep. Don Young, *Congressional Record*, H1182 (Feb. 17, 2011).

¹²⁴ Statement of Rep. Jim Moran, *Congressional Record*, H1182 (Feb. 17, 2011).

¹²⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.96, Young Amendment No. 533 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 94).

¹²⁶ Testimony of Brian Turner, California Air Resources Board, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, *Hearing on the American Energy Initiative: Discussion Draft of H.R. _____, the Jobs and Energy Permitting Act of 2011*, 112th Cong. (May 13, 2011).

¹²⁷ Testimony of Ali Mirzakhali, Director, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, *Hearing on the American Energy Initiative: Discussion Draft of H.R. _____, the Jobs and Energy Permitting Act of 2011*, 112th Cong. (May 13, 2011).

¹²⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.488, Capps Amendment No. 8 to H.R. 2021 (June 22, 2011) (Roll Call No. 474).

H.R. 2021 passed the House on June 22, 2011 with only two Republicans opposing the bill.¹²⁹ House Republicans included the bill in its entirety in the FY2012 appropriations bill for EPA reported by the Appropriations Committee.¹³⁰

F. Votes to Block Regulation of Particulate Emissions from Mines and Other Sources

Under the Clean Air Act, EPA sets air quality standards for fine and coarse particulate matter pollution, which can trigger asthma attacks, heart attacks, and premature death. The agency is in the process of reviewing these standards to determine whether the scientific and medical evidence merits revising them.

House Republicans claim that EPA intends to regulate “farm dust” as part of the agency’s review.¹³¹ To prevent EPA from doing so, Rep. Kristi Noem (R-SD) offered an amendment in February to the FY2011 funding bill to block EPA from using any funds to modify the air quality standards for coarse particles. Only four Republicans opposed this amendment.¹³²

In October, EPA Administrator Lisa Jackson informed Congress that she plans to propose retaining the existing standard for larger coarse particles, a standard that has been in place since 1987. Regardless, House Republicans brought to the floor the Farm Dust Regulation Prevention Act (H.R. 1633), which blocks EPA from revising the standard and exempts a class of pollution – called nuisance dust in the bill – from the entire Clean Air Act. The bill defines nuisance dust so broadly as to include both fine and coarse particle pollution from industrial sources such as metal and gravel mines, cement kilns, smelters, coal processing plants, and others.

Rep. Waxman offered an amendment to clarify that the bill’s exemption does not apply to particulate matter from mining activities, which can be laced with toxic metals such as lead and mercury. House Republicans opposed this amendment 232 to 2.¹³³ House Republicans also voted 232 to 1 against an amendment to ensure that EPA has authority to protect public health from particulate matter contaminated with arsenic and other heavy metals.¹³⁴ Only one Republican

¹²⁹ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2021 (June 22, 2011) (Roll Call No. 478).

¹³⁰ Section 443 of H.R. 2584 (112th Cong.).

¹³¹ For example, when Rep. Kristi Noem testified before the Committee on Energy and Commerce Subcommittee on Energy and Power on October 25, 2011, she stated: “One of the most overwhelming concerns that I hear about from farmers every day and ranchers back home is the overbearing regulations coming out of the EPA, including the regulation of farm dust.”

¹³² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.164, Noem Amendment No. 563 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 140).

¹³³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.905, Waxman Amendment No. 5 to H.R. 1633 (Dec. 8, 2011) (Roll Call No. 909).

¹³⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.904, Markey Amendment No. 4 to H.R. 1633 (Dec. 8, 2011) (Roll Call No. 908).

supported an amendment to ensure that EPA can reduce particle pollution if state and local regulations are not adequate to protect public health.¹³⁵

House Republicans voted unanimously to pass H.R. 1633 on December 8, 2011.¹³⁶

¹³⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.902, Christensen Amendment No. 2 to H.R. 1633 (Dec. 8, 2011) (Roll Call No. 907).

¹³⁶ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1633 (Dec. 8, 2011) (Roll Call No. 912).

III. Undermining the Clean Water Act

A. Votes to Repeal EPA's Authority to Set Water Quality Standards and Enforce Discharge Limits

The Clean Water Act uses two approaches to protect water quality. To reduce pollution from industrial and municipal sources, EPA sets technology-based pollution limits, which states implement through permit programs. To reduce pollution from other sources, like urban and farm runoff, states are required to set water quality standards based on the designated use for each water body and to ensure that these standards are achieved. If a state fails to set adequate water quality standards, the Clean Water Act directs EPA to act and set standards in lieu of the state.¹³⁷

In December 2010, EPA issued standards setting numeric limits on the amount of nutrient pollution allowed in Florida's inland waters after determining that the state's standards were not sufficient to protect Florida's rivers, lakes, and coastal waters.¹³⁸ EPA indicated that it would withdraw these federal standards if the state adopted scientifically sound standards for nutrient pollution.¹³⁹ In July 2011, EPA proposed additional water quality standards to protect the Florida Everglades from farm runoff.¹⁴⁰

In February, House Republicans voted 221 to 17 to block EPA from using any funds to implement or enforce the standards issued by EPA to control nutrient pollution in Florida.¹⁴¹ Rep. Thomas Rooney (R-FL) accused EPA of acting "dictatorial" by using its Clean Water Act authority to set water quality standards when the state fails to do so.¹⁴² House Republicans added the same prohibition to EPA's funding bill for FY2012, which has not passed the House.¹⁴³

In May, Rep. John Mica (R-FL), Chairman of the Transportation and Infrastructure Committee, introduced H.R. 2018, the Clean Water Cooperative Federalism Act. This bill would prevent EPA from revising weak state water quality standards or issuing new ones, unless the state concurs, even if the water quality standard is insufficient to protect human health or aquatic life. In addition, the bill would strip EPA of its authority to enforce discharge limits by prohibiting the agency from objecting to state discharge permits that fail to meet the requirements of the Clean

¹³⁷ Clean Water Act § 303 (b).

¹³⁸ U.S. EPA, *Water Quality Standards for the State of Florida's Lakes and Flowing Waters*, 75 Fed. Reg. 75761-75807 (Dec. 6, 2010) (final rule).

¹³⁹ Letter from U.S. EPA to Florida Department of Environmental Protection (June 13, 2011).

¹⁴⁰ U.S. EPA, *Phosphorus Water Quality Standards for Florida Everglades*, 76 Fed. Reg. 38592-38597 (July 1, 2011) (proposed rule).

¹⁴¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.143, Rooney Amendment No. 13 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 123).

¹⁴² Statement of Rep. Thomas Rooney, *Congressional Record*, H1290 (Feb. 18, 2011).

¹⁴³ Section 452 of H.R. 2584 (112th Cong.).

Water Act. According to EPA, this bill would “overturn almost 40 years of Federal legislation by preventing EPA from protecting public health and water quality.”¹⁴⁴

During consideration of H.R. 2018, House Republicans voted unanimously against an amendment to reinstate EPA’s ability to oversee state water quality programs and take action when state water quality standards are inadequate to protect public health and the environment.¹⁴⁵

They also voted against proposals to preserve EPA’s authority in unique circumstances. House Republicans opposed an amendment to the bill to preserve EPA authority over waterbodies that receive federal funds for restoration and related activities, such as the Chesapeake Bay, Great Lakes, and Puget Sound.¹⁴⁶ They also opposed a proposal to preserve EPA authority over waterbodies that EPA determines provide flood protection for communities, are valuable fish and wildlife habitats that benefit the economy, or are coastal recreational waters.¹⁴⁷

On July 13, 2011, H.R. 2018 passed by a vote of 239-184, with 223 Republicans voting for the bill and only 13 against.¹⁴⁸

B. Votes to Block Oversight of Mountaintop Removal Coal Mining

Mountaintop removal coal mining is a surface mining practice common in Appalachia that involves the removal of mountaintops to expose coal seams and the disposal of the resulting mining “overburden” in adjacent valleys (known as valley fills). This practice can devastate water quality and the surrounding environment. Almost 2,000 miles of Appalachian headwater streams have been buried by mountaintop removal coal mining.¹⁴⁹

EPA oversees mountaintop removal coal mining under the Clean Water Act. Mining companies must obtain a permit in order to dump overburden and mining waste into waterways. The U.S. Army Corps of Engineers administers this program on a day-to-day basis, but EPA has the responsibility to review individual permit applications and has the authority to prohibit, deny, or restrict a valley fill if it will have an unacceptable adverse effect on the environment. EPA has used this veto authority sparingly and in only the most extreme cases. An example occurred on January 13, 2011, when EPA announced that it would halt the proposed disposal of mining waste in streams

¹⁴⁴ U.S. EPA, *Technical Assessment of H.R. 2018*, as attached to a letter to the Honorable Tim Bishop from Arvin Ganesan, U.S. EPA (June 21, 2011).

¹⁴⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.629, Jackson-Lee Amendment No. 2 to H.R. 2018 (July 13, 2011) (Roll Call No. 565).

¹⁴⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.633, Connolly Amendment No. 6 to H.R. 2018 (July 13, 2011) (Roll Call No. 568).

¹⁴⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.635, Blumenauer Amendment No. 9 to H.R. 2018 (July 13, 2011) (Roll Call No. 569).

¹⁴⁸ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2018 (July 13, 2011) (Roll Call No. 573).

¹⁴⁹ U.S. EPA, *EPA Issues Final Guidance to Protect Water Quality in Appalachian Communities from Impacts of Mountaintop Mining* (July 21, 2011) (press release).

at the Mingo-Logan Coal Company's Spruce No. 1 coal mine in West Virginia, one of the largest surface coal mines ever proposed in central Appalachia. This mine would have dumped 110 million cubic yards of coal mine waste into nearby streams, burying more than six miles of high-quality streams in Logan County and causing permanent damage to the ecosystem.¹⁵⁰

In February, during the debate on appropriations for FY2011, House Republicans voted 223 to 14 to block EPA from vetoing permit applications for mountaintop removal.¹⁵¹ They also voted 227 to 10 to block EPA and other agencies from implementing EPA guidance on protecting water quality from mountaintop removal coal mining operations.¹⁵² All but nine House Republicans voted to prevent the Office of Surface Mining in the Department of the Interior from developing, implementing, or enforcing any new rules to protect streams from mountaintop removal and other surface coal mining.¹⁵³ House Republicans included similar prohibitions in EPA's funding bill for FY2012 reported by the Appropriations Committee.¹⁵⁴

House Republicans also removed EPA's authority to protect water quality from the hazards of coal mining as part of H.R. 2018, the Clean Water Cooperative Federalism Act, which, as noted above, eliminated EPA's ability to enforce numerous Clean Water Act provisions. H.R. 2018 removed EPA's authority to veto a valley fill permit based on environmental concerns unless the state concurs with the veto. The bill also limited the time EPA, the U.S. Fish and Wildlife Service, and other agencies have to provide comments to the Army Corps of Engineers on the potential environmental impacts of a proposed valley fill operation.¹⁵⁵

C. Votes to Block Protections for Wetlands and Tributaries

The Clean Water Act prohibits the discharge of any pollutant into "navigable waters" without a permit. A series of court decisions have called into question whether small streams, wetlands, tributaries, and other waterbodies that may not be navigable year-round are protected by

¹⁵⁰ U.S. EPA, *Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, WV*, 76 Fed. Reg. 3126-3128 (Jan. 19, 2011) (notice).

¹⁵¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.157, McKinley Amendment No. 216 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 135).

¹⁵² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.151, Griffith Amendment No. 109 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 129).

¹⁵³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.131, Johnson Amendment No. 498 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 119). In 2008, the Bush administration revised existing stream buffer zone rules to make it easier for coal mining to occur in or within 100 feet of streams. Numerous parties challenged the validity of that rule in court, and others, such as the Union of Concerned Scientists, raised concerns that the Office of Surface Mining had distorted the scientific evidence about the environmental impact of mountaintop removal coal mining during the rulemaking.

¹⁵⁴ Sections 432 and 433 of H.R. 2584 (112th Cong.).

¹⁵⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 2018 (July 13, 2011) (Roll Call No. 573).

this Clean Water Act prohibition. These smaller waterbodies and wetlands perform important functions. In the continental United States, 117 million people obtain some or all of their drinking water from public drinking water systems that rely at least in part on intermittent, ephemeral, or headwater streams.¹⁵⁶ Wetlands provide habitat for plants and animals, serve as important breeding grounds for migratory birds, absorb floodwaters, and help protect water quality by filtering excess nutrients, sediments, and other pollutants before they reach rivers, lakes, and streams.

On April 27, 2011, EPA and the Army Corps of Engineers issued draft guidance for determining whether a waterbody or wetland qualifies for protection under the Clean Water Act. This draft guidance proposed that tributaries, wetlands, and other waters with a “significant nexus” or “chemical, physical, or biological” connection to navigable and interstate waters qualify for protection under the law.¹⁵⁷

H.R. 1, the FY2011 continuing resolution, included language precluding EPA from issuing or enforcing this guidance.¹⁵⁸ The FY2012 Energy and Water Development Appropriations bill included similar language precluding the Army Corps of Engineers from using funds to finalize or enforce this guidance document.¹⁵⁹ House Republicans defeated an amendment to allow EPA and the Army Corps to proceed with its plans to protect tributaries, wetlands, and other smaller waterways, with only nine Republicans supporting it.¹⁶⁰

D. Votes to Block Other Pollution Protection Initiatives

House Republicans voted to limit EPA’s ability to prevent pesticide contamination of waterways. H.R. 872, the Reducing Regulatory Burdens Act, exempts the application of pesticides from any permitting requirements under the Clean Water Act.¹⁶¹ Speaking in opposition to the bill, Rep. Tim Bishop (D-NY) said that the House was “rushing to judgment,” citing “ample evidence to suggest that we don’t know enough about pesticide impairment of water bodies...to determine whether or not it is prudent for us to make a permanent exemption to the Clean Water Act.”¹⁶² This

¹⁵⁶ U.S. EPA, *Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral and Headwater Streams in the U.S.* (July 2009).

¹⁵⁷ U.S. EPA, *Draft Guidance on Identifying Waters Protected by the Clean Water Act* (Apr. 27, 2011).

¹⁵⁸ Section 1747, H.R. 1 (112th Cong.).

¹⁵⁹ Section 108, H.R. 2354 (112th Cong.).

¹⁶⁰ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.591, Moran Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 540).

¹⁶¹ This bill was designed to block a proposed rule that was finalized six months after the bill passed. On October 31, 2011, EPA issued a final general permit for the application of pesticides for the purposes of mosquito control, weed and algae control, animal pest control, and forest canopy pest control. A “general permit” covers a category of dischargers instead of an individual discharger. An operator that plans to discharge into a waterway must submit a notice of intent but does not need to obtain an individual permit. This permit requirement does not apply to pesticides used on agricultural crops or range lands.

¹⁶² Statement of Rep. Tim Bishop, *Congressional Record*, H2090 (Mar. 30, 2011).

bill passed on March 31, 2011.¹⁶³ The House Appropriations Committee added this bill in its entirety to EPA's funding bill for FY2012 when it reported the legislation to the House.¹⁶⁴

House Republicans also voted to block pollution reduction plans for the Chesapeake Bay watershed, which suffers from high levels of nitrogen and phosphorus pollution from agricultural runoff, sewage treatment plants, and other sources, despite years of state efforts to reduce pollution.¹⁶⁵ In May 2009, President Obama issued an Executive Order instructing EPA to coordinate state and federal efforts to reduce pollutants entering the Bay and enforce compliance with established goals.¹⁶⁶ In September 2010, EPA and other federal agencies released an action plan outlining specific measures to restore and protect the Chesapeake Bay and its watershed.¹⁶⁷ In February 2011, however, House Republicans voted 222 to 15 to block EPA from using funds to implement this plan to protect the Chesapeake Bay watershed.¹⁶⁸ Rep. Jim Moran (D-VA) argued unsuccessfully that this provision would “unravel the current effort to finally put a limit on nutrient and sediment pollution in the Chesapeake Bay.”¹⁶⁹

E. Votes to Cut Water Quality Funding

In February 2011, the House passed H.R. 1, the Full-Year Continuing Appropriations Act of 2011, with near unanimous Republican support.¹⁷⁰ This bill included large cuts to the Clean Water and Drinking Water State Revolving Funds, which provide states with grants to upgrade treatment plants and other infrastructure to ensure clean water. The bill reduced the Clean Water State Revolving Fund by 67% and the Drinking Water Fund by 40% over the previous year's levels.¹⁷¹ The FY2012 appropriations bill reported by the House Appropriations Committee cuts the Clean Water Fund by 55% and the Drinking Water Fund by 14% below already-reduced 2011 levels.¹⁷²

¹⁶³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 872 (Mar. 31, 2011) (Roll Call No. 206).

¹⁶⁴ Section 503 of H.R. 2584 (112th Cong.).

¹⁶⁵ Chesapeake Bay Foundation, *Water Quality Issues: Nitrogen and Phosphorous Pollution* (online at www.cbf.org/page.aspx?pid=913) (accessed Nov. 18, 2011).

¹⁶⁶ The White House, *Executive Order: Chesapeake Bay Protection and Restoration* (May 12, 2009).

¹⁶⁷ Federal Leadership Committee for the Chesapeake Bay, *Fiscal Year 2011 Action Plan, Executive Order 13508, Strategy for Protecting and Restoring the Chesapeake Bay Watershed* (Sept. 30, 2010).

¹⁶⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.136, Goodlatte Amendment No. 467 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 120).

¹⁶⁹ Statement of Rep. Jim Moran, *Congressional Record*, H1282 (Feb. 18, 2011).

¹⁷⁰ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147).

¹⁷¹ Congressional Research Service, *H.R. 1 Full-Year FY2011 Continuing Resolution: Overview of Environmental Protection Agency (EPA) Provisions* (Aug. 29, 2011) at 6-7. The levels included in the final appropriations bill for 2011 were higher but still lower than the previous year.

¹⁷² Congressional Research Service, *Environmental Protection Agency (EPA) FY2012 Appropriations* (Dec. 5, 2011) at 6.

IV. Removing Protections for Public Lands, Fish, and Wildlife

A. Votes to Block Protection of Forests and Other Wilderness Areas

On December 23, 2010, Interior Secretary Ken Salazar directed the Bureau of Land Management (BLM) to work with local communities to inventory public lands and designate certain lands with wilderness characteristics as “Wild Lands.”¹⁷³ Areas designated as Wild Lands would be open to more activities than wilderness areas but would be managed by BLM to preserve their wilderness characteristics while Congress considers whether to add them to the National Wilderness Preservation System.

The House Republicans included language in H.R. 1, the House Republican version of the FY2011 appropriations bill, to block funding for the Secretary’s order.¹⁷⁴ They also included this funding prohibition in the final funding bill that passed on April 14, 2011, to avert a government shutdown.¹⁷⁵ The appropriations bill for FY2012 for the Interior Department that House Republicans brought to the floor contained language continuing the prohibition on implementation of the Secretary’s order.¹⁷⁶ An effort by Rep. Jim Moran (D-VA) to strike this funding prohibition was defeated.¹⁷⁷

During consideration of H.R. 1, House Republicans also voted 219 to 18 to block the U.S. Forest Service from enforcing a policy to prevent ATVs and motor vehicles from using hiking and other trails on forest lands designated for non-motorized use.¹⁷⁸ The Bush Administration had initiated this policy to manage previously uncontrolled off-road vehicle use in national forests.¹⁷⁹

B. Votes to Block Protection of Salmon and Other Wildlife

House Republicans have used funding bills to try to block efforts to preserve salmon and other wildlife. In H.R. 1, House Republicans included language to block implementation of two biological opinions intended to ensure the recovery of threatened and endangered salmon, steelhead, green sturgeon, and other species in the San Francisco Bay-Delta ecosystem.¹⁸⁰ The Republicans

¹⁷³ U.S. Department of the Interior, Bureau of Land Management, *Salazar, Abbey Restore Protections for America's Wild Lands* (Dec. 23, 2010).

¹⁷⁴ Section 1778 of H.R. 1 (112th Cong.).

¹⁷⁵ Section 1769 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10) (2011 CR) (112th Cong.).

¹⁷⁶ Section 124 of H.R. 2584 (112th Cong.).

¹⁷⁷ H.AMDT.753, Moran Amendment to H.R. 2584. This amendment was defeated by voice vote on July 27, 2011.

¹⁷⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.123, Herger Amendment No. 177 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 113).

¹⁷⁹ U.S. Forest Service, *Travel Management; Designated Routes and Areas for Motor Vehicle Use*, 70 Fed. Reg. 68264-68291 (Nov. 9, 2005) (final rule).

¹⁸⁰ Section 1475(a) of H.R. 1 (112th Cong.).

also included language to prohibit implementation of a congressionally approved settlement agreement to restore flows and salmon to the San Joaquin River while minimizing water supply impacts to local farmers.¹⁸¹ During floor consideration of H.R. 1, House Republicans voted 210 to 28 to block the Department of the Interior from completing a comprehensive environmental review of the impact of removing four dams on the Klamath River to restore salmon populations.¹⁸² In February, this bill passed with near unanimous Republican support.¹⁸³

H.R. 2354, the FY2012 Energy and Water appropriations bill, included language permanently rescinding all funding for the San Joaquin River restoration agreement.¹⁸⁴ During floor consideration of the bill, Rep. Jeff Denham (R-CA) also offered an amendment to prohibit the National Marine Fisheries Service from using funds to restore the San Joaquin River and reintroduce the California Central Valley Spring Run Chinook salmon. Rep. Doc Hastings (R-WA) offered an amendment to block the Army Corps of Engineers from implementing and enforcing a shoreline management plan developed to protect salmon. These amendments were both adopted, and the bill passed the House in July.¹⁸⁵

House Republicans also voted to relax protections for the gray wolf. H.R. 1 contained provisions directing the Secretary of the Interior to remove Endangered Species Act protections for the gray wolf in certain parts of the country.¹⁸⁶ The final FY2011 funding bill that passed on April 14, 2011, contained a version of this rider, directing the Secretary to delist the gray wolf in Montana, Idaho, eastern Washington, eastern Oregon, and north-central Utah.¹⁸⁷ In July, as part of the debate on the 2012 funding bill for the Department of the Interior, House Republicans voted 226 to 9 to block judicial review of any rule removing endangered species protections for gray wolves in Wyoming or the states to the west of the Great Lakes.¹⁸⁸

¹⁸¹ Section 1475(b) of H.R. 1 (112th Cong.).

¹⁸² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.121, McClintock Amendment No. 296 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 111).

¹⁸³ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147).

¹⁸⁴ Section 203 of H.R. 2354 (112th Cong.).

¹⁸⁵ H.AMDT.666 (Denham Amendment) and H.AMDT.657 (Hastings Amendment) to H.R. 2354 (112th Cong.). The amendments passed by voice vote on July 14, 2011. U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2354 (July 15, 2011) (Roll Call No. 600).

¹⁸⁶ Section 1713 of H.R. 1 (112th Cong.).

¹⁸⁷ Section 1713 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10) (2011 CR) (112th Cong.). See Congressional Research Service, *Gray Wolves Under the Endangered Species Act (ESA): Distinct Population Segments and Experimental Populations* (Nov. 1, 2011) at 19.

¹⁸⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.750, Dicks Amendment to H.R. 2584 (July 27, 2011) (Roll Call No. 659).

C. Votes to Transfer Federal Lands to a Private Mining Company

In October, House Republicans brought H.R. 1904, the Southern Arizona Land Exchange and Conservation Act, to the floor. This bill directs the Department of Agriculture to convey 2,400 acres of federal lands to Resolution Copper, a joint venture of Australian-owned BHP-Billiton and British-owned Rio Tinto, in exchange for 5,300 acres in Arizona. The federal lands included in the exchange contain lands with significant cultural, religious, and historical value for several Native American communities.¹⁸⁹ The legislation blocks any environmental review or consultation with affected tribes prior to completion of the land exchange. The bill passed with Republicans voting 228 to 8 in favor of the legislation.¹⁹⁰

H.R. 1904 does not require Resolution Copper to provide traditional royalty payments in return for any copper extracted from the land. Rep. Ed Markey (D-MA) offered an amendment to require, as a condition of the land exchange, that Resolution Copper pay an 8% royalty to U.S. taxpayers on all minerals produced in commercial quantities from the federal land the company receives in the exchange. Only three House Republicans supported this amendment.¹⁹¹

¹⁸⁹ Testimony of Shan Lewis, Inter Tribal Council of Arizona, Before the Subcommittee on National Parks, Forests and Public Lands, Committee on Natural Resources, U.S. House of Representatives, *H.R. 1904: the Southeast Arizona Land Exchange and Conservation Act of 2011*, 112th Cong. (June 14, 2011).

¹⁹⁰ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1904 (Oct. 26, 2011) (Roll Call No. 809).

¹⁹¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.844, Markey Amendment No. 2 to H.R. 1904 (Oct. 26, 2011) (Roll Call No. 806).

V. Weakening Safety Requirements for Offshore Drilling

A. Votes to Expedite Drilling without Regard to Safety

In May 2011, House Republicans voted unanimously to pass H.R. 1229, the Putting the Gulf of Mexico Back to Work Act.¹⁹² This bill imposes a deadline of just 60 days for the Secretary of the Interior to approve or deny an application for a permit to drill in the Outer Continental Shelf. If the Secretary has not made a decision within 60 days, the permit is approved automatically, even if the Secretary has not had time to assess the application for compliance with safety and oil spill response requirements. Rep. John Garamendi (D-CA) commented that the bill “seems to ignore every one of the recommendations that the [National Commission on the BP Deepwater Horizon Oil Spill] made about how to conduct deepwater drilling in a safe manner.”¹⁹³

During the debate on this bill, Republicans voted several times against amendments to ensure that drilling applicants have the appropriate safety measures in place to prevent another major oil spill, including an amendment by Rep. Markey to set minimum standards for blowout preventers, establish new standards for well casing and cementing, and require independent third party certification of well design and blowout preventers;¹⁹⁴ an amendment by Rep. Garamendi to establish an independent safety organization to ensure that deepwater drilling applications meet safety requirements, as recommended by the National Commission on the BP Deepwater Horizon Oil Spill;¹⁹⁵ and two amendments to ensure that the Secretary has enough time to review permit applications for deepwater drilling for compliance with all applicable safety requirements.¹⁹⁶

B. Votes to Approve New Offshore Drilling without Environmental Review

In May, the House passed H.R. 1230, the Restarting American Offshore Leasing Now Act, to expedite leasing in the Gulf of Mexico and open new areas off the Virginia coast to oil and gas drilling. The bill requires the Department of the Interior to hold four lease sales on a hasty timeline and to use out-of-date environmental analyses to determine potential impacts of new drilling. Only two Republicans voted to oppose this bill.¹⁹⁷

¹⁹² U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1229 (May 11, 2011) (Roll Call No. 309).

¹⁹³ Statement of Rep. John Garamendi, *Congressional Record*, H3134 (May 10, 2011).

¹⁹⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.272, Markey Amendment No. 3 to H.R. 1229 (May 10, 2011) (Roll Call No. 301).

¹⁹⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.271, Garamendi Amendment No. 2 to H.R. 1229 (May 10, 2011) (Roll Call No. 300).

¹⁹⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.274, Holt Amendment No. 6 to H.R. 1229 (May 11, 2011) (Roll Call No. 303); Roll Call Vote on Agreeing to H.AMDT.275, Polis Amendment No. 7 to H.R. 1229 (May 11, 2011) (Roll Call No. 304).

¹⁹⁷ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1230 (May 5, 2011) (Roll Call No. 298).

Rep. Rush Holt (D-NJ) offered an amendment to require updated environmental reviews before allowing the new lease sales to proceed. He argued that the bill deems “the shoddy environmental analysis conducted four years ago, in other words, years prior to the gulf oil blowout, to be sufficient for all future lease sales in the Gulf, despite their glaring deficiencies.”¹⁹⁸ This amendment was defeated, with only eight Republicans supporting it.¹⁹⁹

House Republicans also passed H.R. 1231, the Reversing President Obama’s Offshore Moratorium Act, which requires the Secretary of the Interior to open the Pacific, Atlantic, and Alaskan coasts to oil and gas drilling. This bill would circumvent the standard process for identifying areas for lease and conducting thorough environmental reviews by directing the Secretary to issue leases for half of all unleased acreage in the Outer Continental Shelf. If enacted, individual states would not have the authority to prohibit drilling off their coasts. Only nine Republicans opposed this bill.²⁰⁰

House Republicans defeated several amendments to H.R. 1231 to exclude development in certain coastal areas or to give states the opportunity to prevent drilling off their coasts. House Republicans voted 222 to 5 against a proposal to enact a permanent moratorium on oil and gas drilling in the eastern Gulf of Mexico along Florida’s coast.²⁰¹ They voted down a similar proposal to prohibit drilling off northern California’s coast, despite local opposition.²⁰² Rep. Jay Inslee (D-WA) offered an amendment to give the state of Washington the ability to approve any oil and gas leases issued off its coast. This states’ rights amendment was defeated, gaining only ten Republican votes.²⁰³

C. Votes to Preserve an Oil Royalty Loophole and Cut Funding for Drilling Oversight

For a two-year period from 1998 to 1999, the Department of the Interior erred when drafting leases for drilling in the Gulf of Mexico and exempted companies from paying royalties to the federal government on the oil produced from those leases, no matter how high the price of a

¹⁹⁸ Statement of Rep. Rush Holt, *Congressional Record*, H3088 (May 5, 2011).

¹⁹⁹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.268, Holt Amendment No. 1 to H.R. 1230 (May 5, 2011) (Roll Call No. 295).

²⁰⁰ U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 1231 (May 12, 2011) (Roll Call No. 320).

²⁰¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.285, Brown Amendment No. 6 to H.R. 1231 (May 12, 2011) (Roll Call No. 316). The Gulf of Mexico Energy Security Act, signed into law in December 2006, enacted a moratorium on new drilling in Gulf of Mexico within 125 miles off the Florida coastline until 2022.

²⁰² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.286, Thompson Amendment No. 7 to H.R. 1231 (May 12, 2011) (Roll Call No. 317).

²⁰³ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.287, Inslee Amendment No. 8 to H.R. 1231 (May 12, 2011) (Roll Call No. 318).

barrel of oil. The Government Accountability Office noted that these errors “resulted in significant foregone royalties to the federal government.”²⁰⁴

Twice this year, Rep. Markey offered amendments to close the loophole that allows oil and gas companies to avoid royalty payments for wells in the Gulf of Mexico. The amendments would have barred oil companies from receiving future leases unless they agreed to renegotiate their existing leases to require standard royalty payments and would have prevented the federal treasury from losing billions of dollars in future royalty payments.²⁰⁵ Nonetheless, House Republicans voted 226 to 11 and 223 to 14 to oppose these amendments to ensure that oil and gas companies pay their fair share on the oil and gas recovered from offshore drilling.²⁰⁶

At the same time that House Republicans voted down efforts to close royalty loopholes, they also supported cutting funding for oversight of offshore drilling. The FY2012 funding bill for the Department of the Interior reported by the Appropriations Committee provides \$33 million less than the President requested to ensure oversight and enforcement of offshore drilling safety requirements. The House Appropriations Committee also rejected the President’s request to collect an additional \$52 million in inspection fees to support heightened oversight of offshore drilling.²⁰⁷

²⁰⁴ Government Accountability Office, *Oil and Gas Royalties: Royalty Relief Will Cost the Government Billions of Dollars but Uncertainty Over Future Energy Prices and Production Levels Make Precise Estimates Impossible at this Time* (GAO-07-590R) (Apr. 12, 2007).

²⁰⁵ Estimates of total foregone royalty revenue vary widely, depending on assumptions made. At the high end of estimates, the federal treasury could lose \$53 billion. See Government Accountability Office, *Oil and Gas Royalties: Litigation over Royalty Relief Could Cost the Federal Government Billions of Dollars* (GAO-08-792R) (June 5, 2008).

²⁰⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.119, Markey Amendment No. 27 to H.R. 1 (Feb. 18, 2011) (Roll Call No. 109); Roll Call Vote on Agreeing to H.AMDT.282, Markey Amendment No. 3 to H.R. 1231 (May 11, 2011) (Roll Call No. 313).

²⁰⁷ Congressional Research Service, *Interior, Environment, and Related Agencies: FY2012 Appropriations* (Dec. 7, 2011) at 26-27.

VI. Cutting Support for Clean Energy Technologies and Programs

A. Votes to Cut Funding for Clean Energy Programs

House Republicans have voted multiple times to slash funding for the Department of Energy's clean energy and energy efficiency programs. In February 2011, the House Republicans voted 235 to 3 to pass H.R. 1, an appropriations bill for FY2011 that allocated just \$1.5 billion for energy efficiency and renewable energy.²⁰⁸ This was almost 40% below the President's funding request and a 35% cut from the previous year.²⁰⁹

On April 15, the House Republicans passed the budget resolution written by Rep. Paul Ryan (R-WI), Chairman of the Budget Committee, with only four Republicans voting no. All Democrats opposed the measure.²¹⁰ The Ryan budget outlined significant budget cuts for energy programs, reducing overall funding by 83% by 2020.²¹¹ Rep. Ryan called for spending cuts for renewable energy and energy research and investment in particular, declaring this "corporate welfare spending" best left to the private sector.²¹²

The Ryan budget served as a guide for H.R. 2354, an appropriations bill for 2012 that allocated just \$1.3 billion to clean energy and efficiency programs. This is almost 60% below the President's request and 27% below the previous year's levels.²¹³ The House Republicans voted 209 to 21 to pass this bill in July.²¹⁴ These cuts would reduce funding for solar energy research and development by 37%, advanced vehicle technologies by 15%, energy-efficient building programs by

²⁰⁸ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147). The final FY2011 continuing resolution appropriated \$1.8 billion for energy efficiency and renewable energy programs.

²⁰⁹ Congressional Research Service, *Energy and Water Development: FY2011 Appropriations* (May 11, 2011) at 12.

²¹⁰ U.S. House of Representatives, Roll Call Vote on Passage of H. Con. Res. 34 (Apr. 15, 2011) (Roll Call No. 277).

²¹¹ H. Con. Res. 34, Section 102, Major Functional Categories, Energy (270) (112th Cong.). This category includes civilian energy and environmental programs of the Department of Energy, the Rural Utilities Service of the Department of Agriculture, the Tennessee Valley Authority, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission.

²¹² House Committee on the Budget, *Concurrent Resolution on the Budget—Fiscal Year 2012* (112th Cong.) (2011) (H. Rept. 112-58) at 68.

²¹³ Congressional Research Service, *Energy and Water Development: FY2012 Appropriations* (Oct. 14, 2011) at 13.

²¹⁴ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2354 (July 15, 2011) (Roll Call No. 600).

29%, and weatherization assistance by 81%.²¹⁵ At the same time, the bill proposed to increase funding for fossil fuels, such as coal and oil, by \$32 million (7%) over last year's levels.²¹⁶

House Republicans voted down numerous attempts to increase funding levels for renewable energy and energy efficiency, including two amendments to increase funding for the Advanced Research Projects Agency-Energy (ARPA-E).²¹⁷ ARPA-E is dedicated to the development of cutting-edge energy technology, such as integrating advanced power electronics into solar panels to generate energy more efficiently. Rep. Jay Inslee (D-WA) noted that “while the Chinese are racing ahead on clean energy, we’re running backwards” by cutting funding for programs such as ARPA-E.²¹⁸

House Republicans also voted 230 to 6 to defeat an amendment offered by Rep. Markey to increase clean energy funding by \$100 million and reduce funding for the fossil fuel and nuclear energy accounts by \$50 million each.²¹⁹ They voted 226 to 10 to defeat a bipartisan amendment to restore full funding for advanced vehicle technology research by reducing funding for fossil fuels.²²⁰ And they voted against amendments to restore funding for key energy efficiency programs via small cuts in weapons funding.²²¹

In September, House Republicans voted for a continuing resolution to keep the federal government operating until mid-November and to provide disaster-relief funds to the Federal Emergency Management Agency.²²² This bill would have rescinded \$100 million from Department of Energy's Innovative Technology Loan Guarantee Program and cut \$1.5 billion from its Advanced Technology Vehicle Manufacturing (ATVM) program. The ATVM program, launched in 2008, provides loans to support the manufacture of advanced technology vehicles and components in the United States. The Department of Energy estimates that the loan guarantees have created or

²¹⁵ Congressional Research Service, *Energy and Water Development: FY2012 Appropriations* (Oct. 14, 2011) at 15-16.

²¹⁶ *Id.* at 13.

²¹⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.32, Inslee Amendment No. 395 to H.R. 1 (Feb. 16, 2011) (Roll Call No. 56); Roll Call Vote on Agreeing to H.AMDT.612, Garamendi Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 553).

²¹⁸ Statement of Rep. Jay Inslee, *Congressional Record*, H901 (Feb. 15, 2011).

²¹⁹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.597, Markey Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 541).

²²⁰ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.599, Connolly Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 543).

²²¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.605, Tonko Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 548); Roll Call Vote on Agreeing to H.AMDT.603, Welch Amendment to H.R. 2354 (July 12, 2011) (Roll Call No. 546).

²²² U.S. House of Representatives, Roll Call Vote on Motion to Concur in the Senate Amendment with an Amendment to H.R. 2608 (Roll Call No. 727) (Sept. 23, 2011).

maintained 39,000 jobs in California, Delaware, Illinois, Indiana, Kentucky, Ohio, Michigan, Missouri, and Tennessee.²²³

At the same time that House Republicans voted repeatedly to cut funding for clean energy, they also voted to preserve tax breaks for oil and gas companies. In March, Rep. Bill Keating (D-MA) offered an amendment to appropriations legislation that would have revoked a collection of oil company tax giveaways totaling \$40 billion, saying “let’s stop sending taxpayers’ money to the most profitable companies in the world.”²²⁴ Not a single Republican voted in favor of the measure.²²⁵

B. Votes to Block Energy Efficiency Standards

In 2007, the lighting industry and energy efficiency advocates reached a consensus on national standards to make light bulbs more efficient and avoid a patchwork of conflicting state standards. These national standards go into effect on January 1, 2012. As a result of the new standards, American households are expected to save \$6 billion on energy costs in 2015 alone.²²⁶ Opponents of these standards claim that they will result in a ban of incandescent light bulbs. These claims are false; in fact, consumers will have a range of energy-efficient light bulb choices, including more efficient incandescent light bulbs.²²⁷

In July, Rep. Joe Barton introduced the Better Use of Light Bulbs (BULB) Act, H.R. 2417, to repeal these standards. The National Electrical Manufacturers Association and American Lighting Association joined with consumer and environmental advocates to oppose the BULB Act. House Republicans voted 228 to 10 in support of the bill.²²⁸ H.R. 2417 did not pass on this vote because the vote occurred under a procedure requiring a two-thirds majority. But one week later, during the debate on appropriations for the Department of Energy for FY2012, Rep. Michael Burgess (R-TX) offered an amendment to prevent the Department from using funds to implement the light bulb efficiency standards.²²⁹ This amendment passed on July 15, 2011, by a voice vote.

²²³ U.S. Department of Energy, Loan Programs Office, *Our Projects* (online at https://lpo.energy.gov/?page_id=45) (accessed Nov. 30, 2011).

²²⁴ Statement of Rep. Bill Keating, *Congressional Record*, H1426 (Mar. 1, 2011).

²²⁵ U.S. House of Representatives, Roll Call Vote on Motion to Recommit H.J. Res. 44 (Mar. 1, 2011) (Roll Call No. 153).

²²⁶ U.S. EPA, *Energy Independence and Security Act of 2007 Backgrounder* (Spring 2011) (online at www.energystar.gov) (accessed Nov. 30, 2011).

²²⁷ *Id.*; See American Lighting Association, *Fact Sheet: 4 Key Questions About the New Light Bulb Legislation* (online at www.americanlightingassoc.com/Downloads/Light-Bulb-Legislation-by-Longo.aspx) (accessed Dec. 13, 2011).

²²⁸ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2417 (July 12, 2011) (Roll Call No. 563).

²²⁹ H.AMDT.678 to H.R. 2354 (112th Cong.).

VII. Allowing Unsafe Disposal of Toxic Coal Ash

On December 22, 2008, a Tennessee Valley Authority coal ash impoundment in Kingston, Tennessee, ruptured, releasing more than five million cubic yards of toxic sludge and blanketing the Emory River and 300 acres of surrounding land.²³⁰ As this episode demonstrated, improper disposal of the combustion wastes produced by coal-burning electric utilities can pose a threat to human health and safety. EPA considers 49 coal ash impoundments in 12 states as having “high hazard potential,” which means that a failure in the impoundment is likely to cause loss of human life.²³¹ Unsafe disposal of coal ash can also threaten drinking water by leaching arsenic and other toxic chemicals into drinking water from unlined surface impoundments.²³²

In June 2010, EPA proposed two alternatives to ensure the safe disposal of coal ash under the Resource Conservation and Recovery Act (RCRA).²³³ One proposal would regulate coal ash under the provisions for hazardous waste; the other would regulate coal ash as a solid waste under rules crafted to address the specific risks of coal ash. During consideration of H.R. 1, the Full Year Continuing Appropriations Act for 2011, Rep. David McKinley (R-WV) offered an amendment to block EPA from regulating coal ash under the hazardous waste provision. The amendment passed, with Republicans voting 220 to 18 in support.²³⁴

In October 2011, the House began consideration of H.R. 2273, the Coal Residuals Reuse and Management Act. The bill blocks EPA from finalizing either of its proposed rules for coal ash disposal. Instead, H.R. 2273 creates a system of state permit programs based on the disposal criteria developed for household garbage and requires EPA to defer to those state programs, whether or not they are adequate. House Democrats offered several amendments to address the bill’s shortcomings, all of which were defeated.

Rep. Waxman offered an amendment to require state coal ash disposal programs to protect human health and the environment. The amendment failed, with only four Republicans voting in

²³⁰ U.S. EPA Region 4, *EPA’s Response to the TVA Kingston Fossil Plant Fly Ash Release: Basic Information* (online at www.epa.gov/region4/kingston/basic.html) (accessed Nov. 23, 2011).

²³¹ U.S. EPA, *Fact Sheet: Coal Combustion Residues (CCR) - Surface Impoundments with High Hazard Potential Ratings* (Aug. 2009) (online at <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/ccrs-fs/>) (accessed Dec. 12, 2011).

²³² RTI International, *Human and Ecological Risk Assessment of Coal Combustion Wastes (Draft)*, Prepared for U.S. EPA, Office of Solid Waste (Aug. 6, 2007).

²³³ U.S. EPA, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities*, 75 Fed. Reg. 35127-35264 (June 21, 2010) (proposed rule).

²³⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.158, McKinley Amendment No. 217 to H.R. 1 (Feb. 19, 2011) (Roll Call No. 136).

support.²³⁵ House Republicans also voted 227 to 2 to prevent EPA from enforcing the requirements of state coal ash programs if the state fails to do so.²³⁶

House Republicans voted 222 to 4 against an amendment to require existing impoundments to retrofit to meet modern safety standards.²³⁷ Rep. Markey stated that the country “shouldn’t have to wait for another catastrophe like Kingston to happen before we require these basic safety measures to be employed at all coal ash ponds.”²³⁸ No Republicans supported a measure establishing a warning system to alert first responders and residents of the pending failure of a hazardous coal ash impoundment.²³⁹

H.R. 2273 passed on October 14, 2011, with only three Republicans voting in opposition.²⁴⁰

²³⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.838, Waxman Amendment No. 2 to H.R. 2273 (Oct. 14, 2011) (Roll Call No. 794).

²³⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.841, Rush Amendment No. 5 to H.R. 2273 (Oct. 14, 2011) (Roll Call No. 797).

²³⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.839, Markey Amendment No. 3 to H.R. 2273 (Oct. 14, 2011) (Roll Call No. 795).

²³⁸ Statement of Rep. Ed Markey, *Congressional Record*, H6948 (Oct. 14, 2011).

²³⁹ U.S. House of Representatives, Roll Call Vote on Motion to Recommit H.R. 2273 (Oct. 14, 2011) (Roll Call No. 799).

²⁴⁰ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2273 (Roll Call No. 800) (Oct. 14, 2011).

VIII. Curtailing Review of the Keystone XL Pipeline

TransCanada's proposed Keystone XL pipeline would transport up to 830,000 barrels per day of tar sands crude oil from Alberta, Canada, to refineries in the Gulf Coast. This pipeline would almost double the quantity of tar sands fuel currently imported to the United States. It also raises serious environmental concerns because of the risks of spills and leaks, especially into the Ogallala Aquifer, and because producing oil from tar sands is more energy intensive than producing a barrel of conventional oil. On a life-cycle basis, gasoline derived from tar sands generates substantially higher greenhouse gas emissions than gasoline from conventional oil.²⁴¹

In May 2011, House Republicans introduced legislation, H.R. 1938, to force the Obama Administration to make a decision on the Keystone XL permit by November 1, 2011. This bill, which would have short-circuited the existing State Department review process, passed on July 26, 2011, with only three Republican dissenters.²⁴² During the debate, House Republicans rejected concerns about the pipeline's impact on greenhouse gas emissions, air quality, and water quality. According to Rep. Steve Scalise (R-LA), they are the concerns of "radicals [who] don't want that oil coming in. They don't like oil at all. So I guess they're going to ride around on bicycles."²⁴³

Only five Republicans supported an amendment to require the pipeline operator, TransCanada, to demonstrate an ability to respond to a worst-case pipeline spill.²⁴⁴ Similarly, only four Republicans supported an amendment to examine whether current pipeline safety regulations are sufficient to address the risks of transporting tar sands oil.²⁴⁵ Only one Republican supported an amendment to require a study of the potential health impacts of air pollution from refineries processing tar sands oil.²⁴⁶

House Republicans voted almost unanimously to support a finding that the Keystone XL pipeline will result in no significant change in total United States or global greenhouse gas emissions, despite evidence to the contrary.²⁴⁷ They voted 232 to 3 against adding a finding that the pipeline would cross the Ogallala Aquifer and that spills from the pipeline could threaten groundwater and

²⁴¹ Natural Resources Defense Council, *GHG Emission Factors for High Carbon Intensity Crude Oils* (Sept. 2010).

²⁴² U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1938 (July 26, 2011) (Roll Call No. 650).

²⁴³ Statement of Rep. Steve Scalise, *Congressional Record*, H5512 (July 26, 2011).

²⁴⁴ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.727, Hanabusa Amendment No. 8 to H.R. 1938 (July 26, 2011) (Roll Call No. 646).

²⁴⁵ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.722, Eshoo Amendment No. 3 to H.R. 1938 (July 26, 2011) (Roll Call No. 642).

²⁴⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.728, Johnson Amendment No. 9 to H.R. 1938 (July 26, 2011) (Roll Call No. 647).

²⁴⁷ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.721, Rush Amendment No. 2 to H.R. 1938 (July 26, 2011) (Roll Call No. 641).

drinking water.²⁴⁸ Rep. Lee Terry (R-NE), the bill's sponsor, claimed that adding these facts about the pipeline's route and its potential environmental impact would amount to "gutting" the bill.²⁴⁹

At the committee level, the House Foreign Affairs Committee also included language in the Foreign Relations Authorization Act that called on the Secretary of State to approve the pipeline.²⁵⁰ Rep. Berman opposed the measure, arguing that he did not want to put aside the Administration's interagency process given the pipeline's potential impact on U.S. interests.

In December, House Republicans included language about the Keystone XL pipeline in a bill to extend the payroll tax cut.²⁵¹ The bill directs the President to approve the Keystone XL pipeline within 60 days unless he determines the pipeline is not in the national interest. This would curtail the environmental review process, deny the public an opportunity to comment, and require the President to make a decision on the pipeline before a final route has even been selected. House Republicans voted 224 to 14 in support of this bill.²⁵²

²⁴⁸ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.720, Welch Amendment No. 1 to H.R. 1938 (July 26, 2011) (Roll Call No. 640).

²⁴⁹ Statement of Rep. Lee Terry, *Congressional Record*, H5519 (July 26, 2011).

²⁵⁰ Section 1151, H.R. 2583 (112th Cong.)

²⁵¹ Subtitle A to Title I, H.R. 3630 (112th Cong.).

²⁵² U.S. House of Representatives, Roll Call Vote on Passage of H.R. 3630 (Dec. 13, 2011) (Roll Call No. 923).

IX. Reducing Funding for Environmental Protection

A. H.R. 1, Full-Year Continuing Appropriations Act of 2011

In February 2011, the House passed H.R. 1, the Full-Year Continuing Appropriations Act of 2011, with near unanimous Republican support.²⁵³ H.R. 1 cut EPA's budget by \$3 billion, 29% below FY2010 funding levels.²⁵⁴ The bill also included dozens of policy riders blocking EPA from taking specific regulatory actions, as discussed throughout this report.

H.R. 1 cut funding for EPA's environmental programs and management account by \$422 million (14%). This account primarily funds the development, implementation, and enforcement of air and water pollution control standards.²⁵⁵ The bill cut in half funding for the Great Lakes Restoration Initiative, a multi-agency effort to clean up pollution and combat invasive species in the Great Lakes.²⁵⁶ Funding for similar restoration programs for the Puget Sound and the Chesapeake Bay were reduced by a combined 40%.²⁵⁷ The bill also cut the Clean Water State Revolving Fund by \$1.4 billion (67%) and the Drinking Water State Revolving Fund by \$557 million (40%) over the previous year's levels.²⁵⁸ These programs provide states and tribes with grants to upgrade treatment plants and other infrastructure to ensure clean water and safe drinking water.

The bill cut climate change funding government-wide by more than \$100 million (29%) from FY2010 levels.²⁵⁹ These cuts affected EPA, the National Park Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and the U.S. Forest Service programs to research, respond to, and prevent climate change.²⁶⁰

H.R. 1 also included significant cuts for programs at the Department of Energy. The bill cut funding for energy efficiency and renewable energy programs at DOE by \$775 million, a 35% cut

²⁵³ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 1 (Feb. 19, 2011) (Roll Call No. 147).

²⁵⁴ House Committee on Appropriations, *Summary: Fiscal Year 2011 Continuing Resolution* (Feb. 11, 2011).

²⁵⁵ Congressional Research Service, *H.R. 1 Full-Year FY2011 Continuing Resolution: Overview of Environmental Protection Agency (EPA) Provisions* (Aug. 29, 2011) at 5.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 6-7.

²⁵⁹ House Committee on Appropriations, *Summary: Fiscal Year 2011 Continuing Resolution* (Feb. 11, 2011).

²⁶⁰ U.S. House of Representatives, Committee on Appropriations, *FY2011 Continuing Resolution Reductions* (online at http://appropriations.house.gov/_files/ProgramCutsFY2011ContinuingResolution.pdf) (accessed Nov. 8, 2011).

from the previous year.²⁶¹ The bill also cut funding for the Energy Information Administration (EIA) by \$15 million (14%).²⁶² EIA provides policymakers with data and impartial analysis of energy production and consumption in the United States.

H.R. 1 reduced funding for the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, which are responsible for implementing the Endangered Species Act, by \$379 million (23%) and \$387 million (8%), respectively, from the previous year's levels.²⁶³ The bill also cut the Land and Water Conservation Fund by 87%, severely curtailing the ability of the Bureau of Land Management, the Fish and Wildlife Service, the National Park Service, and the Forest Service to acquire new lands for recreation and wildlife protection.²⁶⁴

B. The Ryan Budget

On April 15, 2011, the House Republicans passed the budget resolution written by Rep. Paul Ryan (R-WI), Chairman of the Budget Committee, with only four Republicans voting no. All Democrats opposed the measure.²⁶⁵

The Ryan budget requires massive cuts for energy and environmental programs. The budget reduces funding for energy programs, including programs at the Department of Energy, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission, by 83% by 2020.²⁶⁶ The Ryan budget also cuts the budget for natural resources and environmental programs by 13% by 2020.²⁶⁷ The report accompanying the Ryan budget states that this budget “builds on the fiscal discipline of H.R. 1” by “paring back unnecessary spending and funds to carry out overreaching regulatory expansion,” and it cited funding limitations on EPA’s ability to reduce emissions of global warming pollutants as a policy option for savings.²⁶⁸

²⁶¹ Congressional Research Service, *Energy and Water Development: FY2011 Appropriations* (May 11, 2011) at 12.

²⁶² *Id.*

²⁶³ Congressional Research Service, *Interior, Environment, and Related Agencies: FY2011 Appropriations* (May 12, 2011) at 4; Congressional Research Service, *Commerce, Justice, Science, and Related Agencies: FY2011 Appropriations* (July 25, 2011) at 6.

²⁶⁴ Congressional Research Service, *Interior, Environment, and Related Agencies: FY2011 Appropriations* (May 12, 2011) at 46-47.

²⁶⁵ U.S. House of Representatives, Roll Call Vote on Passage of H. Con. Res. 34 (Apr. 15, 2011) (Roll Call No. 277).

²⁶⁶ H. Con. Res. 34, Section 102, Major Functional Categories, Energy (270) (112th Cong.).

²⁶⁷ H. Con. Res. 34, Section 102, Major Functional Categories, Natural Resources and Environment (300) (112th Cong.). This budget category covers programs at a range of agencies, including EPA, National Park Service, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, Forest Service, National Oceanic and Atmospheric Administration, and Army Corps of Engineers.

²⁶⁸ House Committee on the Budget, *Concurrent Resolution on the Budget—Fiscal Year 2012* (112th Cong.) (2011) (H. Rept. 112-58) at 72.

C. FY2012 Appropriations Bills

The Ryan budget served as a guide for appropriations bills to cut funding for EPA, the Department of Energy, the Department of the Interior, and other agencies in FY2012.

H.R. 2354, the Republican funding bill for the Department of Energy, cut FY2012 clean energy and efficiency programs by almost \$1.9 billion (60%) below the President's request and \$487 million (27%) below the previous year's already reduced levels.²⁶⁹ This bill also cut funding for the Advanced Technology Vehicles Manufacturing program by 40% over the previous year.²⁷⁰ In contrast, the bill increased funding for nuclear energy programs by almost \$8 million (1%) and fossil energy research and development by \$32 million (7%) over FY2011 levels.²⁷¹ House Republicans voted 209 to 21 to pass H.R. 2354 on July 15, 2011.²⁷²

H.R. 2584, the FY2012 funding bill for EPA and the Department of the Interior, passed the House Appropriations Committee on July 12, 2011. It was debated and amended on the House floor in late July but never called for a final vote. The bill cuts FY2012 funding for EPA by \$1.5 billion (18%) from FY2011 levels.²⁷³ It cuts funding for climate change programs by 22% government-wide from the previous year.²⁷⁴ It also cuts the Clean Water State Revolving Fund by 55% and the Drinking Water State Revolving Fund by 14% below already reduced levels for FY2011.²⁷⁵

In addition, H.R. 2584 reduces the Fish and Wildlife Service budget for FY2012 by 21% below the previous year's already reduced levels, with significant cuts for endangered species protection, habitat conservation, and the National Wildlife Refuge System.²⁷⁶ The bill also slashes the Land and Water Conservation Fund by 78% below FY2011 levels, eliminating the majority of funds used by the federal government to acquire new lands for recreation and wildlife protection.²⁷⁷

²⁶⁹ Congressional Research Service, *Energy and Water Development: FY2012 Appropriations* (Oct. 14, 2011) at 13.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² U.S. House of Representatives, Roll Call Vote on Passage of H.R. 2354 (July 15, 2011) (Roll Call No. 600).

²⁷³ Congressional Research Service, *Environmental Protection Agency (EPA) FY2012 Appropriations* (Dec. 5, 2011) at 1.

²⁷⁴ Statement of Rep. Hal Rogers, *Congressional Record*, H5437 (July 25, 2011).

²⁷⁵ Congressional Research Service, *Environmental Protection Agency (EPA) FY2012 Appropriations* (Dec. 5, 2011) at 6.

²⁷⁶ Congressional Research Service, *Interior, Environment, and Related Agencies: FY2012 Appropriations* (Dec. 7, 2011) at 10-11.

²⁷⁷ *Id.* at 57.

X. Obstructing the Regulatory Process

A. The Regulatory Accountability Act (H.R. 3010)

H.R. 3010, the Regulatory Accountability Act, rewrites the Administrative Procedure Act to make issuance of regulations vastly more difficult. The bill adds more than 60 new analytic and procedural requirements to the rulemaking process, including an analysis of the potential costs and benefits of any “reasonable alternatives for a new rule or other response identified by the agency or interested persons.”²⁷⁸ The bill requires the use of formal rulemakings, which require time-consuming trial-like procedures, for “high impact” regulations with an annual cost of at least \$1 billion. And it requires agencies to adopt the “least costly” regulation, regardless of that regulation’s feasibility or impact on public health, unless the agency can show that “additional benefits of the more costly rule justify its additional costs.”²⁷⁹ This determination and the agencies’ implementation of the bill’s other analytical and procedural requirements would be subject to judicial review, giving polluters new avenues to overturn regulations in court. The bill even directs courts to not defer to agency determinations unless the agency followed specific procedures to reach those determinations. H.R. 3010 passed with unanimous Republican support.²⁸⁰

During consideration of H.R. 3010, Rep. Gerry Connolly (D-VA) offered an amendment to exempt safeguards that relate to “the safety of food, the safety of the workplace, air quality, the safety of consumer products, or water quality” from the reach of H.R. 3010. This amendment was defeated with no Republicans voting in favor.²⁸¹

Only one Republican supported an amendment by Rep. Jerry Nadler (D-NY) to exempt the Nuclear Regulatory Commission (NRC) from the requirements of H.R. 3010.²⁸² Rep. Nadler offered this amendment because the bill could make it “all but impossible” for NRC to enact new safety standards for reactors, noting that the disaster at Japan’s Fukushima nuclear power plant demonstrates that NRC “must have the ability and flexibility to impose new regulations quickly to safeguard the health and well-being of Americans.”²⁸³

B. The REINS Act (H.R. 10)

The Regulations from the Executive in Need of Scrutiny (REINS) Act (H.R. 10) requires approval from both houses of Congress before federal agencies can implement any significant rule, including those to protect the environment and public health. In effect, this bill would force

²⁷⁸ See H.R. 3010 § 3(b).

²⁷⁹ *Id.* § 3(f).

²⁸⁰ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 3010 (Dec. 2, 2011) (Roll Call No. 888).

²⁸¹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.891, Connolly Amendment No. 5 to H.R. 3010 (Dec. 2, 2011) (Roll Call No. 884).

²⁸² U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.892, Nadler Amendment No. 6 to H.R. 3010 (Dec. 2, 2011) (Roll Call No. 885).

²⁸³ Statement of Rep. Jerrold Nadler, *Congressional Record*, H8097 (Dec. 2, 2011).

Congress to re-legislate provisions in the Clean Air Act, Clean Water Act, and other laws that require the agencies to conduct significant rulemakings. If Congress fails to act on a rule, the new rule would not go into effect, delaying important safeguards and wasting years of scientific inquiry, stakeholder comment, and agency staff resources. H.R. 10 passed the House on December 7, 2011, with Republicans voting unanimously in support.²⁸⁴

Rep. Carolyn McCarthy (D-NY) introduced an amendment to the REINS Act that would have exempted regulations relating to food safety, workplace safety, air quality, consumer product safety, or water quality from the bill's requirements. As Rep. McCarthy explained, the REINS Act would have the effect of adding 535 regulators to the rulemaking process with each member of Congress "forced to review the rules and regulations regarding highly technical matters currently handled by subject area experts."²⁸⁵ Not a single Republican voted for the amendment.²⁸⁶

C. The Regulatory Flexibility Improvements Act (H.R. 527)

The existing Regulatory Flexibility Act requires agencies to take into account the impacts of federal rules that regulate the conduct of small businesses. H.R. 527 expands these requirements by mandating that federal agencies assess the "indirect effects" of regulations that do not directly affect small businesses. It also gives the Office of Advocacy within the Small Business Administration the power to issue rules governing agency compliance with H.R. 527 and to intervene in agency adjudications. H.R. 527 passed with unanimous Republican support.²⁸⁷

Rep. Steve Cohen (D-TN) introduced an amendment to H.R. 527 that would have exempted regulations relating to food safety, workplace safety, air quality, consumer product safety, or water quality from the bill's requirements. Rep. Cohen stated that this amendment would protect workers and consumers "when they eat their breakfasts, their lunches and their dinners, when they buy toys for their children and their grandchildren, when they drive their cars, and when they work in their workplaces."²⁸⁸ No Republicans voted for the amendment.²⁸⁹

²⁸⁴ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 10 (Dec. 7, 2011) (Roll Call No. 901).

²⁸⁵ Statement of Rep. Carolyn McCarthy, *Congressional Record*, H8228 (Dec. 7, 2011).

²⁸⁶ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.898, McCarthy Amendment No. 5 to H.R. 10 (Dec. 7, 2011) (Roll Call No. 897).

²⁸⁷ U.S. House of Representatives, Roll Call Vote on Passage of H.R. 527 (Dec. 1, 2011) (Roll Call No. 880).

²⁸⁸ Statement of Rep. Steve Cohen, *Congressional Record*, H8047 (Dec. 1, 2011).

²⁸⁹ U.S. House of Representatives, Roll Call Vote on Agreeing to H.AMDT.884, Cohen Amendment No. 3 to H.R. 527 (Dec. 1, 2011) (Roll Call No. 875).

XI. Conclusion

The House has been in session for 165 legislative days in 2011 and has taken 191 anti-environment votes during this period. On average, the House Republicans have averaged more than one anti-environmental vote for every day the House was in session.

Of the 191 anti-environment votes, 168 were roll call votes. In total, the House has taken 770 legislative roll call votes in 2011.²⁹⁰ More than one in five of the roll call votes taken in 2011 – 22% – were votes to undermine environmental protections.

On average, 228 Republican members of the House – 94% of the Republican members – voted for the anti-environment position during these roll call votes. On average, 165 Democratic members of the House – 86% of the Democratic members – voted for the pro-environment position.

The anti-environment votes included 27 votes to block action to address climate change, 77 votes to undermine Clean Air Act protections, 28 votes to undermine Clean Water Act protections, and 47 votes to weaken protection of public lands and coastal waters. The Environmental Protection Agency was the target of 114 of these votes; the Department of the Interior was the target of 35 of these votes; and the Department of Energy was the target of 31 of these votes.

²⁹⁰ This tally excludes 154 non-legislative roll call votes, including votes on Rules of the House, House Rules Committee resolutions providing for consideration of legislation, quorum calls, motions to adjourn, and votes to approve the House journal.