



Legal Preparedness Reporter

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Michael Hodges, JD, CPP, Editor

Amendment of Stafford Disaster Relief Act

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On April 27, 2009 Congress passed the Pre-Disaster Mitigation Act of 2009. H.R. 1746 was introduced by Rep. James Oberstar of Minnesota and designed to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The amended legislation will reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

The Stafford Disaster Relief and Emergency Assistance Act was enacted to provide assistance to state and local governments from the Federal Government during natural disasters.

H.R. 1746 will provide FEMA with appropriate funding to give grants to state and local governments for pre-disaster mitigation programs.

Notably, H.R. 1746 increases funding to needed parties by \$75,000. Locales were provided \$500,000.

Photo source: <http://www.leheplanning.com/images/tornadohouse.jpg>

Under this Amendment, recipients can expect \$575,000 and no one locale may receive more than fifteen (15) percent of the total funds for a fiscal year.

The legislation still has to pass the U.S. Senate and be signed by the President before becoming law.



Legal Preparedness in the homeland security/emergency management context, speaks to the statutory and regulatory framework necessary to carry out those actions related to prevention, preparation, response, and recovery from terrorist incidents or catastrophic disasters. It precedes, co-exists with, and extends beyond the physical logistics of the preparedness cycle.

Katrina Victims vs. The Government Goes To Trial

A 2009 trial date is set for plaintiffs suing the Army Corps of Engineers for claims resulting from the 2005 hurricane.

Plaintiffs from the Lower 9th Ward and St. Bernard Parish claim that the Army Corps of Engineers did not adhere to environmental laws when constructing and maintaining the Mississippi River Golf Outlet (MRGO).

Plaintiffs' claim asserts that during the Katrina Hurricane in 2005, it was the "negligence" of the Army Corps of Engineers that led to the destruction of wetlands which were supposed to be protected by law.

Quarantine Patient Sues CDC

In May of 2007, a passenger on an International flight to Europe had tuberculosis.

Doctors initially thought the passenger had a very harmful strain of tuberculosis but it was later revealed to be less severe.

On his return to the United States, the passenger was placed into quarantine. He was later released but not before much media attention which identified the passenger by name, his circumstances for travel, and other information.

The passenger claims that such media attention violated his "right to privacy". He has filed a lawsuit against the Center for Disease (CDC) under that legal theory.



Photo source:

<http://www.wormsandgermsblog.com/uploads/image/quarantine.jpg>

H1N1

(Swine Flu) Facts

What is the Swine Flu:

"H1N1 (referred to as "swine flu") is an influenza virus.

The virus was originally referred to as "swine flu" because laboratory testing showed that many of the genes in the virus were similar to influenza viruses that normally occur in pigs in North America."

How is it Spread:

"Spread of this H1N1 virus is thought to be occurring in the same way that seasonal flu spreads. The virus is spread mainly from person to person through sneezing or coughing by people with influenza."

Symptoms:

"The symptoms of this new H1N1 flu virus in people are similar to the symptoms of seasonal flu and include fever, cough, sore throat, runny or stuffy nose, body aches, headache, chills and fatigue."

Source: <http://www.cdc.gov/h1n1flu/qa.htm>

First Responder Bill Moves Through Congress

March 5, 2009 H.R. 1343 was referred to the Committee on the Judiciary. Titled “First Responders Fighting Terrorism Protection Act of 2009,” H.R. 1343 has been introduced by Rep. Sue Myrick and is now in Committee.

As the bill moves forward in the legislative process, its purpose is to give immunity from civil liability to first responders when responding lawfully to prevent acts of terrorism.

This means any first responder who acts in a reasonable manner to prevent:

- An act of terrorism;
- Observes an act of terrorism; or
- Receives a report of an act of terrorism

and takes reasonable steps, will have qualified immunity from civil liability consistent with applicable law in the jurisdiction in question. Also, first responders deemed immune from civil liability under this legislation will be able to recover attorney fees and other reasonable costs from the plaintiff.

The Act defines “first responders” as any Federal, State, or Local Law Enforcement Agent, prosecution agent, border agent, immigration agent, transportation security agent, firefighter, or emergency medical provider.

“Act of Terrorism” includes domestic and international terrorism which is defined by section 2331 of title 18, United States Code (USC). Rep. Sue Myrick represents North Carolina’s 9th District.

Final Rule Issued For Importation of Food Shipments

The U.S. Food and Drug Administration (FDA) has issued a Final Rule on the Importation of Food Shipments. The Rule is scheduled to take effect May 6, 2009. The final rule revises the Interim Rule contained in 21 CFR Part 1, Subpart I, which has been in effect since December 2003.

By way of background, the Bioterrorism Act requires that information be provided to the FDA before food is imported to the United States. Preliminary information is necessary to determine whether the imported food has to be inspected.

Pursuant to Section 201(f) of the rule, “food” is defined as articles for food or drink for man or other animals, chewing gum, and articles used for components of any such articles.

This includes: dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), fruits and vegetables, fish and seafood, dairy products and egg shells, raw agricultural commodities for use as food or components of food, canned and frozen foods, bakery goods, snack food, and candy (even chewing gum), live food animals, animal feeds and pet food.

Specific details of the final rule are available at <http://www.cfsan.fda.gov/~lrd/fr081107.html>



Photo source: <http://www.mofga.org/Portals/2/Organic%Produce.jpg>

Supreme Court Decides in Toxic Clean Up Case

The U.S. Supreme Court decided in March 2009 that companies which have “limited” connections to environmentally contaminated sites will be able to avoid liability for the clean-up.

The case is Burlington Northern & Santa Fe Railway Co. et al. v. United States et al. Since 1960, agricultural chemical distributor Brown & Bryant (B&B) operated land in Arvin, California where hazardous materials were stored. The land was purchased from Shell Oil. Use of the land resulted in chemical spills from both deliveries and other transfers. B&B was subsequently investigated by the State of California and the federal Environmental Protection Agency (EPA) who found soil and ground contamination.

In 1989, California and EPA spent over \$8 million dollars to clean up the contaminated land. The clean-up was implemented under “CERCLA” authority pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act which provides cleanup of toxic sites, and assigns cost to those responsible for the toxic conditions.

Shell Company and railroads Burlington Northern & Santa Fe Railway Co. were sued in District Court. The railroads became parties because B&B expanded its operations from the land it brought, onto adjacent land owned and operated by Burlington Northern, Santa Fe Railway Company, and Union Pacific Railways. The District Court ruled against the defendants and apportioned liability between the railroad companies and Shell.

On appeal, the Ninth Circuit Court agreed that Shell is liable as an “arranger” under 42 U.S.C. §9607(a)(3). An “arranger” under the law essentially means a party who arranged for disposal of hazardous materials. The U.S. Supreme Court held that Shell is not an “arranger” for the contamination of the land in question and thus, not liable beyond the limits of the statute.

The Court made clear that the language within CERCLA does not “specifically” define an “arranger.” Therefore, “arranger” should be given an “ordinary” meaning, and in doing so, there was no proof that Shell Company intended a toxic spill.



Photo source:

http://www.iir.com/centf/images/Toxic_Cleanup.jpg

The *Homeland Security/Emergency Management Division-National Legal Preparedness Program* results from a Cooperative Agreement between the Department of Homeland Security, Federal Emergency Management Agency and the University of the District of Columbia to establish a national scope training program for legal issues in preparation, response, and recovery from terrorist incidents and catastrophic events.

The HSEMD-NLPP is a project of the University's Institute for Public Safety & Justice.



**Homeland Security/Emergency Management
National Legal Preparedness Program**

Institute for Public Safety & Justice
University of the District of Columbia
4200 Connecticut Avenue, N.W.

Phone: 202-274-5689
Fax: 202-274-5409
Email: NLPTP@udc.edu

Angelyn Spaulding Flowers, JD, PhD
National Project Director

Chimere J. Jones
Project Manager,
Layout and Graphics

INSTITUTE FOR PUBLIC SAFETY & JUSTICE

Translating Research into Policy—Translating Policy into Practice

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