

Senate Bill 1711 Exploits the National Tragedy of Hurricane Katrina to Undermine Public Health and Environmental Protections



What the Bill Does: Senate Bill 1711 gives EPA the authority to waive any federal law or regulation under EPA's jurisdiction, or any state or federal law or regulation that applies to an EPA project or activity. To invoke the law, EPA need only determine that such a waiver is "necessary to respond, in a timely and effective manner, to a situation or damage relating to Hurricane Katrina," and is "in the public interest," taking into account emergency conditions relating to Hurricane Katrina and consequences to public health or the environment from granting the waiver or modification.

No demonstrated need for legislation and no plan to gather facts: The bill's sponsors have provided no evidence of need for this sweeping legislation. Asked to provide such evidence for press accounts, aides to a sponsor have been unable to do so. These same aides have disavowed any intention of conducting hearings and have further indicated willingness to attach the bill to hurricane funding measures.

Repealing protections for up to 1 ½ years: EPA may grant a waiver for 120 days starting from August 26th. But the agency may extend the waiver beyond 120 days, up to 18 months after the legislation is enacted.

Revoking protections across the entire country: The bill allows EPA to waive or change federal or state laws anywhere in the country. It is not limited to Gulf states hit by the hurricane.

Leaving states powerless to object: While the bill requires EPA to "consult" with state governors, it does not allow states to block EPA from waiving or modifying state or federal laws.

Eliminating or altering more than public health and environmental laws: The bill allows EPA to waive any clean air, clean water, hazardous waste or other public health law provided there's some tiny connection to Hurricane Katrina. Moreover, by granting EPA legal waiver authority for "any project or activity carried out by EPA" responding to a "situation. . . relating to Hurricane Katrina," the bill allows the agency to waive a wide range of federal and state laws having nothing to do with the environment: civil rights, labor, tax, wage, and state public health laws all fall under the bill's expansive language. Indeed, on its face the bill grants EPA the authority to waive or modify federal or state *criminal* laws whenever the agency finds that such a waiver would aid its post-Katrina activities.

Nothing requires EPA to protect public health and the environment: To invoke the bill, EPA need only (1) meet the toothless condition that a legal waiver is in the "public interest," and (2) "take into consideration" public health and the environment. Nothing in the bill requires EPA to ensure that it is protecting the public at all – let alone as well as the waived law(s) would have.

Abolishing accountability for injuries: The bill disregards any adverse effect caused by a waiver, eliminating accountability for injuries to people, public resources,

or business interests harmed now or years down the road (for example: destroyed fisheries, toxic waste sites, or poisoned drinking water supplies).

The Bill Grants the Head of EPA the Power to Do the Following, if He Alone Decides It Is in the Public Interest to Address a Situation Relating to Hurricane Katrina:

- Allow unlimited levels of toxic petroleum products or industrial chemicals, fecal matter, heavy metals, or other toxins in drinking water;
- Waive requirements for testing water for toxic chemicals to determine whether it is safe;
- Waive public health standards, and even preempt state standards, for toxic waste on soils or in the air in contaminated communities;
- Allow open burning of huge quantities of debris, including toxic chemicals, plastics, destroyed cars, and other materials that can create highly toxic smoke;
- Allow highly hazardous waste to be disposed of in unregulated landfills -- or even people's backyards;
- Authorize use of the dirtiest gasoline or oil or coal in the country, in the name of addressing fuel supply or cost issues; and
- Authorize oil refineries, power plants, chemical facilities and other industries around the country to increase any type of air or water pollution above current limits, again to address fuel supply or cost issues.

Moreover, the legislation extends beyond the environmental context. In theory, under this bill, the EPA Administrator could:

- Eliminate protections for minority or low-income individuals and others (e.g., minimum wage or worker safety requirements regulations);
- Authorize no-bid, price-gouging contracts for recovery efforts; and
- Suspend tax payments by private businesses in the name of addressing recovery efforts, or fuel supply or cost issues.

Why Would Congress Grant EPA's Administrator Such Unprecedented Power? It is simply unprecedented for Congress to give an unelected federal official such sweeping power to override federal or state laws across the land. Not even during the Civil War, World War II, or the aftermath of September 11 has any one person had that power.

Exploiting a National Tragedy to Weaken Public Health Laws. In a September 16, 2005, Washington Post article, a spokesperson for Senator Inhofe said this about one of the Bush administration's Katrina critics: "It is reprehensible for a politician to promote an agenda by twisting a tragedy Americans feel so deeply about, particularly when there is no merit to his ideas." The same is true of this bill, which Senator Inhofe himself is sponsoring. S.1711 represents the most sweeping grant of authority ever considered by Congress. The bill's anti-environmental agenda exploits the human suffering from the hurricane by allowing private industry to operate above the law.

S.1711 especially threatens the most vulnerable communities in the Gulf Coast – and communities elsewhere that live in the shadows of oil refineries -- by authorizing the

elimination of protections that ensure they have clean water to drink, clean air to breathe, and a toxic-free environment. The hurricane's devastation disproportionately hurt poor and minority residents; this bill adds insult to injury by kicking those residents while they are down.

Current Laws Are Flexible Enough to Allow EPA and States to Protect the Public.

EPA Administrator Stephen Johnson informed members of Congress as recently as September 13, 2005, that EPA has all the legal authority it needs to respond to Hurricane Katrina, both in the Gulf States and across the country. In fact, EPA has used that authority since the hurricane to grant limited waivers of summer-time cleaner-burning gasoline requirements. Just one day after Johnson told this to Congress, however – one day before this waiver bill was introduced – EPA suddenly changed its tune and issued a terse, two-sentence statement to select reporters saying the agency “anticipate[s] situations where additional legal authority would help us facilitate more timely cleanup and reconstruction of areas devastated by the Hurricane.” But even that statement only listed three specific areas, in the Gulf States, where the agency says additional legal authority might be helpful: for “work with . . . State and local partners to address the disposal of debris, issuance of discharge permits for contaminants contained in flood waters, and the sharing of important information related to various chemical products with state and local authorities.” Although this statement is at odds with Johnson’s original statement, suggesting White House or Congressional intervention, nothing EPA has *ever* said justifies the much broader waiver authority in S.1711.