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September 22, 2005

The Honorable Max Baucus
511 Hart
Senate Office Building
Washington, D.C. 20510

Re: S. 1711
Proposed Waiver by U.S. Environmental Protection Agency of
Environmental Requirements in Response to Hurricane Katrina

Dear Senator Baucus:

This letter is submitted on behalf of the Committee on Environmental Law of the Association of the Bar of the City of New York (hereinafter "Committee") regarding the Committee's opposition to Senate Bill 1711 that would grant the U.S. Environmental Protection Agency ("EPA") unprecedented legal authority to ignore federal and state environmental laws for a period of 18 months after it takes effect. The bill as drafted is overly broad and unnecessary to deal with the aftermath of Hurricane Katrina.

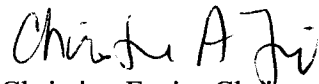
Members of the Committee are drawn from the private, government and public sectors and represent diverse viewpoints with respect to environmental matters and have significant experience with the substantive requirements of all federal environmental laws and EPA regulations.

While there is indeed merit in recognizing the enormous environmental and public health issues in the Gulf Coast region and the public does expect EPA to utilize considerable enforcement discretion in addressing its environmental laws, the EPA does not need the broad authority this bill provides. Many EPA regulations already include provisions for emergency exemptions from compliance with requirements during such national disasters as Katrina, and EPA has enforcement discretion where its regulations are less clear. Similarly, EPA has broad authority to address such issues as disposal of debris, contaminants contained in floodwaters and assistance to state and local authorities

on emergency cleanup and recovery. In fact, a good example of EPA's broad authority is its granting of a limited waiver of summertime gasoline requirements as a result of the increased natural gas demands nationwide as supplies fell in the wake of Katrina.

The Committee further finds that the bill authorizes waivers that are too long in duration, fails to restrict the waiver authority to those states directly impacted by the hurricane, does not attempt to limit the waiver authority with respect to programs where a limited waiver might be considered appropriate, and fails to set forth any reliable criteria for granting such a waiver. Accordingly, the Committee asks that you not support Senate Bill 1711.

Respectfully,

A handwritten signature in black ink that reads "Christine Fazio". The signature is written in a cursive, flowing style.

Christine Fazio, Chair
Environmental Law Committee