

## **CDC Public Health Emergency Law Case Study**

### **Legal Authority During a Public Health Disaster: Hazardous Substance Discharge\***

#### **Objectives / Topics for Case Study**

1. Explain inter-jurisdictional mutual aid and legal coordination in the *pre-event* phase.
2. Describe the legal role of public health agencies in a declared state of emergency.
3. Describe the legal authorities of public health, law enforcement, and other relevant agencies to implement public health and other services in declared and undeclared emergencies.
4. Describe a public health agency's legal authority and role in a mass evacuation.
5. Describe a public health agency's legal obligations and roles in the provision of public health services to a displaced population.

#### **Background**

On February 1, the Governor organizes a summit meeting of state and local officials to review the state's level of preparedness to respond to a mass casualty event caused, intentionally or inadvertently, by a chemical, biological, or radiological agent. The Governor says that by the end of the meeting she wants clarification of (1) her authority to declare an emergency; (2) the extent of state resources available for such a response; (3) the help that can be expected from neighboring states; and (4) the help that can be expected from the federal government.

*Question 1:* Who can declare an emergency and under what legal authority?

*Question 2:* What are the criteria and procedures for requesting emergency response assistance from other state and local jurisdictions?

*\*These exercise contents are for instructional use only and are not intended to provide a legal interpretation or opinion about federal or individual state laws, nor are they intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Persons who seek legal interpretation or advice on federal, state, or local law should consult a qualified attorney in the relevant jurisdiction(s).*

### **October 1, 8:00 a.m.: Train Derailment**

Fall rains have caused severe flooding in the Mississippi and Ohio River basins, and numerous levees have been breached. The floods have closed roads and stranded residents in several Midwestern states. On October 1, at 8:00 a.m., high currents on the Mississippi River cause a barge to ram into and damage a railroad trestle bridging the river. Both sides of the trestle are located in high density urban areas, and one side is within a city in the Governor's state. At 8:30 a.m., the damage on the trestle derails a locomotive and 16 cars. Among the derailed cars are four tank cars containing hazardous chemicals, including a chlorine tank car that ruptures and releases chlorine gas.

The city's business area, the local high school, a small military installation, and some residential areas are near the derailment site. The wind is blowing at approximately 5 miles an hour toward an adjacent state across the river.

A call placed to 911 reports the wreck and notes that a greenish-yellow cloud is blanketing the surrounding area. The local fire department, emergency medical services (EMS), sheriff's office, public safety, and hazardous material (HAZMAT) teams are called in to respond to the disaster. With the gas plume quickly spreading, other localities are soon involved in the response.

*Question 3:* When multiple jurisdictions are affected by a disaster such as this, how do the professionals in local, state, federal, and other agencies coordinate their legal authorities?

*Question 4:* What are some of the key legal concerns regarding volunteer first responders and others who volunteer to assist with response efforts?

### **October 1, 9:30am: Health Consequences at Valley High School**

At Valley High School, a half mile away from the derailment, a class is participating in a scrimmage soccer match for their P.E. class. Before the students see anything unusual, they smell a strong odor in the air, similar to bleach. Immediately, they begin experiencing itching and burning in their eyes and throats and start coughing. One asthmatic student has extreme difficulty breathing. The students are rushed inside and an urgent call is made to the hospital.

Over the next few hours, the hospital and 911 receive numerous phone calls and reports of suspected chemical exposure. The list of symptoms and clinical findings (in increasing severity) includes:

- Itching, tingling, and burning of eyes, nose, and throat
- Coughing, shortness of breath, and headaches
- Chest pain, vomiting, and respiratory distress (rapid breathing, wheezing, blue

- coloring of the skin), leading to fluid buildup in the lungs
- Severe skin burns, lung collapse, and death

Within an hour, the Governors' office receives a preliminary report on the disaster. Continual updates flood in throughout the morning. Within only five hours, there have been nine deaths in the area and hundreds of people have been affected. In early afternoon, the Governor declares a state of emergency.

*Question 5:* What are the criteria and procedures for declaring an emergency? Specifically, what constitutes a public health emergency?

*Question 6:* How can mutual aid agreements be used both during and absent an emergency declaration?

### **October 1, 1:00 pm: Further Information**

The Governor, through the state's Emergency Management Agency, establishes an emergency operations center (EOC) and convenes a meeting to summarize available information and develop a plan for action. The EOC reports the following information:

- Four of the 16 derailed train cars were tank cars: 1 contained chlorine; 2 contained hydrochloric acid; and 1 contained a plasticizer that is an environmentally hazardous substance.
- The plume now has extended to cover parts of two states.
- Hundreds of people are seeking care at local hospitals and clinics, reporting mainly eye, skin, and respiratory tract burning and difficulty breathing.
- Most local residents have been advised via the media, reverse 911 calls, and the Emergency Alert System on the radio to stay inside until further notice.
- There have been some problems with communication because of high demand and out-of-date or unavailable phone numbers (many local residents only have cell phones).
- Significant disruptions in emergency services and health care have occurred due to the overwhelming demand of the injured and the "worried well."

Given these facts about the unfolding disaster, the Governor requests information on the relative benefits of evacuation and shelter-in-place. Key representatives of public health, fire, law enforcement and emergency services at the EOC give their advice. When the first responders arrived on scene, they reported breathing difficulties and were ordered to stand by and not approach the scene, which proved to be a prudent decision. When the fire chief arrived and was almost overcome by the toxic fumes, he directed a mass evacuation of the immediate area.

Although flood conditions will complicate transportation in some of the affected areas, he recommends evacuation of all residents.

Medical personnel from emergency services note that they are concerned about residents who are elderly, ill, or unable to evacuate. A nursing home, Pleasant Place, is located nine miles south of the derailment site and the owner of the nursing home says that it would take at least 24 hours to move the residents. Further, the only available place to evacuate residents is a hospital 20 miles away that is already at full capacity.

*Question 7a:* What legal and operational considerations might influence the decision to call for an evacuation or a shelter-in-place order? What factors should be considered in deciding whether an evacuation or shelter-in-place order be issued in the situation described here?

*Question 7b:* How are the requirements of the elderly and other special needs populations addressed through an evacuation or shelter-in-place order?

*Question 7c:* What factors should be considered in choosing between mandatory or voluntary evacuation orders?

### **October 1: Review of Legal Authorities for Evacuation**

As part of the EOC deliberations, the Governor is asking the Attorney General and legal counsel for key agencies to confirm the legal authority for an evacuation order. One of the questions that arises is the following:

*Question 8:* Which agencies will make and enforce an evacuation or shelter-in-place order?

### **October 1: Governor Requests Review of Plans for Continuity of Coordination**

Anticipating the need for a mass evacuation order, the Governor requests an update on agencies' plans for continuity of operations. Efforts to ensure continuity of coordination between public health, law enforcement, and the courts are also discussed.

*Question 9:* How will the continuity of the courts and the justice system be ensured?

*Question 10:* What staffing plans are in place for supplying medical services, and for preserving order at medical care facilities?

### **October 1: Mass Evacuation Order: Concerns about Displaced Persons**

The EOC and the Governor decide to order a mass evacuation. Their plan is to use sheriff's office personnel, assisted by a number of other area law enforcement agencies, to conduct a house-to-house evacuation. Also, a 500-meter buffer zone around the derailment site will be instituted and access will be limited to only those individuals wearing the appropriate personal protective equipment.

A local university and club recreation area will be used to house evacuees.

*Question 11:* Within your jurisdiction, what are the legal requirements for public health, emergency management, and other agencies to provide food, water, shelter, medical care and other needs to displaced people?

*Question 12:* In your jurisdiction, what agencies may have legal responsibility for ensuring that homes and businesses are safe and clean before allowing people to return home?

### **Conclusion**

By midnight on October 1, still winds had prevented the further spread of the cloud. A light rain that evening also provided some relief, washing the toxic contaminants from the air. By October 3, when residents began returning to their homes and businesses, the source(s) for reimbursement to evacuees for their expenses remained unclear.

Quick action and effective coordination by local, state, regional, and federal officials helped prevent deaths and limit damage, but the incident highlighted the risks posed by similar events across the country.

## Notes:

\* Relevant provisions of PKEMRA (FY2007 DHS Appropriations Act, P.L. 109-295):

**Sec. 689(a), (c) Individuals with Disabilities** – PKEMRA acknowledges the need to meet special needs of individuals with disabilities during emergency evacuation and response. First, Sec. 689(a) requires the FEMA Administrator to “develop guidelines to accommodate individuals with disabilities... guidelines include ‘the accessibility of, and communications and programs in, shelters, recovery centers, and other facilities; and devices used in connection with disaster operations, including first aid stations, mass feeding areas, portable payphone stations, portable toilets, and temporary housing.’ This provision is not codified in the Stafford Act. Second, Section 689(c) amends the Stafford Act’s Federal Assistance to Individuals and Households program (§408) to recognize that damage can render a home inaccessible to disabled persons, and thus, uninhabitable to them. Accordingly, temporary housing assistance can be provided to individuals with disabilities whose residence is rendered “inaccessible” as a result of a major disaster. Further, in locating readily fabricated dwellings, FEMA must now seek whenever practicable, sites that – “[meet] the physical accessibility requirements for individuals with disabilities.” The term ‘Individual with a Disability’ is defined by reference to section 3(2) of the Americans with Disabilities Act of 1990.

**Sec. 689a. Nondiscrimination in Disaster Assistance** – Section 308(a) of the Stafford Act has long required that “the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished... without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.” This section has now been amended also to prohibit discrimination on the basis of “disability and English proficiency.” This amendment, coupled with the two previous amendments **Sec. 689 Individuals with Disabilities**, and **Sec. 689e. Disaster Related Information Services** (listed above), may make FEMA’s decisions in providing assistance to individuals with disabilities or with limited English proficiency judicially reviewable. While FEMA’s decisions to grant or withhold disaster assistance are generally protected from judicial review by sovereign immunity, courts have held that they can review FEMA compliance with its statutory prohibition against discrimination; this amendment opens the possibility for judicial review.

## References:

1. Agency for Toxic Substances and Disease Registry. ToxFAQs for Chlorine. Available at <http://www.atsdr.cdc.gov/tfacts172.html>. Accessed September 4, 2007.
2. National Transportation Safety Board. Collision of Norfolk Southern Freight Train 192 with Standing Norfolk Southern Local Train P22 with Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005. Washington, DC: 2005;NTSB/RAR-05/04. Available from <http://www.nts.gov/publictn/2005/RAR0504.pdf>. Accessed September 9, 2007.
3. National Transportation Safety Board. CSX Train Derailment and Subsequent Fire in the Howard Street Tunnel, Baltimore, Maryland, July 18, 2001, Railroad Accident Brief. Washington, DC: 2004;NTSB/RAB-04/08. Available from <http://www.nts.gov/publictn/2004/RAB0408.pdf>.