

# Katrina Task Force Newsletter

Vol. 1, No.1

March 2006

## MESSAGE FROM THE SECTION CHAIR OUR HEROIC EFFORTS: THE SECTION'S RESPONSE TO HURRICANES KATRINA AND RITA

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The Section's response to Hurricanes Katrina and Rita has been swift, substantial, and enormously helpful to many. They reflect on the Section's core commitment to public service and helping others in need. Here is a quick summary of our ongoing efforts.

**American Bar Association (ABA Katrina Task Force)**—In response to the “big” ABA's invitation to join its Katrina Task Force, the Section has been assisting the broader efforts of the ABA to help hurricane victims.

**Section Katrina Task Force**—Under the leadership of Section Task Force Chair Steve McKinney, the Section formed its own Katrina Task Force immediately after Hurricane Katrina. The Task Force has been active and productive. Key activities include:

**Plenary Session at the 13th Section Fall Meeting**—The Section's Katrina Task Force organized a plenary session at the 13th Section Fall Meeting in Nashville. The session focused on the U.S. Environmental Protection Agency's (EPA) and affected states' hurricane response efforts.

**Quick Teleconferences (QT)**—The Section's Katrina Task Force has organized and conducted a series of QTs on Katrina-related issues. Immediate Past Section Chair Michael Gerrard has moderated the QTs, and has done his usual outstanding job.

The first QT was held on Oct. 6, 2005, and focused on the practical problems of debris removal and management. Speakers included: Ernie Abbott of the Federal Emergency Management Agency (FEMA) Law, former general counsel of FEMA and current chair of the Section of State and Local Government; Jerry Cain, chief of the Environmental Permitting Division of the Mississippi Department of Environmental Quality (MDEQ); Dr. Harold Leggett, assistant secretary for Environmental Compliance of the Louisiana Department of Environmental Quality (LDEQ); and Lisa Jaeger of Bracewell & Giuliani LLP, former acting general counsel of EPA.

The second QT was on Nov. 29, 2005, and focused on permitting and compliance issues. Speakers included: Charles Chisolm, Executive Director, MDEQ; Lee A. DeHihns, Alston & Bird LLP (Section Vice Chair); Gary Jones, Senior Counsel for Strategic Litigation, EPA Office of Regulatory Enforcement; and James R. May, Professor, Widener University School of Law.

A third QT was on Feb. 2, 2006, and focused on the health impacts of Hurricanes Katrina and Rita. Speakers included Dr. Howard Frumkin, director of the National Center for Environmental Health/Agency

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*Peter Wright, Editor*

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This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 321 N. Clark St., Chicago, IL 60610.



for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention; Dr. Kevin Stephens, director of the City of New Orleans Health Department; Patrice Sims, Senior Attorney, Natural Resources Defense Council; and Anthony DiLeo, a health care attorney in New Orleans.

A fourth QT occurred Feb. 7, 2006 entitled “Challenges to Redevelopment After Katrina and Rita.” Speakers for this QT include Professor Oliver Houck of Tulane Law School; Mr. Alden McDonald, President, Liberty Bank & Trust Company; Brian Sanderson, Deputy Director, Governor’s Office of Recovery and Renewal; and Dr. Beverly Wright of the Deep South Center for Environmental Justice at Xavier University.

What makes these QTs special and so illustrative of our Section’s commitment to our members and to public service is the Section’s offering of up to 200 telephone lines free of charge to people living within the affected areas of Florida, Texas, Louisiana, Mississippi and Alabama. Our QT service provider, ConferTel, should be recognized for its assistance and generosity in making these lines available.

**Plenary session at the 35th Annual Conference on Environmental Law, Keystone, CO**—A plenary session entitled “Hurricane Katrina: It’s an Ill Wind that Blows No Good” will be held at the Keystone Conference on March 10, 2006. This session recognizes that the devastation caused by Hurricanes Katrina and Rita is forcing many environmental policy makers to re-examine whether the current environmental legal regime is sufficient to meet the threats presented by such disasters. Questions being raised include: Did land use policies contribute to the severity of the damage? With unprecedented damage, how do we address the long term waste disposal and surface water contamination issues? How should environmental issues be addressed in the response and rebuilding efforts? A panel will discuss how these and other environmental issues faced in the aftermath of these storms provide a unique opportunity, and some might say a duty, to build on successes and learn from failures. The session will be moderated by Steven G. McKinney, Balch & Bingham, Birmingham, AL.

Panelists will include Bruce Babbitt, former Arizona Governor and Secretary of the Interior, Washington, DC; Bob Holden, Liskow & Lewis, New Orleans; Jimmy Palmer, U.S. Environmental Protection Agency Region 4, Atlanta, GA; Kim Haddow,, Sierra Club, Washington, DC; and Anthony J. Topazi, President and CEO, Mississippi Power Company, Gulfport, MS.

**Section Request for Blanket Authority**—In November 2005, the Section requested and obtained blanket authority to submit comments to EPA and key House and Senate Committees expressing the Section’s opposition to legislation that authorizes or creates broad exemptions, suspensions or waivers of federal or state environmental laws. The request arises from the Section’s Council resolution dated Sept. 25, 2005, expressing the Council’s support for the appropriate use of exemptions available under existing environmental law, but opposing new blanket suspensions of federal environmental requirements, which are believed to be unnecessary and likely to have damaging, unintended, long-term impacts.

Under the strong leadership of Irma Russell, chair of the Strategic Response Committee, the committee members produced a top-flight white paper (posted on our Web site at [www.abanet.org/envIRON/katrina](http://www.abanet.org/envIRON/katrina)) on current legislative proposals to exempt activities from federal environmental legislation, the more than 50 existing exemptions under current federal law and an analysis of the risks posed by blanket exemptions to environmental regulations. Irma and her committee did an outstanding job in developing a superb piece of scholarship that will assist lawmakers and others in considering legislative initiatives in this regard.

**Creation of a Section Web Site**—Immediately after Hurricane Katrina, the Section launched its Hurricane Katrina Relief Effort Web site. The site contains useful information and is organized in the following categories: general information, disaster help, emergency and environmental resources (state), emergency and environmental resources (federal), legal resources, and disaster and emergency planning. The site has a public and members only section. The latter site offers help to Section members who have been displaced by these natural disasters.

The Section’s efforts are robust and ongoing, and a true testament to our commitment to public service. Section members wishing more information should review our Section Web site at [www.abanet.org/envIRON](http://www.abanet.org/envIRON) or e-mail Steve McKinney at [smckinney@balch.com](mailto:smckinney@balch.com)

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## **MESSAGE FROM THE TASK FORCE CHAIR**

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### **Katrina Section Task Force Mission**

*The Section of Environment, Energy, and Resources of the American Bar Association through its Special Task Force in response to Hurricanes Katrina and Rita is committed to contribute its expertise to those who are responding to this disaster; to ensure that the goals of environment, energy, and resources law are not compromised; and to preserve the knowledge gained in order to aid those who may, in the future, need such resources.*

As Lynn Bergeson’s article chronicles, the Section’s Katrina Task Force did a lot to extend our help to those dealing with the devastation of these hurricanes. We made public service our purpose and set ambitious goals. As with so many truly successful efforts, the team was all volunteer and highly motivated. We had an all-star roster of talent and everyone did everything they could to push the effort forward. The volunteers who “answered the bell” are: Vicki Wright, Claudia Rast, Larry Caster, Bill Penny, Arlena Barnes, Bill Thomas, Mary Ellen Ternes, Jim Arnold and Mark Christiansen. John Manard provided real-life

reconnaissance of the situation in Louisiana and faithfully helped secure excellent speakers straight from the “front” for our many program efforts. Mike Gerrard handled the moderator duties of our four Quick Teleconferences (QTs) with his usual efficiency and aplomb. Our Section staff, particularly Brooke Loucks, responded well to the unusual deadlines we set for ourselves and then imposed upon them. I am very grateful for the opportunity to be a part of this special team.

Our Section’s efforts should also be seen as part of a larger ABA effort to provide relief to those in need. ABA President Mike Greco formed a task force, including a representative from our section, to provide ABA headquarters support and a forum for coordination and communication among the participating ABA sections, divisions and forums. The ABA staff added a special Web page at [www.abanet.org/katrina](http://www.abanet.org/katrina) for Katrina relief efforts to the ABA Web site. This Web page provided a wealth of valuable information and a real time clearing house for meeting the needs of affected lawyers.

President Greco personally worked with state courts and bar association officials in the affected states to ensure support for the volunteers willing to provide pro bono legal services to those in need. The ABA Young Lawyers Division (YLD) has a long-standing contract with the Federal Emergency Management Agency to provide specified legal services on a pro bono basis to people in areas affected by disasters. Hundred of different YLD volunteers have served in the affected areas for months now.

The ABA’s many sections, divisions and forums approached hurricane relief with creativity and enthusiasm. Most found ways of making their unique base of knowledge and experience available to affected areas through special Web sites, programs and publications. Some worked to provide resources such as furniture, books and computers directly to lawyers in need. Others made financial contributions to relief agencies or to re-establish legal aid offices or bar association public service functions. The wide variety of support activities is catalogued in a report of the Section Officers Conference, posted on our

Section’s Katrina Web site at [www.abanet.org/environ/katrina](http://www.abanet.org/environ/katrina). All-in-all, the efforts was massive and compassionate. It was and continues to be something of which we all can be proud. On behalf of the Section’s Task Force and the Section’s leadership, thank you for your support!

**AMERICAN BAR ASSOCIATION  
SECTION OF ENVIRONMENT,  
ENERGY, AND RESOURCES**

***Calendar of Section Events***

**35th Annual Conference on  
Environmental Law**  
March 9-12, 2006  
Keystone, Colorado

**Environmental Sciences V: Water  
Quality and Wastewater Treatment**  
March 23, 2006  
Teleconference

**Environmental Sciences VI:  
Site Remediation Technologies**  
April 6, 2006  
Teleconference

**Eastern Water Resources  
Conference**  
May 11, 2006  
Miami, Florida

**6th Biotech Roundtable: Traits  
Tolerances and Traceability**  
June 27, 2006  
St. Louis, Missouri

***For more information, see the  
Section Web site at  
[www.abanet.org/environ](http://www.abanet.org/environ) or  
contact the Section at 312/988-5724.***

## ABA KATRINA RESOURCES, NEWS AND INFORMATION

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The ABA's Katrina Web site ([www.abanet.org/katrina](http://www.abanet.org/katrina)) has a form that allows members to sign up to be part of a volunteer database as well as providing a range of resources on the following topics:

- I Would Like to Volunteer My Professional Legal Services
- Office Space Directory—Locate temporary space in over 20 states
- HUD Announces Mortgage Assistance for Disaster Victims
- Bankruptcy and Small Business Disaster Relief Loan downloadable resources from the Business Law Section
- Family Law Section publishes resources regarding children's issues.
- CLE: Getting to Normal: Permitting and Compliance in Restart Mode
- CLE: Katrina Through Beta: Insurance Issues in the Wake of the Storm
- Tort Trial & Insurance Practice Section Animal Law Committee Disaster Relief Resources
- Section of Litigation Insurance Coverage Committee Hurricane Katrina Insurance Related Resources
- Disaster Recovery Articles in latest issue of Law Practice Management Section's Law Practice Today Webzine
- Lawyer and Firm Relocation Information
- Job Board for Lawyers Affected by Hurricane Katrina
- Update Your Member Information to Continue to Receive Member Benefits
- Child Welfare, Foster, and Adoption Information for Lawyers
- Hurricane Katrina Helping Handbook by Morrison & Foerster, LLP.
- Public Service in a Time of Crisis: A Report and Retrospective on the Legal Community's Response to the Events of September 11, 2001 74 Page PDF to assist lawyers with response to Hurricane Katrina

## THE NEED FOR WAIVERS OF ENVIRONMENTAL LAWS IN RESPONSE TO NATURAL DISASTERS

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The Section of Environment, Energy, and Resources has been evaluating the topic of the need for waivers of federal and state environmental laws in response to natural disasters as part of the Section's response to Hurricanes Katrina and Rita. This careful evaluation of this topic has led to the Section's request for blanket authority (which was approved on Nov. 18, 2005), a detailed set of comments supporting the Section's views (which is in the form of a "white paper" on this subject), an overview of existing statutory exemptions and the Section's Resolution opposing federal legislation along the lines outlined above. This article will briefly review the Section's actions and provide links to the documents.

### Section Blanket Authority

On Sept. 25, 2005, the Section's Council adopted a resolution regarding the need for new legislative providing for blanket exemptions from federal environmental requirements in response to the recovery from the impacts of the recent hurricanes. The resolution is Appendix A to the Section's White Paper, which is discussed below.

The resolution acknowledges the extensive and widespread damage caused by the recent hurricanes and the resulting urgent need for remediation, restoration and reconstruction on a vast scale. The resolution takes the position that existing environmental laws provide for certain exemptions in times of natural disasters and that those exemptions should be adequate to address the response to the hurricanes. The concern expressed in the resolution is that new legislative blanket exemptions from environmental requirements may have adverse and unintended long term consequences.

The resolution provided in part:

Therefore Be it Resolved, that the Section supports the appropriate use of exemptions available under existing environmental laws, but is

opposed to new blanket suspension of federal environmental requirements, which is unnecessary and likely to have damaging, unintended, long-term impacts.

And Be it Further Resolved, that the Section is committed to providing the expertise of its members to assist federal, state, and local authorities in the restoration and redevelopment process that considers both the needs of the affected communities and the short -and long-term environmental effects.

Following the adoption of the Resolution, the Section's Katrina Task Force prepared the White Paper, which is discussed below.

## **White Paper**

The White Paper was written with the background of several legislative proposals in Congress seeking to exempt activities from federal environmental laws. The White Paper provides a summary of the Section's comprehensive review of then pending legislative initiatives and the more than 50 existing exemptions to environmental requirements currently on the books. The White Paper provides support for the Section's resolution, discussed above, that broad exemptions or waivers are not necessary and may in fact pose more harm than good. A copy of the White Paper was sent to Stephen Johnson, EPA Administrator, on Nov. 21, 2005. A copy of the letter to Administrator Johnson and the 34-page White Paper can be found on the Section's Web site at [www.abanet.org/environ/katrina/Whitepaper.pdf](http://www.abanet.org/environ/katrina/Whitepaper.pdf). The White Paper was a collaborative effort of all of the Task Force members and Lynn Bergeson, the Section chair. The primary authors were: Chris Davis, Alexandra Dunn, Jim May, Claudia Rast, Irma Russell and Vicki Wright.

The White Paper assesses the possibility and risks of federal congressional action to provide new blanket exemptions, suspensions, modifications and waivers from the nation's existing federal environmental laws in the aftermath of Hurricanes Katrina and Rita. Part I describes emergency environmental responses to Hurricanes Katrina and Rita, including widespread

damage and risks from untreated sewage sludge and debris, petroleum and other contaminants. It summarizes the issues identified by the Joint Task Force formed by the Centers for Disease Control and Prevention (CDC) and the U.S. Environmental Protection Agency (EPA).

Part II identifies current legislative proposals to exempt activities from federal environmental laws in the aftermath of Hurricanes Katrina and Rita. Some proposals seek to expedite cleanup in affected areas with targeted responses. Others would effect broad changes to environmental laws, eliminating legal protections without a nexus to the catastrophes or to the needs of emergency responses.

Part III details the more than 50 existing exemptions that federal law currently provides to environmental requirements. These exemptions range from the categorical, including those for acts of God or war, to the specific, such as allowing otherwise prohibited acts during weather disasters or in the interest of the nation. The statutory exemptions allow the president or the administrator of EPA to exempt, suspend, or modify existing requirements in times of emergency, disaster or national security. These specific and detailed exemptions, adopted as part of the fabric of the environmental laws themselves, include a Clean Air Act (CAA) exemption for fuel burning facilities during significant national or regional emergencies and a Clean Water Act (CWA) provision allowing otherwise unauthorized discharges during disasters and in the interest of national security. Other provisions allowing specific departures from environmental requirements are found in the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), the Resource Conservation and Recovery Act (RCRA), the Coastal Zone Management Act (CZMA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Ocean Dumping Act (ODA), the Oil Pollution Act (OPA), the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), and virtually all areas of environmental regulation.

Part IV concludes that blanket exemptions from environmental regulations pose a risk and that the

requirements of the environmental laws should not be removed without individual consideration of the dangers at issue. This section of the White Paper notes that under existing statutory authority substantial enforcement discretion is already vested in EPA and state agencies and concludes that too broad exemptions carry significant costs and risks. The White Paper advocates individual and serious scrutiny be undertaken before action is taken to eliminate environmental protections. Environmental statutes embody the legislative judgment that the environment and the public require protection from unreasonable risks with an adequate margin of safety. The White Paper argues that it is essential that existing federal and state environmental laws and regulations be maintained and appropriately applied. The White Paper recites the dangers of dispensing with environmental protections to facilitate “quick fixes” or blanket treatment include long term and severe problems, including heightened exposure to harmful contaminants, creation of hazardous and costly new Superfund sites, loss of ecological systems, inequitable environmental justice impacts on disadvantaged populations, the need for costly long term treatment, repair and restoration, erosion of the rule of law and erosion of the public confidence in the law.

The White Paper provides the extended discussion of the Section’s opposition to legislation that authorizes or creates broad exemptions or waivers of federal or state environmental laws. The White Paper and its examination of the issues and collection of references and citations is an example of how the Section has made available its resources, expertise and experience to assist those responding to these disasters and preparing to respond to future emergencies.

**ABA Section of Environment, Energy,  
and Resources**

**14th Section Fall Meeting  
Oct. 4-8, 2006  
San Diego, California**

**SAVE THE DATE**

**GIVING MOTHER NATURE HER DUE:  
TOWARD A MORE FAIR APPLICATION OF  
THE ACT OF GOD DEFENSE IN  
ENVIRONMENTAL REMEDIATION**

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**Glenn Farnet  
Esteban Herrera, Jr.**

It certainly is an understatement to say that Nature can wreak havoc and cause much damage to individuals and property. These past 13 months of tsunamis, earthquakes, hurricanes, floods and tornadoes are all the proof anyone needs. Yet, in the legal arena of imposition of regulatory responsibility for environmental remediation, the forces of Nature may not be getting the blame they deserve.

For example, under the federal Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.*, and the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, an owner or operator of a facility or vessel can be liable for remediation of spills of oil (OPA) and hazardous substances (CERCLA) even where the incident and resulting contamination occurred as a result of an “act of God.” Under both statutes, the force of Nature, the “act of God,” must be the sole cause of the incident and damages in order for a defense to liability under those statutes to be available. See, *e.g.*, 33 U.S.C. 2703(a) (OPA) and 42 U.S.C. 9706(b) (CERCLA). No room for allocation. No sharing of liability with Nature. Courts interpreting these statutes, at least in the past, have concluded that fault on the part of a natural or legal person results in imposition of 100 percent of the damages. So, theoretically, a Category 4 hurricane with 15 to 20 foot storm surges knocking over a container and causing an oil or hazardous substance spill is not responsible (in the general sense) under OPA and CERCLA if any negligence of owner or operator contributed to incident.

Given the events of these past 13 months, it may be time to reexamine how liability and responsibility for civil damages and remediation costs involving “acts of God” should be allocated. The “act of God” defense has a longer history in tort law than it does in the field

of environmental regulation. One place to look for help in reexamining how the “act of God” defense should be applied may be to look for guidance to the well-developed body of tort law interpreting the defense.

Louisiana, like most other states, recognizes that an “act of God” can be a defense to liability for tort damages. *Southern Air Transport v. Gulf Air Ways*, 40 So.2d 787 (La. 1949); *Oliver v. Amity Mut. Irrigation Co.*, 994 P.2d 495 (Colo. Ct. App. 1999); *Strange v. Bartlett*, 236 Ga. App. 686, 513 S.E.2d 246 (1999); *Keystone Elec. Mfg., Co. v. City of Des Moines*, 586 N.W.2d 340 (Iowa 1998). Although there are slight differences in the way the courts in various states apply the defense, there is more similarity than dissimilarity, and Louisiana’s approach provides a good model for discussion.

Under Louisiana tort law, an “act of God” is defined as “... a providential occurrence or extraordinary manifestation of the forces of nature which could not have been foreseen and the effect thereof avoided by the exercise of reasonable prudence, diligence and care, or by the use of those means which the situation renders reasonable to employ.” *Southern Air Transport v. Gulf Air Ways*, 40 So. 2d 787, 791 (La. 1949). This definition incorporates a “reasonableness” standard and thus allows the court flexibility in evaluating the defendant’s culpability in the face of the natural disaster. Courts also have to deal with the situation in which a plaintiff is damaged due to the concurrent effect of an “act of God” and independent human fault. The standard that has developed in these situations likewise provides a degree of flexibility in determining whether the human fault was of such a degree as to preclude the application of the “act of God” defense. The courts look to whether “the act of God” was of such an overwhelming and destructive character as by its own force that, independently, it likely would have caused the injuries sued upon regardless of the concurring human fault. *Rector v. Hartford Acc. & Indem. Co. of Hartford*, 120 So. 2d 511 (La. App. 1st 1960). In these situations, the courts usually resort to a “proximate causation” analysis to evaluate whether the defense should apply. *See, Terre Aux Boeufs Land Co., Inc.*

*v. J.R. Gray Barge Co., et al.*, 00-2754 (La. App. 4 Cir. Nov. 14, 2001), 803 So. 2d 86, *writ denied*, 01-3292 (La. Mar. 8, 2002), 811 So. 2d 88 (“[a] defendant may be found negligent but still be exonerated from liability of the “Act of God” if it would have produced the same damage, regardless of that negligence, because the defendant’s negligence was not the proximate cause.”).

Thus, the courts in Louisiana are allowed considerable flexibility in application of the “act of God” defense in the context of concurrent fault to avoid denying the benefit of the defense to a party whose conduct was negligent but who nevertheless was the victim of an extraordinary natural event. In these situations, the courts will allow the defendant to reap the benefits of the defense by showing either that he took “reasonable precautions” during the event or that the “proximate cause” of the plaintiff’s damages plaintiff’s was the force of nature and not the substandard conduct of the defendant. Both the “reasonable precaution” standard and the “proximate cause” standard allow the court to consider a wide range of social and policy issues when evaluating the ultimate responsibility of the defendant. *See Landry v. State of Louisiana and the Board of Levee Commissioners of the Orleans Levee District*, 495 So. 2d 1284 (La. 1986) (recognizing that the “reasonable” standard “... involves consideration of moral, social, and economic values as well as the ideal of justice.”). The court’s responsibility to examine these social and policy issues was perhaps most succinctly stated in *Benoit Roberts v. Benoit*, 605 So. 2d 1032, 1052 (La. 1991), in which the court said:

The problem [of proximate cause is] not one of causation for which it has been so often mistaken, but one of defining the boundaries of the rule invoked .... Because substandard conduct does not render the actor liable for all consequences spiraling outward until the end of time, the concept of proximate cause, or one of its functional equivalents, such as scope of the duty in duty-risk analysis, is necessary to truncate liability at some point. The primary inquiry, then, in a proximate cause determination is: “whether plaintiff will be granted the legal system’s protection—that is, will the defendant be required to have met a specified

standard of conduct in the case at issue or be subject to liability.” E. Wayne Thode, *Tort Analysis: Duty-Risk v. Proximate Cause and the Rational Allocation of Functions Between Judge and Jury*, 1977 UTAH L. REV. 1, 10 (1977). This is a policy decision in purest form.

Congress, state legislatures, and/or the courts should closely reexamine how the “act of God” defense is applied under statutes such as OPA, CERCLA, and their state counterparts. Some fair allocation of fault to Nature should be made or considered. Minor fault on behalf of the human actor should not result in all cases in imposition of 100 percent of liability for damages, the burden of which more fairly may be placed on our society as whole. Consideration of the factors that courts have developed in tort law may be a more fair way to consider who should pay and how much when Nature strikes. For example, under OPA and CERCLA actions, the owner or operator of the facility could be allowed to prove that the “act of God” would have produced the same damage/contamination, regardless of the negligence of the owner or operator. In that case, the “act of God” could in fact be deemed the sole cause of the incident, even though the human actor was negligent. In that same case, the effects of the “act of God” in fact could be deemed to have been unpreventable by use of reasonable precautions.

These past 13 months have been a challenge for many. Now, Nature has created a challenge to our legal system to deal fairly with the effects of these natural forces by doing justice in the face of much death and destruction. We believe that the system can and will be up to the challenge.

*This article is adapted with the permission of BNA, Inc., from two articles that originally appeared in BNA’s Toxics Law Reporter: Herrera, In the Wake of Katrina: The “Act of God” Defense Under Select Environmental Programs Applicable in Louisiana, Toxics Law Rp., Vol. 20, No. 47 (Dec. 8, 2005), BNA, Inc., and Farnet, Nature’s Fury or Human Blunder? The “Act of God” Defense to Tort Suits in Louisiana, Toxics Law Rp., Vol. 20, No. 47 (Dec. 8, 2005), BNA, Inc.*

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*Esteban Herrera also is a partner in the Baton Rouge office of Kean, Miller. Esteban joined the firm in 1991 after receiving a B.S. and an M.S. in Civil and Environmental Engineering in addition to his law degree. Since joining the firm, he has practiced in the fields of environmental law, environmental litigation, toxic tort litigation and insurance coverage. His education in civil and environmental engineering has provided him with a unique insight into technical issues in the environmental law and toxic tort practice. Esteban has experience in cases involving hazardous wastes, hazardous substances, chemical exposure, oil field wastes, oil field practices, and surface water and groundwater contamination. He can be reached at (225) 382-3419 or esteban.herrera@keanmiller.com.*

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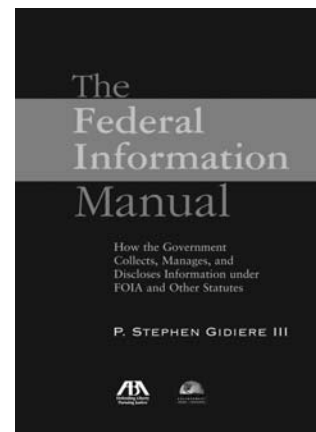
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*A current and practical guide to FOIA and other laws governing federal information*

### **The Federal Information Manual How the Government Collects, Manages, and Discloses Information under FOIA and Other Statutes By P. Stephen Gidiere III**

*The Federal Information Manual* is a complete, all-in-one guide to understanding the complex legal framework that controls the government's collection, management and disclosure of its records. Practical in scope and accessible in its approach, this is an essential resource for anyone who handles requests and disputes concerning access to this vast amount of information. It includes an easy-to-navigate explanation of the Freedom of Information Act (FOIA), the statute most often encountered in this area, and includes practical tools for preparing FOIA requests and responding to information requests from federal agencies.

Going beyond FOIA, the book explains the complicated web of statutes, cases, regulations and policies that govern federal information. For the environmental law practitioner, the book's coverage of statutes such as the Clean Air Act, the Clean Water Act and the Federal Power Act that permit or require disclosure is especially valuable. *The Federal Information Manual* also addresses current, hot-button topics such as the trend toward increased government secrecy, the unauthorized release of classified information and homeland security. Includes glossaries of abbreviations and federal statutes, table of cases and appendices.



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