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ENVIRONMENTAL LAW

Katrina: Is She the 'Canary in the Mineshaft?'

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Special to the Legal

By now everyone in the United States is probably aware of the severity of hurricanes this year, with more Category 5 hurricanes in 2005 than ever before in the recorded history of hurricanes in this country. At this point, there are so many hurricanes that we ran the gamut of alphabet names; however, it is not necessarily the number of hurricanes, but their severity that should call everyone's attention to the problem. Why has this happened?

At the same time, gasoline prices have more than doubled, with little hope that they will ever return to pre-2005 prices, and the prospects for home-heating oil and natural gas this winter will add hundreds of dollars to our heating bills. How did this happen?

Finally, the waste produced by Hurricane Katrina in New Orleans numbers in the tens of millions of tons with no good solution to how its disposal should be accomplished. How did we get there?

BACKGROUND

With the onset of the industrial revolution, the demand for energy escalated and has continued unabated. Prior to the middle of the 20th century, coal was king and the anthracite mines in Pennsylvania flourished. With coal as the primary source of energy, the resulting particulate emissions led a call for more strict emissions standards and the rise in our exploration and ultimate dependence on petroleum — an admittedly cleaner



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fuel. Oil soon displaced coal as the nation's leading source of energy.

However, with the rising demand for oil year by year, our dependence on the importation of oil, primarily from the Middle East, grew, culminating in what should have been our first wake-up call, the OPEC embargo in the fall of 1973 when the Oil Producing Exporting Countries stopped exporting oil to the United States. The resultant gas lines and outbursts of physical violence at service stations as we tried to "top off" our tanks led the Carter administration to search for incentives in the hunt for alternative energy sources. The petroleum industry responded in a significant way, investing billions of dollars in alternative energy projects, only to find that once OPEC resumed exports and the prices of crude oil dropped, the nation returned to its reliance on oil importation.

OUR CURRENT ENERGY POLICY

With a barrel of crude oil approaching

\$70 and very few incentives to research and develop alternative energy production, we are reported to now be importing more oil than ever before. And our resulting dependence on foreign oil has not only shaped our foreign policy, but also increased efforts to drill for more oil domestically in both Alaska and coastal regions, including California and Florida.

From a global standpoint, many scientists assert that greenhouse gases resulting from the emission of carbon dioxide is a serious problem and that one of the principal sources of CO₂ is the burning of fossil fuel. Those scientists have linked the escalating burning of fossil fuel with climate change, often called "global warming." In this regard, they cite the migration of numerous animals, as well as flora and fauna, from the polar cap regions, the "Arctic Thaw" and melting of the permafrost in Greenland, and the rise in and overall warming of oceans as the results of global warming.

While the current administration has declined to participate in the Kyoto Treaty, which established the year 2012 as the goal for certain reductions in carbon dioxide emissions, many of our largest corporations who compete in the global economy have voluntarily reduced their carbon dioxide emissions because of the need to conform to CO₂ reduction requirements in other countries. So, too, have many major players in the petroleum industry.

ALONG CAME KATRINA

The death and devastation from Katrina, followed closely on its heels by hurricanes

Rita and Wilma, led to hundreds of thousands of personal tragedies, a temporary loss of refinery capacity, environmental nightmares and tens of billions of dollars in insurance claims (which will lead to less insurance coverage being available in the future at significantly higher premiums). Some asked whether a recurrence of Katrina, a Category 5 hurricane, was possible; we now know that it was, is and probably will be.

As indicated, a significant ingredient for a Category 5 hurricane is warmer ocean water, which combines in a vortex with air that creates Category 5 hurricanes. Although the cyclical changes in tides and temperature no doubt have a major impact on the frequency and severity of hurricanes, many experts believe global warming also plays a role in these phenomena. In addition, more than half of the United States' population lives along coastlines, and flooding inland areas has become a major worry. In essence, the OPEC embargo's wake-up call in 1973 may now have come again, albeit in a different form with the threat of escalating "natural" disasters, including primarily hurricanes and flooding.

WHAT SHALL WE DO?

There are many ways to attack the problem, one of which is to seek short-term help by drilling in more fragile areas within the United States to reduce or at least freeze our oil importation dependency. In this regard, market forces will both incentivize alternative energy production and maximize energy

conservation. (Will you still say "fill 'er up" at \$5 a gallon?) But telling people to put on a sweater and give up one vehicular trip each week, while at the same time refusing to increase corporate average fuel economy (CAFE) standards, does not present any long-term solution.

Accordingly, the long-term solution lies in incentivizing alternative energy production, including wind, solar and nuclear energy, hydrogen fuel cells, biomass and numerous other potential sources that technology and science will produce. Yet today, the manufacturers of wind and solar components are primarily located outside the United States, mostly in Europe (e.g., GE manufactures its solar panels in Germany). It will take not only behavior change and private market forces, but also federal initiatives to make this happen. Additionally, Toyota's success with developing and selling hybrid cars should, together with federal incentives, spur Detroit to focus on reducing vehicular gasoline dependence.

CURRENT INITIATIVES

The instinctive reaction to Katrina in Congress was to pass an energy bill that provided only \$3 billion for alternative energy production. Congress must focus on our inconsistent and inadequate financial incentives to promote the production of alternative energy in this country to make it more attractive to compete in the growing market both here and abroad.

In addition, we need to make real efforts to reduce our energy consumption, including revisiting our CAFE standards, forcing the Department of Energy to implement laws that 12 years ago mandated the production of more energy-efficient appliances (no real progress has been made toward that end), assuring the continued existence and improvement of mass transit (e.g., in Philadelphia alone, SEPTA reported 10,000 additional riders daily shortly after Katrina), and finally mandating reductions in energy consumption, which the higher cost of energy will help foster.

At the state level, Pennsylvania really does serve as a shining example of efforts to make meaningful the alternative energy industry by setting a goal of 18 percent renewable energy by 2020, of which 600 megawatts are to be from solar energy; making \$1 billion in grants and low interest loans available through the Pennsylvania Energy Development Authority (PEDA); using alternative fuels for its state fleet; implementing Gov. Edward G. Rendell's "Stay Warm PA Initiative;" and continuing to be the leader in wind farms east of the Mississippi.

CONCLUSION

In essence, we know what needs to be done. The only question is whether we have the will to implement these necessary measures now, or must we wait and hope that when we do so it is not too late? Putting it otherwise, do we really have a choice? •