Legal Standards for Emergency Response to Terrorism Incidents

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Information Only...

- The following is not legal advice.
- Consult your attorney for legal advice for your situation.
Terrorism and Hazardous Materials Events: 9-11

- Called the worst environmental disaster ever inside a major city.
- The scene had "the same scope as a Superfund site."
  - Max Costa, New York University Hospital environmental-medicine specialist
Terrorism: HAZMAT with an Attitude

- Attack will almost always result in HAZMAT release
- Attitude in the sense of criminal intent
- Terrorism is a federal CRIME
Terrorist Intent

• “If it is true that I have acquired [chemical or nuclear] weapons, I thank God who has made it possible. And if I seek to procure such weapons, it is a duty.”

- Osama Bin Laden
Bush Administration Predicts Future Attacks in America

- WMD attacks and suicide bombings like those in Israel are “only a matter of time”
  - Secretary of Defense Rumsfeld

- “Inevitable”
  - FBI Director Robert S. Mueller III
Legal (& Practical) Standards for Terrorism Response

- Federal Guideline: “The principles for site safety and control are the same as for a HAZMAT incident.”

- Approaching any terrorism event as a possible HAZMAT incident is common sense safety consciousness.
Legal Standards for HAZMAT Response

• Hazardous Waste Operations and Emergency Response (HAZWOPER), 29 C.F.R. 1910.120

• For non-OSHA states, EPA incorporates OSHA’s HAZWOPER standard 40 C.F.R. § 311.1
HAZWOPER General Duties

- Applies to employers
- Individual responders charged with knowledge of their duties
- Applies to volunteers as well as to paid responders
- Federal employees are also bound
HAZWOPER Planning Requirements

• Emergency response plan “developed and implemented to handle anticipated emergencies” prior to commencement of emergency response operations
• HAZWOPER plan may be merged with other necessary emergency plans following National Response Team Integrated Contingency Plan Guidance
Other Key Legal Guidance

- NFPA 1600 “Standard on Disaster/Emergency Management and Business Continuity Programs”
NFPA 472

- Requires at all occurrences needing response, including suspected terrorism incidents
- Evaluated by first responders as potential HAZMAT events
- Part of general situational awareness
HAZWOPER Planning Requirements

• Emergency response plan “developed and implemented to handle anticipated emergencies” prior to commencement of emergency response operations

• HAZWOPER plan may be merged with other necessary emergency plans following National Response Team Integrated Contingency Plan Guidance
HAZWOPER Training Requirements

- Employees in “close proximity to hazardous wastes”
  - 40 hours off-site training
  - three days on-site field experience
- Employees occasionally on-site
  - 24 hours off-site training
  - one day on-site field experience
- Supervisors
  - additional eight hours of training in subjects like employee safety, spill containment.
Federal Support for Terrorism HAZMAT Responders

• National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides structure for federal support
• Regulates cleanup of hazardous waste sites under CERCLA
• Provides for a National Response Team and Regional Response Teams
Federal Support for Terrorism
HAZMAT Responders

- NCP requires telling National Response Center (NRC) of discharges/releases
- NRC is national clearinghouse for all pollution incident reporting
- NRP works in conjunction with FEMA’s Federal Response Plan (FRP)
- FRP’s Terrorism Annex (TA) covers terrorism responses
Federal Support for Terrorism
HAZMAT Responders: PDD 39

- TA established pursuant to Presidential Decision Directive (PDD) 39
- PDD 39 requires FBI to be lead agency during crisis management = immediate aftermath
- FEMA leads during consequence management as response and recovery effort proceeds
Homeland Security Act of 2002

- Unifies domestic preparedness for terrorism - law enforcement
- 22 agencies, 170,000 employees
- Department will administer grant programs for firefighters, police, and emergency personnel
Homeland Security Act of 2002

• Goal “a comprehensive national incident management system for response to terrorist incidents and natural disasters”
• “Eliminat[e] the artificial distinction between ‘crisis management’ and ‘consequence management.’”
• Effect: Does away with PDD 39
Homeland Security Act of 2002

- FRP, NCP and all other federal plans will be eventually consolidated by the proposed Department into an all-hazard plan
- Consistent with existing FEMA guidance and local emergency planning practice
Homeland Security Presidential Directive 5 (HPSD 5)

- Issued February 28, 2003
- Crisis management and consequence management to be a “single integrated function”
- Secretary of DHS to coordinate Federal resources for response
- Initial responsibility to state, local gov’ts.
HPSD 5: National Incident Management System (NIMS)

- Nationwide approach: applies to Federal, state, local governments
- NOT the same as NIIMS
- Goal: Interoperability, compatibility
HPSD 5: National Incident Management System (NIMS)

• For incident command, provide core
  – Concepts
  – Principles
  – Terminology
  – Technologies
HPSD 5: National Incident Management System (NIMS)

• Multi-agency coordination
• Unified command
• Training
• Resource identification and management
• Qualifications and certification
• Information management: events and resources
HPSD 5: National Response Plan (NRP)

• All discipline, all hazards plan
• NRP using NIMS provides national level policy and operational direction
• Protocols for different threat levels
• Incorporate existing Federal plans
• Additional plans as appropriate, such as public affairs, intergovt’l. communications
HPSD 5: National Response Plan

• NRP to include standard approach to:
  – Incident reporting
  – Assessments
  – Recommendations to higher levels
HPSD 5: National Response Plan

• Requirements for improvements from:
  – Testing
  – Exercising
  – Incident experience
  – New information
  – New technologies
Homeland Security Presidential Directive 5: Deadlines

• National Incident Management System created by June 1, 2003, adopted by Federal agencies

• Preliminary National Response Plan, implementation strategy due on April 1, 2003

• Recommendations for full implementation of NRP due September 1, 2003
Homeland Security Presidential Directive 5: Deadlines

• Beginning in Federal Fiscal Year 2005, NIMS will be a REQUIREMENT for any Federal funding through
  – Grants
  – Contracts
  – Other activities

• Secretary of DHS to develop standards, guidelines for NIMS adoption