

Legal Preparedness Reporter

Volume 1, Issue 2

Summer 2008

Michael Hodges, JD, CPP, Editor



Inside this issue:

Weapons of Mass
Destruction:
Fertilizer Legis-
lation Proves
Effective 1

Extension Flood
Zone Changes: A
Costly Possibility 2

When Preven-
tion Becomes A
Liability: Use of
Vaccines 2

Crisis Managers
Rethink work-
place Violence
Plans After Guns
At Work Bill 3

Isolation and 3
Quarantine Legal
Primer

Terrorism Risk
Insurance Pro-
gram Receives 4

First Responders 4
Legislation

WMD Fertilizer Legislation Proves Effective

Last year, President Bush signed into law the federal Secure Handling of Ammonium Nitrate Act of 2007. The Act directs the Department of Homeland Security (DHS) to regulate the sale and transfer of ammonium nitrate, which is commonly used in agriculture fertilizer. Additionally, the bill requires owners of ammonium nitrate facilities and purchasers of the fertilizer to register with the DHS.

The April 1995 attack by Timothy McVeigh which used large amounts of ammonium nitrate to blow up the Alfred P. Murrah federal building in Oklahoma City, Oklahoma sensitized law enforcement personnel to the use of ammonium nitrate as a weapon of mass destruction (WMD).

Following the terrorist attacks on September 11, 2001, South Carolina became the first state to seek restrictions on access to ammonium nitrate. South Carolina's concern and aggressive approach to restricting ammonium nitrate was proven to be justified in April 2008, when an 18 year old student attempted to blow up his high school using ammonium nitrate he purchased from the internet site Ebay. Prosecutors charged him with:

- Attempting to use a weapon of mass destruction against a person or property within the United States;
- Attempting to damage and destroy by means of explosive any building and real property getting federal funds; and
- Knowingly receiving in interstate commerce an explosive with knowledge or intent that it will be used to kill, injure or intimidate individuals, as well as unlawfully damage and destroy any real or personal property.

A search of the student's home produced a diary with references to the Columbine High School shootings in Colorado, and the 1995 bombing of the Alfred P. Murrah building. Further evidence of this legislation working in South Carolina is the decrease in ammonium nitrate purchases. According to *The State*, South Carolina's leading newspaper, in 2006, about 8,000 tons were sold, and just last year in 2007, only 3,000 tons totally were sold. [Higgins, L. & Tate I. S.C. (2008, April 23). Teen Faces Federal WMD Charge, *The State*, pg a.]



Ammonium Nitrate in its natural form. [http://www.aurepio.pl/pliki/namozy_3.jpg]

Ammonium Nitrate as an explosive device [http://www.af.mil/shared/media/photodb/photos/040401-F-0000S-001.jpg]

Legal Preparedness in the homeland security/emergency management context, speaks to the statutory and regulatory framework necessary to carry out those actions related to prevention, preparation, response, and recovery from terrorist incidents or catastrophic disasters. It precedes, co-exists with, and extends beyond the physical logistics of the preparedness cycle.

Flood Zone Changes: A Costly Possibility

In the aftermath of Hurricanes Katrina and Rita, the Federal Emergency Management Agency (FEMA) is playing a major role in reviewing flood plans which may have costly implications for community planners, risk managers, and those responsible for maintaining costs for safety of personnel and property.

As a part of a five (5) year program, FEMA is re-examining approximately 90,000 flood hazards maps across the United States. During this survey, if it is found that a community can not prove that its levees are in working condition or are deemed inadequate, a new FEMA map is drawn as if the levees did not exist.

As flood plans change local jurisdictions will need to consider issues ranging from the necessity to revisit building codes to whether or not the problem of insurers fleeing the jurisdiction either literally, or through significant increases in the cost of flood insurance. Costs are derived from increased premiums, as well as personnel and administrative

costs of complying with new building codes and regulations.

For example, in the Nations Capitol of Washington D.C., flood maps were last reviewed in 1985 . [Segraves, M. (2008, Jan 24). Flood Map Changes Could be Costly for D.C. Residents , WTOP Radio.]

Under a recent FEMA flood plan review, modifications to existing maps will expand what is called the "100 year flood zone". Such modifications are a dramatic change to the existing flood maps and designated hazard zones. These proposed changes are affecting governmental and private sector properties and business operations.

Hence, as proposed changes can be costly, it is important for community and emergency planners to be proactive in monitoring FEMA for a particular locale, as the public comment period may be the last opportunity to address the issue before unnecessary costs are incurred in rising insurance premiums and compliance.



Picture of Flood taken from, [http://www.wrh.noaa.gov/tfx/hydro/FAW/fawmain.php?wfo=byz], promoting National Flood Safety Awareness Week.

When Prevention Becomes a Liability: Use of Vaccines

In the last Legal Preparedness Reporter, we learned about preparation for a pandemic. Increasingly, pandemic planners weigh the use of vaccines for its prevention model.

In doing so, planners are urged to consider storage issues, as they raise potential liability concerns. The Center for Disease Control (CDC) estimates that hundreds of thousands of vaccines are discarded because of poor refrigeration. Typically, these vaccines are needed for flu, diphtheria, tetanus, and even cervical cancer viruses.

There are two primary reasons which may cause spoliation of such vaccines. One is the human factor, the second is mechanical failure.

Human factor explanations for spoiling of vaccines generally stem from one of two causes; poor training that did not highlight the importance of

temperature control; or accidents, where a worker mistakenly leaves a refrigeration door ajar. These are also factors of potential negligence claims as spoiled vaccines do not provide their designated level of protection .

Mechanical failure is always a possibility, as equipment fail for a variety of reasons. As this may be the case, your emergency plan should include monitoring and surveillance of vaccine storage equipment. Aside from potential liability costs, there are potential costs in wasted vaccines because of poor refrigeration.

Dr. Lance Rodewald, Director of Immunization Services at the CDC estimates that the federal Vaccines for Children Program cost about \$20 million a year because of improper refrigeration. The costs include the wasted vaccines, and the need for revaccinations.

Flood Facts:

“Floods are one of the most common hazards in the United States.”

“Not all floods are the same. Some floods develop slowly, sometimes over a period of days. Where as, flash floods can develop quickly, often in just a few minutes.”-

FEMA-[<http://www.fema.gov/hazard/flood/index.shtm>]

Flood Terms:

“Flood Warning: Flooding is occurring or will

occur soon; if advised to evacuate, do so immediately.

Flood Watch: Flooding is possible. Tune in to NOAA Weather Radio, commercial radio, or television for information

Flash Flood Warning: A flash flood is occurring; seek higher ground on foot immediately.

Flash Flood Watch: Flash flooding is possible. Be prepared to move to higher ground; listen to NOAA Weather Radio, commercial radio, or television for information.”

-FEMA [http://www.fema.gov/hazard/flodd/fl_terms.shtm]

Crisis Managers Rethink Workplace Violence Plans at Work Bill Passage

For many years, crisis managers have shaped workplace violence polices, plans, and security programs to comply with recommendations of the Occupational Safety and Health Administration (OSHA) in maintaining a safe workplace.

Until now, business owners have been successful in keeping handguns away from the workplace.

As of April 2008, the state of Florida successfully passed legislation that allows gun owners to have firearms locked in their cars while they are working

Essentially, the legislation prohibits business owners from “banning” firearms that are kept locked in cars by their employees when those vehicles are parked on company property. In a similar case, Oklahoma took up the issue of guns at work. However, on October 4, 2007, a federal court permanently enjoined the Oklahoma gun-at-work law from taking effect.

In a 93 page ruling, U.S. District Judge Terence Kern determined that the proposed legislation contradicts federal workplace safety laws that were established under the 1970 Occupational Health and Safety Act.

Moreover, similar gun laws have passed in states such as Minnesota, Kansas, Kentucky, and Alaska.

Isolation and Quarantine Legal Primer

Since the international outbreak of the Severe Acute Respiratory Syndrome (SARS) a few years ago, and growing concerns of a potential pandemic, legal authority for isolation and quarantines becomes a much needed topic for clarity and understanding.

Generally, Title 42 of the United States Code (USC) gives the Secretary of Health and Human Services (HHS) responsibility for preventing the introduction, transmission, and spread of communicable diseases from foreign countries into the US and its territories.

Specifically, section 361 of the Public Health Service (PHS) Act is of great importance to crisis managers. Pursuant to the Public Health Service Act, the list of diseases that would make quarantine appropriate must be specified in an Executive Order of the President, on recommendation of the HHS Secretary.

The list is modifiable, as we have seen recently with types of influenza that cause or may cause a pandemic has been added. There are two distinct tools in controlling public health emergencies. First, there is the process of “isolation.” Isolation refers to the separation of people who have a specific infectious illness from those who are healthy.

Secondly, “quarantine” is the separation and restriction of movement of people who have been exposed to an infectious agent but who are not sick or showing symptoms.

Essentially, enforcement of isolations and quarantines can be conducted by Federal and State health departments, law enforcement, transportation authorities, and health care providers.



Photograph taken from the Red Cross website of individuals transported to the hospital for observation and possible isolation.

[<http://redcross.tallytown.com/bb.html>]

First Responder Legislation

In many states, employers as well as workers compensation insurance companies refuse to pay benefits to first responders for illness acquired by providing services to the public.

First responders include police, firefighters, correctional officers, and paramedics. First Responders are susceptible to hazardous exposures including but not limited to natural disasters, terrorist attacks, criminal, vehicular and other accidents. Such hazards present a range of ailments such as heart disease, hypertension, mental and nervous conditions, diabetes, hearing loss, and a host of other impairments.

Increasingly, states are enacting what is known as First Responders legislation. Florida, for example, passed the First Responders Act in 2007. Senate Bill 746, makes it easier for public servants such as firefighters, police officers, and paramedics to establish entitlement to workers' compensations benefits. The law also covers first responders within the volunteer ranks.

Other benefits of the Florida First Responder Act are payment of medical benefits for psychiatric injuries. Also, covered employees are now entitled to continued cost of living increases of permanent total disability benefits past the age of sixty-two (62).

Coverage areas of legislation are left only to one's imagination. Some states focus on personal damages from primary and secondary causes of attending an emergency incident, where as others are focusing on providing new and additional protective equipment for responders.

If trends persist, states will continue to modify and enact First Responder statutes to keep pace with developing issues of emergency response. Legal practitioners will best serve their clients by staying educated and informed.

The Legal Preparedness Reporter of the National Legal Preparedness Training Program (NLPTP) will continue to revisit emerging issues in this area.

Terrorism Risk Insurance Program Receives Extension

The Terrorism Risk Insurance program law was reauthorized and signed into law by President Bush.

Originally enacted, in 2002, in response to potentially devastating financial losses stemming from events of 9/11, the Terrorism Risk Insurance Act (TRIA) ensured that the federal government would assist insurance companies in covering losses under particular conditions of terrorist attacks. According to the US Treasury, "The Act's purposes are to ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections." TRIA also required that insurance firms offer their clients insurance that would cover damages caused by acts of terrorism by foreign subjects.

TRIA was scheduled to expire at the end of December 2007. However, H.R. 2761, Terrorism Risk Insurance and Extension Act of 2007, extended the Act for an additional seven years. As part of the extension, the new Act eliminates the distinction between foreign and domestic acts of terrorism; provides for a study by the Government Accountability Office (GAO) on expanding coverage for nuclear, biological,

chemical, and radiological risk materials (NBCR); and limits the aggregate liability for all insurance companies at \$100 billion.

Therefore, as terrorism continues to be an important issue of emergency planners, it will be another seven years before the federal government takes up the issue of providing assistance to commercial property and casualty insurers from losses that may result from terrorism. Implications of this maybe the Federal Government deciding on another extension, or leave it to insurance companies to shoulder all the costs for terrorist acts.

The *Homeland Security/Emergency Management - National Legal Preparedness Program (NLPP)* results from a Cooperative Agreement between the Department of Homeland Security, Federal Emergency Management Agency and the University of the District of Columbia to establish a national scope training program for legal issues in preparation, response, and recovery from terrorist incidents and catastrophic events.

The NLPP is a project of the University's Institute for Public Safety & Justice.



INSTITUTE FOR PUBLIC SAFETY & JUSTICE

Translating Research into Policy—Translating Policy into Practice

Homeland Security/Emergency Management National Legal Preparedness Program

Institute for Public Safety & Justice
University of the District of Columbia
4200 Connecticut Avenue, N.W.
Washington, D.C. 20008

Phone: 202-274-5689
Fax: 202-274-5409
Email: NLPTP@udc.edu

Angelyn Spaulding Flowers, JD, PhD
National Project Director

Chimere J. Jones
Project Manager
Layout & Graphics

