

Section 9 - Role of the Private Sector

47. Introduction Governor - James Gilmore

48. Corporate Security - Ron Kelly

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2. Elizabeth Terry and J. Paul Oxer, P.E., Survival Handbook for Chemical, Biological, and Radiological Terrorism (Philadelphia, PA: Xlibris Corporation, 2003).

49. Corporate Crisis Preparedness and Management - Don Schmidt

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2. National Fire Protection Association, NFPA 1600, Standard on Disaster/Emergency Management and Business Continuity Programs (Quincy, Mass: National Fire Protection Association).

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50. Case study: Protecting Soft Sargets - Alan Orlob

51. Preparing People and Organizations for the Psychological Aspects of Terrorism - Mark Braverman

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16. National Institute of Mental Health, Mental Health and Mass Violence: Evidence- Based Early Psychological Intervention for Victims/Survivors of Mass Violence—A Workshop to Reach Consensus on Best Practices (2002).

52. Case Study: Creating a Public-Private Preparedness Community at the County Level William Donnelly

53. Legal Issues for Business in Responding to Terrorist Events William C. Nicholson

1. Public Law 107-296, HR 5005, 107th Congress.

2. William C. Nicholson, ‘‘Integrating Local, State and Federal Responders and Emergency Management: New Packaging and New Controls,’’ Journal of Emergency Management, 1:15 (Fall 2003): 15.

3. HS Act, x01.

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5. Management of Domestic Incidents (28 February 2003);

www.whitehouse.gov/news/releases/2003/02/20030228-9.html

6. U.S. Policy on Counterterrorism (21 June 1995).

7. HSPD 5, x8.

8. Robert Lee Hotz and Gary Polakovic, "America Attacked; Environmental Nightmare; Experts Differ on Peril from Smoke; Health: EPA Says the Cloud Rising from the Ruins Is Not Toxic, but Others Aren't So Sure. Rescuers Are Most at Risk for Possible Ill Effects," Los Angeles Times (14 September 2001): A5. "Those construction workers, firefighters and cops are being very heavily exposed to dust and asbestos. That [exposure] isn't going to end tomorrow; they'll be heavily exposed for weeks and months."

9. Alan Feuer and Michael Wilson, "Its Ranks Depleted, a Weary Fire Department Is Trying to Regroup," New York Times (11 September 2002);

www.firehouse.com/terrorist/911/11_NYTregroup.html

10. Laurie Garrett, "City Struggles to Contend with Widespread WTC Cough," New York Newsday (30 September 2002).

11. See William C. Nicholson, "Legal Issues in Emergency Response to Terrorism Incidents Involving Hazardous Materials: The Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard, Standard Operating Procedures, Mutual Aid, and the Incident Command System," Widener Symposium Law Journal 9:2 (April 2003): 295, 298–300.

12. In 1970, Congress enacted the federal Occupational Safety and Health Act (OSH Act), 84 Stat. 1590 (codified at 29 USC 553, 651–678, 2002). It specifically authorized the secretary of labor to promulgate national health and safety standards. 29 USC 655(a). Occupational Safety and Health Standards 29 CFR 1910.120 (q) (1998) covers employees who are engaged in emergency response to hazardous substance releases no matter where it occurs except that employees engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section are not covered; nor are emergency response organizations that have developed and implemented programs equivalent to this paragraph for handling releases of hazardous substances pursuant to Section 303 of the Superfund Amendments and Reauthorization Act of 1986. Environmental Protection Agency (EPA) 40 CFR 372.18 (1995) deals with the enforcement and compliance guidelines for reporting toxic chemical release and the community's right to know.

13. 29 CFR, x1910.119, deals with preventing or minimizing the consequences of catastrophic release of hazardous materials in an industrial setting.

14. See Federal Emergency Management Agency, United States Fire Administration, Hazardous Materials Response Technology Assessment (2000), which discusses various technologies for control and mitigation of hazmat incidents, including training required for their application.

15. 29 USC, x568, discusses the procedure of issuing a citation to an employer who is in violation of a requirement of Section 5 or Section 6 of OSH Act.

16. 29 USC, x666. A civil penalty assessed on an employer for violation of either an employer's requirements and duties under Section 5 of the OSH Act or any violations of the Occupational Safety and Health Standards under Section 6.

17. 29 USC, x666, describes a serious violation as existing in a place of employment if there is a substantial probability that death or serious physical harm could result from an existing condition, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use.

18. Ibid.

19. Ibid.

20. Ibid.

21. See, e.g., *Meridian Insurance Company v. Zepeda*, 734 NE 2d 1126, 1130–1131 (Ind. App. 2000).
“ . . . A criminal conviction may be admitted in evidence in a civil action and may be conclusive proof in a civil trial of the factual issues determined by the criminal judgement.”

22. “Note: Administrative Law—Occupational Safety and Health Act—on Multiemployer Jobsite, When Employees of Any Employer Are Affected by Noncompliance with a Safety Standard, Employer in Control of Work Area Violates Act; Employer Not in Control of the Area Does Not Violate Act, Even If His Own Employees Are Affected, Provided That the Hazard Is Nonserious,” *Harvard Law Review* 89 (1976): 793, 796.

23. “Lawsuits Stemming from WTC Attack Could Cost City Billions,” *New York News* (8 February 2002).

24. John M. Barkett, “If Terror Reigns, Will Torts Follow?” *Widener Symposium Law Journal* 9:2 (April 2003): 486, 500–1.

25. See *Morgan v. Bucks Associates*, 428 F. Supp. 546, 549 (ED Pa. 1977).

26. Benjamin Weiser and Claudia H. Deutsch, “Stringent Measures Gather Dust, Experts Say,” *New York Times* (16 August 2004): B-1. “Without question, many companies after 9/11 took serious steps, some quite ambitious and costly, to protect their employees and their assets. Gregg A. Popkin, senior managing director of CB Richard Ellis Inc., which manages about 115 commercial buildings in the metropolitan area, says landlords in those buildings have spent a combined \$50 million on scanners, turnstiles and other measures in the past three years. . . . But there is much that has not changed all that dramatically. Plans that were drawn up were shelved, security machines put in place have been taken out, and computer security remains far from perfect.”

27. For NIMS and related information see

www.fema.gov/nims/

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28. For NFPA 1600 (2004 Edition) see

www.nasttpo.org/NFPA1600.htm

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29. 9/11 Commission Report, p. 398.

30. NFPA 1600, x5.7.2.

31. 9/11 Commission Report, p. 398.

32. S.2774, 9/11 Commission Report Implementation Act (introduced 7 September 2004). Additional bills have been

introduced in the House of Representatives.

33. S.2774, x806, Private Sector Preparedness.

34. NFPA 1600, x5.2.1.

35. See Ken Lerner, "Governmental Negligence Liability Exposure in Disaster Management," *Urban Lawyer* 23 (1991): 333.

36. See William C. Nicholson, "Litigation Mitigation: Proactive Risk Management in the Wake of the West Warwick Club Fire," *Journal of Emergency Management* 1:2 (Summer 2003).