DEALING WITH NATURAL DISASTERS
Here Comes The Flood (Of Legal Issues)

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Environmental Issues
Following a Disaster

Tracey Dodd
J.S. Held LLC
New Orleans, LA

Dorsey R. Carson, Jr.
Carson Law Group, PLLC
Jackson, MS
Disaster - Defined

A sudden event, such as an accident or a natural catastrophe, that causes great damage or loss of life

• Human made
• Naturally occurring
Human Made

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Chernobyl
Kuwait Oil Fires
Love Canal
Three-Mile Island
Naturally Occurring
Flood
Earthquake
Wildfires
Loss of Life

- Personal Injury/Fatality (# of deaths)
- 1900 Galveston Hurricane
- 1899 San Ciriaco Hurricane
- 1906 San Francisco Earthquake
- September 11 Attacks
- Hurricane Maria
Loss of Natural Resources

- Contamination of Water
  - Surface Water
  - Drinking Water
- Destruction of Wetlands
- Contamination of Lands with Wastes
- Loss of Vegetation
- Loss of Agriculture/Food Supply
Infrastructure

- Destruction of Power Generation/Power Supply
- Destruction of Water Supply
- Loss of Communications
- Loss of Transportation Routes/Access
- Loss of Health/Emergency Services
Economic Impact

- Short term and long term impacts
- Evidence of detrimental and positive impact to the economy
- Impact on production
- Fallout of pollutants impacts global economy
- Loss of employment
Disaster Preparedness

Begins Months/Years Prior to the Event

- Planning
- Drills
- Testing Vulnerabilities
- Testing Resiliency
- Re-evaluation of Past Responses
  - Successes and Failures
- Continually Updating Plan, Roles and Responsibilities
Emergency Response can last Days or Weeks
- Relies on Management Plans
- Actions to Save Lives and Property
- Actions to Mitigate Further Damages
- Search and Rescue
- Improve Health by Securing Food/Water/Utility Supply
- Provide Temporary Shelter
- Initial Security and Initial Property Repairs
  - Stabilize!
Emergency Relief
Recovery

Recovery Efforts Can Last Many Months
• Business or Community Stabilization
• Longer-term repairs/Permanent Repairs
• Financial Aid to Projects/Communities
Government Reporting

Martial Law

RESIDENTS ONLY BEYOND THIS POINT!
FEMA, ATF, DEA, OSHA
Response Depends on Disaster

- One Size Doesn’t Fit All
- Different Federal, State and Local Resources Dependent Upon the Disaster Type
- FEMA responds in Different Ways
- Head toward Normalcy
Resources - Access
Alternate Tools

Remote Sensing
• Flyovers/Radar
• Drones
  • With or without thermal imagery
• Satellite Imagery/Aerial Photography
• LIDAR (Light Detection and Imaging)
• GIS
Priorities - Assessment
Responder Resources

cc: How can I recycle this

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Security
Safety
Food - Water
Communications
Expert Use

- Engineers
- Consultants
- Insurance Carriers
- Government Involvement
- Legal
Damage Assessments
Primary

1. Fatalities, Injuries, Infrastructure
2. Human Factors to Respond to
Category of Damages
Flood vs. Wind
Special Considerations

• Backup vs. Flood Protection Failure
• Pollution
• Code Compliance
• Increased Costs/Expediting
Secondary Assessment

- Economics
- Redevelopment
Damage Mitigation

- Vendor Use
- Specialized Contractors
- Resource Allocation
Human vs. Natural
Examples and Issues
• Compliance with Mold Contracting/Mold Consulting Regulations
• Contaminants in the Flood Waters
• Special Handling/Precautions
• Other Hazards for Assessment Teams
• Electrical Issues/Corrosion
• Subsurface Displacement
• Segregate Flood Damage from Wind or Backup in Conveyance System
• Hurricane Katrina
Tornado

Examples and Issues

• Limited Time to Evacuate/Limited Emergency Notice
• Immediate Retrieval of Hazards
  • Pharmaceuticals/Medicines
  • Hazardous/Biological Wastes
• Structural Stabilization and Evaluation of the Property
• Business Continuity/Transfer of Operations
• Immediate Debris Cleanup/Removal
Wildfire

Examples and Issues

• Evacuation Order
• Debris Removal
• Retrieval of Wastes
• Structural Stabilization/Evaluation of the Property
• Cleaning of Smoke and Residues
• Land Destabilization with Rain
Sinkhole

Examples and Issues
• Evacuation Orders
• Release of Pollutants
• Engineering Stabilization/Evaluation of the Property
• Bayou Corne Sinkhole
Hurricane

Examples and Issues
• Segregation of Damages of Flood vs. Wind
• Compliance with Mold Contracting/Consulting Regulations
• Immediate Stabilization
• Debris Removal
• Hurricane Katrina
Financial Recovery

- Expediting Costs
- Business Continuity
- Code Compliance for Restoration
- Resiliency
Legal Issues
Reporting

Government

FEMA Reimbursement
• Contents
• Repair vs. Replacement
• Replacement Project

Joint Commission
Look Back & Response

cc: Marc - Olivier Jodoin

Lessening Damage

THIS IS WHERE RESPONSE REALLY BEGINS!
Vulnerability Assessments

What is your weakest link?
- Vendors
- Staff/Personnel
- Lack of Preparedness
- Lack of Redundancy Planning

Where is the business MOST VULNERABLE?
- PLAN FOR IT!
Disaster Management

Use Your Last Disaster to Manage Future Disasters

• Plan
• Manage
• Drill
• Update Plans
• Test all Resources
Response Tools
DISASTER PREPAREDNESS

ARE YOU READY?
DISASTER PREPAREDNESS

• Planning
• Drills
• Testing of Vulnerabilities
• Evaluation of Past Responses
• Relief Efforts
  • Search and Rescue
  • Food and Water
  • Utilities
  • Housing
DISASTER PREPAREDNESS

• Assess potential risk
• Evaluate policies and equipment
DISASTER PREPAREDNESS
Case Study: Arkema

• Arkema, Inc., a chemical manufacturer in Crosby, TX, was flooded during Hurricane Harvey in 2017
• Arkema produced organic peroxides which combust if not kept at low temperatures
When the Arkema facility flooded, workers attempted to move the chemicals into refrigerated trucks on-site to prevent combustion.

Generators in the low-temperature warehouses had to be shut down because of flooding.

Floodwaters also prevented moving trailers to high ground by shorting out electrical components of moving equipment.
DISASTER PREPAREDNESS

Case Study: Arkema
DISASTER PREPAREDNESS
Case Study: Arkema

LESSONS LEARNED:
• Anticipate flooding, and create preparedness plan
• Effective safety systems
• Unambiguous regulations and guidelines to provide useful guidance
• Adopt risk-reduction strategies
• Regular testing and upgrades of emergency systems
DISASTER PREPAREDNESS: FEMA DEBRIS REMOVAL
Types of Disaster Debris:
• Construction materials
• Damaged buildings
• Sediment
• Green waste
• Electronics
• Large Appliances
• Personal property
DISASTER PREPAREDNESS: FEMA DEBRIS REMOVAL

• FEMA manages federal disaster response
• Coordinates with state and local responders
• Manages National Flood Insurance Program and U.S. Fire Administration
• Reimburses 100% of public cleanup for 60 days, then down to 75%
DISASTER PREPAREDNESS:
Case Study: Post-Katrina FEMA Debris Removal

Hurricane Katrina produced over 100 million CY of debris, over 55 million CY in New Orleans alone, over twice as much as the previous record-holder, Hurricane Andrew, with 43 million CY of debris.
DISASTER PREPAREDNESS:
Case Study: NOLA Landfills

Old Gentilly and Chef Menteur Landfills
• Environmental Concerns
• Local Public Pressure
• Governmental Regulatory Response
DISASTER PREPAREDNESS: FALSE CLAIMS ACT

Factors involved in fraudulent claims for disaster relief:

• Limited information
• Limited oversight
• Lack of resources
• Large amounts of money
• Limited time-table
DISASTER PREPAREDNESS: FALSE CLAIMS ACT

Case Study: U.S. v. Jaquet Construction Services

• Whistleblower filed FCA suit alleging fraud in 2007
• FEMA reimbursed for trailer inspections never performed
• Justice Department intervened in 2011
• Suit settled for undisclosed amount
DISASTER PREPAREDNESS: FALSE CLAIMS ACT

Case Study: *U.S. v. State Farm*

• Whistleblower filed FCA suit alleging fraud in allocation of damage from private insurance to federal flood coverage
• State Farm found guilty in 2013
DISASTER PREPAREDNESS: OVERSIGHT

• Two examples where lax oversight leads to payment for unnecessary, poor or damaging work
• Over-excavation after the 2017 Santa Rosa fires
• OIG Report: Lack of FEMA standards led to overpayment after Hurricane Irma
DISASTER PREPAREDNESS: DOCUMENTATION

• FEMA has power to withhold or claw back reimbursement if proper documentation and regulations not followed
• After Hurricane Katrina, Mississippi spent $30.5 million to retrofit less than 1000 homes
• OIG Report found lax oversight and no documentation, and refused reimbursement
• Consequence: State seeks $ from contractor.
DISASTER PREPAREDNESS: TAKINGS

Case Studies:
Claims for inverse takings after natural disasters
• Rocky Mountain Thrift Stores v. Salt Lake City Corp.
• Bernard Parish et al. v. United States
Case Study: San Jacinto River Waste Pits
- 1340 Superfund sites across United States
- Most Superfund sites have caps to isolate contaminants
- After Hurricane Harvey, cap damages were discovered
- 100-year storm caps eroded after 20 year-floods
- CERCLA liability
DISASTER PREPAREDNESS: GOVERNMENTAL IMMUNITY

• By January 2008, U.S. Army Corp of Engineers received 489,000 claims planning to file suit over levees which burst during Hurricanes Katrina and Rita
• Multiple lawsuits were later dismissed by virtue of immunity granted by Flood Control Act of 1928
DISASTER PREPAREDNESS: REPORTING

- Dispersal of pollutants after natural disaster may require reporting to FEMA, EPA, and/or local and state governments
- Different businesses and industries may also have their own standards under public/private accreditation agencies
- Disposal of pollutants requires significant documentation, especially if state lines are crossed
After the 2010 oil spill in the Gulf of Mexico, BP took various steps to limit liability and address claims:

- Engaging local experts to prepare for lawsuits
- Reallocating liability to business partners
- Work with governments on clean-up
- Public relations
DISASTER PREPAREDNESS: GETTING INVOLVED

• Becoming a FEMA-approved contractor can be lucrative
• Contractors are not engaged by FEMA but instead with local governments
• Contractors must be aware:
  • FEMA limitations on reimbursement
  • Administrative paperwork
  • Licensing requirements
  • Securing payment
Before a disaster, businesses should evaluate disaster management plans:

- Critical vendors
- Potential hazards
- Likelihood of damage

After a disaster, businesses can engage in a variety of strategies to limit potential liability
Questions?