



AAPA Port Legal Issues Workshop

Location: Houston, TX

Date: Thursday, February 22, 2018

Time: 3:15 PM – 4:45 PM

ROLE OF THE ATTORNEY IN EMERGENCY PREPARATION AND RESPONSE



Dealing With the Emergency

What exactly is Emergency Management?

SPEAKER:



Colin Rizzo is the Emergency Manager for the Port of Houston Authority, a position he has filled since its creation in January of 2012.

Colin is responsible for the direction and day-to-day operations of the Emergency Management Department planning and directing emergency and disaster preparedness and response within the Port of Houston Authority.

He certified by the International Association of Emergency Managers as a Certified Emergency Manager (CEM) and is also certified police officer, fire inspector and arson investigator. The Emergency Management Association of Texas named Colin the Texas Emergency Manager of the Year for 2017.

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What is Emergency Management

- The managerial function charged with creating the framework within which ports reduce vulnerability to hazards and cope with disasters
- Protects people and assets by coordinating and integrating all activities necessary to build, sustain and improve the capability to mitigate against, prepare for, respond to, and recover from threatened or actual natural disasters, acts of terrorism, or other man-made disasters.

Principles of Emergency Management

- Comprehensive
- Progressive
- Risk Driven
- Integrated
- Collaborative
- Coordinated
- Flexible
- Professional



The 4 Phases of Emergency Management



Mitigation

Activities that:

- Prevent an emergency
- Reduce the chance of an emergency from happening
- Reduce the damaging effects of the unavoidable



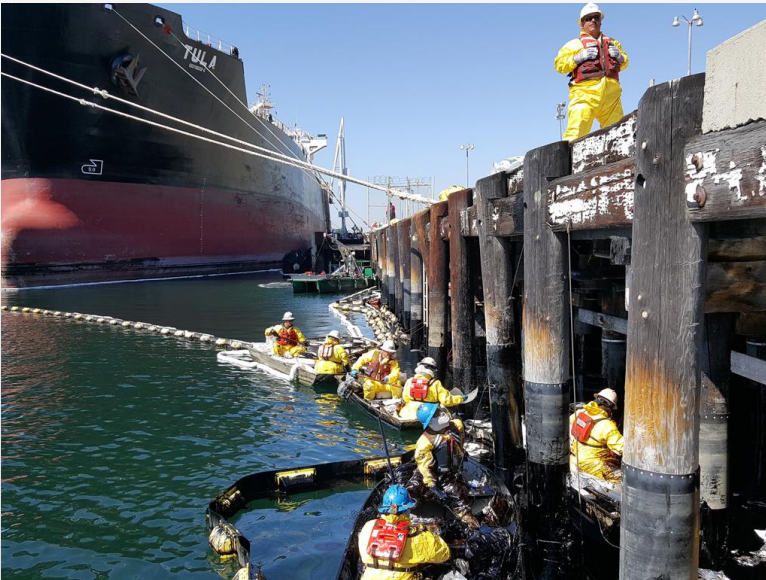
Preparedness

- Plans or preparations made to save lives and help response and rescue operations
- This includes employee outreach and education
- Preparedness takes place before an emergency occurs



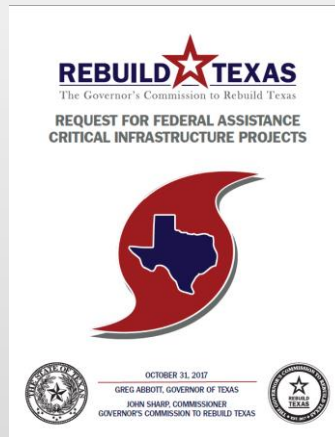
Response

- The actions taken to save lives and prevent further damage in an emergency.
- Response is putting your plans into action



Recovery

- Actions taken to return the port to normal or an even safer situation following an emergency.
- Recovery may include federal financial assistance in order to recover



The Preparedness Cycle



Plan

- Planning makes it possible to manage the entire life cycle of a potential emergency or disaster
- The first step to planning is a Threat and Risk Assessment specific to your port/facility



- Plans provide the standard for assessing capabilities and help stakeholders learn their roles.
- Planning elements identify contingencies are in place for large-scale disasters

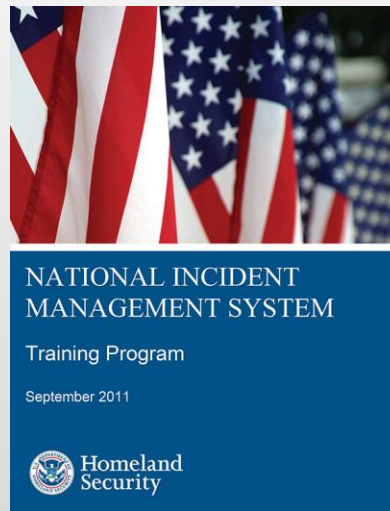
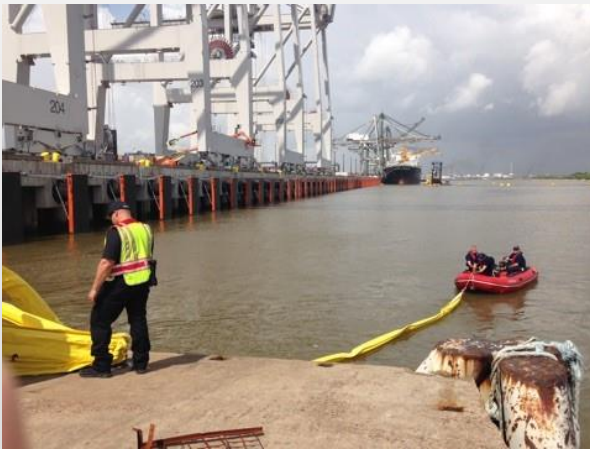
Organize and Equip

Providing the human and technical capital stock necessary to build capabilities and address shortfalls identified in the Risk Assessment



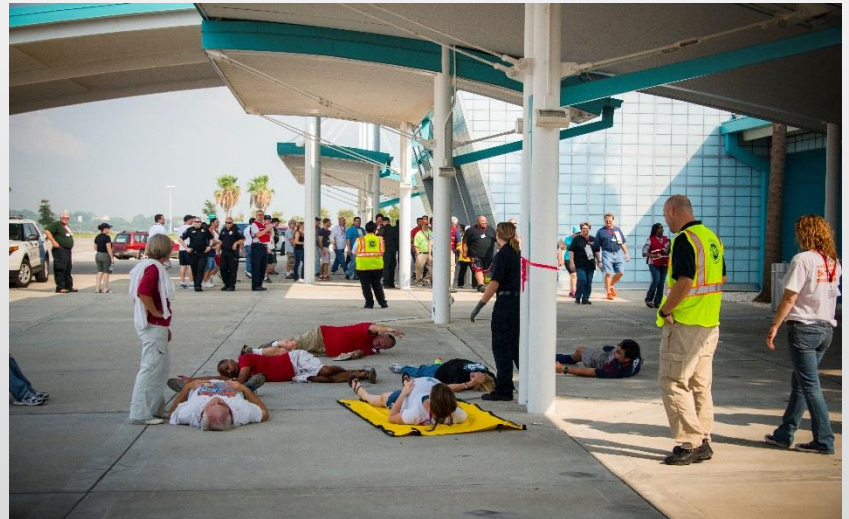
Train

Training provides first responders and all port staff with the knowledge, skills and abilities to perform key tasks required during a specific emergency situation.



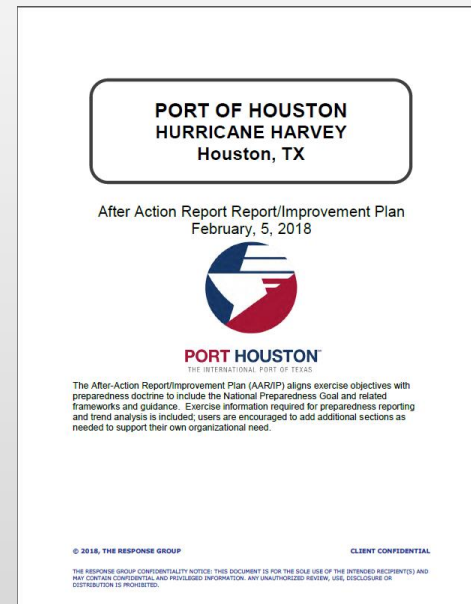
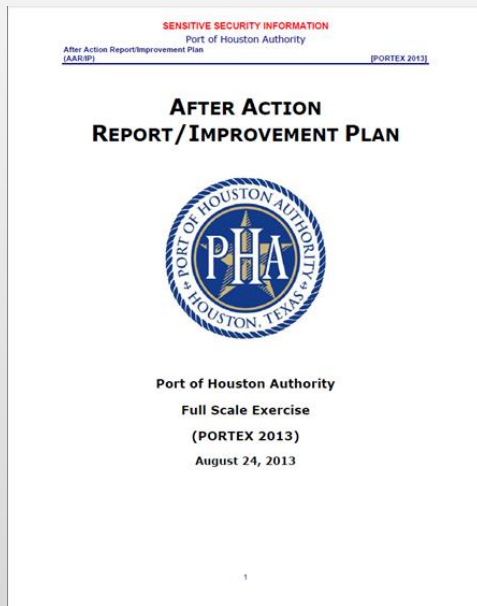
Exercise

Exercises enable entities to identify gaps and shortfalls within plans, policies and procedures to address areas for improvement prior to a real-world incident.

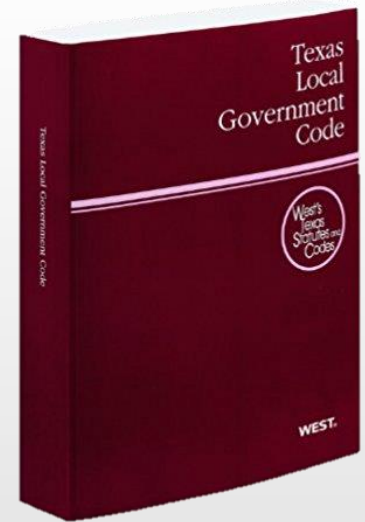
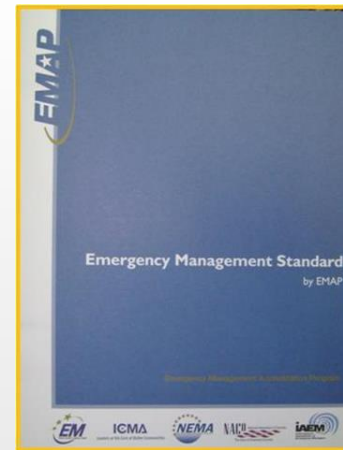
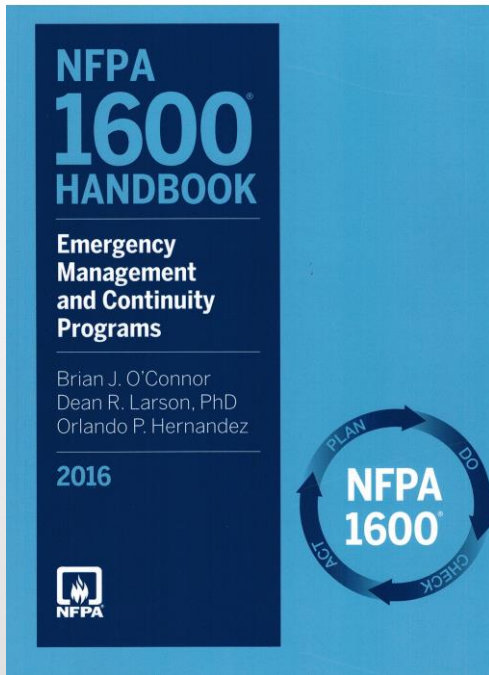


Evaluate and Improve

Collecting lessons learned, develop improvement plans, and track corrective actions to address gaps and deficiencies identified in exercises or real-world events.



Legal Responsibilities/EM Standards



Dealing With the Insurance Companies

SPEAKER:



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Rhonda D. Orin is the managing partner of the firm's Washington, D.C. office.

Ms. Orin represents policyholders in coverage cases nationwide, including cyber losses, third-party tort and environmental liability claims, first-party property damage and business interruption claims and alternative risk transfer arrangements. She has served as lead counsel in multiple jury and bench trials, argued before the highest courts of several states, and appeared in two cases before U.S. Supreme Court.

Give Notice Early (and Often)

- The first action a port should take when facing a potential loss is to Give Notice.
- The second action a port should take when facing a potential loss is to Give Notice.
- Late notice can be fatal to a claim, and is one of the most frustrating reasons for coverage to be denied.
- Give notice first – ask questions later.
 - Resist the very reasonable temptation to give notice only after you are appropriately informed.

Choose Your Words Wisely . . .

- Broad and generic is better than specific – *especially* because you need to give notice early.
- Be careful with causation.
 - Causation is an issue of both fact and law.
 - State laws on causation vary widely.
 - Entire trials can be devoted to what caused what.
 - There's no need to commit to “because of” or “caused by.”
- You may not know about some losses for a long time.
 - E.g. DICC

Utilize Your Insurance Broker

- The question of *who* should get notice is overwhelming.
- It should not be your problem during the crisis.
- Give notice to your insurance brokers and ask them to forward the letter to whoever should receive it.
 - You can follow up later with lists of names and addresses, when you find them.
 - But until then, the notice that you sent to the broker should satisfy the notice requirements of most policies and states.

And Where *Should* You Look?

- Your own files and records.
 - Dead storage (both paper and electronic)
 - Old projects where certificates may have been filed.
 - Financial records showing what premiums were paid.
- Third-party files and records.
 - Exhibits to motions in courthouse files.
 - Insurance brokers and agents.
 - The U.S. Naval Archives, if you had government contracts.
- Hire an “insurance archaeologist.”



Don't Forget About "OPP"

- "Other People's Policies" can be fertile sources of coverage.
- Look for Certificates of Insurance in your files from the myriad of contractors, transportation entities and other who affect a port's regular operations.
- Are you an "Additional Insured"?



Don't Forget About Old Policies

- Occurrence-based liability policies never expire, so they can be tapped for coverage decades after their policy periods.
- For most policies, the issue is whether the damage took place during the policy period (not when it was discovered).
- But not unless you look . . .



What If They Just Don't Answer?

- The first reaction of insurance companies to a claim is to send letters protecting their rights to deny coverage.
- The second reaction is to request massive amounts of information, distracting you from the original problem.
- The third reaction is to repeat Reactions One and Two.
- But *your* obligation is to put the loss behind you.



Save Yourself from “Consent” Provisions



Be Careful with New Types of Losses

- While hurricanes may be old news, cyber attacks are “new” news.
- Throw a wide net when it comes to giving notice; don’t limit yourself to “cyber-specific” insurance policies.
- Don’t embrace terms that may be used by your insurance companies, and even your own brokers.
 - “Social Engineering” can turn into “Limited Coverage.”
 - There’s no need to use this invented term.



Examples of Cyber-Specific Coverage

- Privacy Injury Liability
- Privacy Regulatory Proceedings and PCI Fines
- Network and Content Liability
- Crisis Management Fund
- Network Loss or Damage
- Business Interruption
- Electronic Theft
- Network Extortion



Insurance Policies To Keep in Mind

- Errors & Omissions Liability
- Directors & Officers Liability
- Crime
- General Liability/
Umbrella Liability
- Broad Form Property
- Cyber Extensions on FIB/Fidelity
- Specialized Cyber



Public Officials Liability Insurance

- Very different from standard liability insurance
- Designed to protect commissioners, managers, employees and other public officials
- Covers errors and omissions by those acting for ports
- Limitations
 - Deductibles/SIRs often high
 - Exclusions can be broad

But There are Solutions

- Regularly prepare and submit updated proofs of loss.
 - Follow the insurance company guidelines to the letter.
 - Use experts, like loss adjusters, as needed.
- Inform the insurance companies in writing of your timing issues and requirements.
- Notify them of your intent to proceed with repairs.
- Utilize the provisions in many policies that require insurance companies to provide interim reimbursements in undisputed amounts.

Readiness and Emergency Planning

SPEAKER:



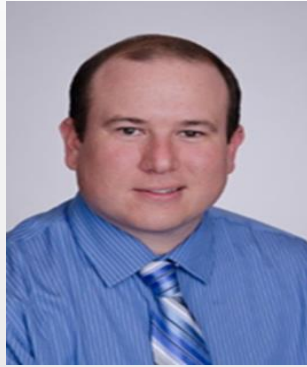
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Ms. Baker is a founding and managing partner of the nationally-recognized commercial litigation and environmental regulatory boutique law firm of Baker • Wotring LLP. Ms. Baker has practiced environmental law for more than 33 years and obtained her law degree from the Georgetown University Law Center, where she received the Magoichi Kato Scholarship Award for Academic Excellence for Japanese American students. She obtained a Bachelor of Science degree, Summa Cum Laude, from the University of Maryland. Baker • Wotring LLP is based in Houston, Texas and is a nationally-certified women and minority-owned firm, holding certifications from NAMWOLF (National Association of Minority and Women-Owned Law Firms), WBENC (Women's Business Enterprise National Council), NMSDC (National Minority Supplier Development Council), MBE (Minority Business Enterprise) from the City of Houston, and is a certified State of Texas HUB (Historically Underutilized Business).

Ms. Baker's practice encompasses the full spectrum of environmental issues, with an emphasis on the handling of difficult and complex multi-party environmental cases, Superfund, environmental regulatory counseling and representation in enforcement, permitting, catastrophic release response, compliance and environmental support in corporate/real estate due diligence and transactional matters. She is an author and editor of the First and Second Editions of the Texas Environmental Law Handbook, published in January 1989 and October 1990 and is a co-author of two other books on environmental law. Ms. Baker has also authored and published more than 50 articles on environmental law, has lectured extensively on environmental legal issues, and has testified in a variety of cases as an expert witness on environmental law in the United States and Canada.

QUESTIONS AND ANSWERS

THANK YOU.



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