

# 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.”
  - **Center for Domestic Preparedness, Chemical, Ordinance, Biological and Radiological (“COBRA”) Incident Command Course Responder Guide (2002)**
- Approaching any terrorism event as a possible HAZMAT incident is common sense safety consciousness.

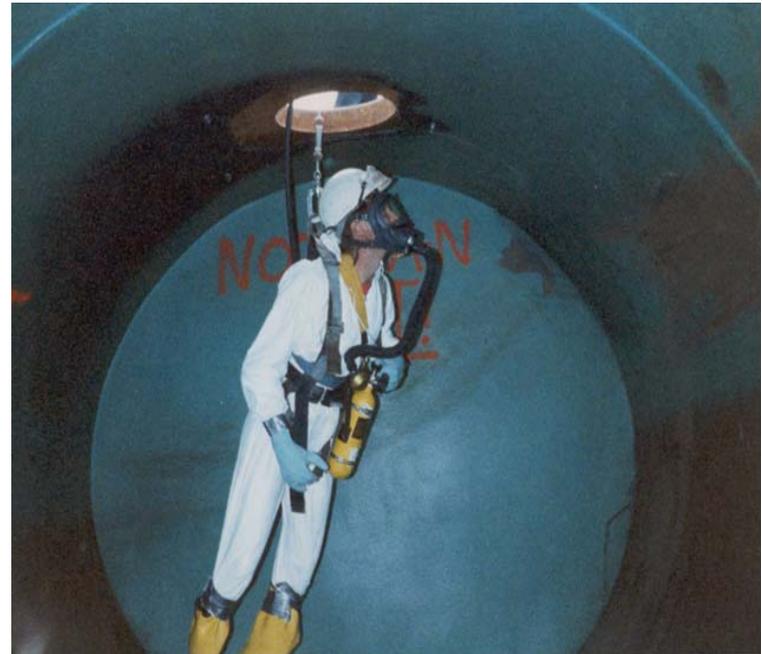
# Legal Standards for HAZMAT Response

- 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 472 “Professional Competence for Responders to Hazardous Materials Incidents” 2002 Edition
- 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

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# 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