

When “it” Hits the Fan: Legal Considerations in Emergency Management



January 2010

Presented by Randi Wind Millap, General Counsel
Wisconsin Department of Military Affairs
(608) 242-9072 | randi.windmillap@wisconsin.gov



Municipal Responsibilities

- Include:
 - First line of response in emergencies and disasters
 - Decision-maker(s) in emergency
 - Bear the responsibility for how the municipality survives the disaster (or not)
 - Protect and provide for safety, welfare, and good order



Powers and Duties: Counties and Municipalities

- §323.14 Stats. requires that each county board:
 - Develop and adopt an emergency management plan and program that is compatible with the state plan of emergency management
 - Designate a:
 - Head of emergency management
 - Committee of the board as a county emergency management committee

**Powers and Duties:
Head of Emergency Management**

- §323.15 Stats. requires that the head of emergency management:
 - Coordinate and assist in developing city, village, and town emergency management plans
 - Integrate the plans with the county plan

Municipal Cooperation

- Counties, towns, and municipalities may under §66.0301 furnish services, combine offices, and finance emergency management services
 - See 323.14(2) Stats.

Role of the State

- §323.01(1) Stats. states:
 - “The role of any state agency... is to assist local units of government and local law enforcement agencies in responding to a disaster or the imminent threat of a disaster.”

Disaster Response Planning



Disaster Response Planning: Poor Response Planning

- Flaws in the plan
 - No plan
 - Incomplete plans without implementing standard operating procedures (SOPs)
 - Obsolete plans
 - Plans based on unrealistic assumptions
 - Plans based on non-existent resources

Disaster Response Planning: Poor Response Planning, cont'd.

- Response that exceeds training level
- Response that exceeds liability coverage
- No plan for dealing with time delays in backup response
- Decision-makers do not understand plan

Standard of Care

- Is the decision-maker...
 - Authorized by statute, resolution, or ordinance?
 - Acting in an official capacity?
- Was the action reasonable under the circumstances?
- Was there any malicious intent on the part of the decision-maker?

Standard of Care, cont'd.

- Decision maker must act and set policy that is reasonable under the specific circumstances
 - Reasonable is defined as conformance to what is legally required (i.e. standards)
 - Reasonableness is determined by
 - Foreseeability
 - Magnitude of Risk
 - Cost Benefit

When disaster strikes...



...who is in charge?

Home Rule Considerations

- What is home rule?
- Multiple municipalities?
- Federal authorities?
- Use of incident command system
 - See 323.15(1)(a) Stats.

Emergency Declarations



Other Considerations

- Availability of authorized position
- Line of succession
- Delegation of authority

Who can declare an emergency?

- Must be duly authorized by...
 - Statute
 - Local ordinance
 - Local resolution
 - Designation

Scope of Authority

- Is the decision-maker authorized by statute, resolution, or ordinance?
- Is the decision-maker acting in an official capacity?
- Was the action reasonable under the circumstances?
- Any malicious intent on part of decision-maker?

How is it Accomplished?

- By ordinance or resolution
- By proclamation, followed by resolution if governing body is unable to meet promptly
- What if not ratified? See 323.14(4)(b), Stats.

Proclamation Advantages

- Social controls
 - Curfews
 - Evacuation
 - Travel/entry restrictions



- “Whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property...”(see §323.14(3) & (4) Stats.)

Proclamation Advantages, cont’d.

- Securing of resources
- Seizure of equipment (not operator)
- Requesting state resources (i.e. Wisconsin National Guard)

Proclamation Advantages, cont’d.

- Suspension of permits
- Suspension of price controls
- Emergency purchasing and contracting
 - By ordinance or resolution
- Emergency hiring
 - By ordinance or resolution

Proclamation Advantages, cont'd.

- Public work repair and reconstruction over \$20,000 is not required to be let by contract if the public health and welfare are endangered
 - By resolution

Duration of Emergency

- Local level: limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist (§323.11, Stats.)
- State level: No longer than 60 days, unless extended by legislative joint resolution (§323.10, Stats.)

Further Considerations

- Emergency temporary location of government (see §323.52 Stats.)
- Compliance with open meetings law (see § 323.52(2) Stats.)
- Dealing with the media and public

Evacuation Considerations

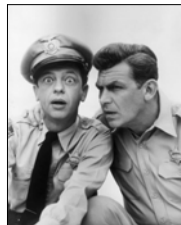


Police Power of the Fire Chief

- Suppress disorder and order persons to leave a fire or first aid scene
- Enter property and premises to do what is necessary to extinguish fire or aid persons at first aid scene
- See §213.095 Stats.

Peace Maintenance

- §59.28 Stats. provides:
 - “Sheriffs..., undersheriffs, and deputies... shall keep and preserve the peace... and quiet and suppress all affrays, routs, riots, unlawful assemblies, and insurrections...”



Forcible Evacuations

- Carefully weigh individual's constitution rights versus safety
- A political decision
- Seek creative solutions



Creative Solutions

- Emergency detention (Chapter 51)
- Emergency protective placement (Chapter 55)
- JIPS and CHIPS
- Release
- “Ciardo” solution

Mass Evacuations

- Is it realistic to evacuate all persons?
- Shelter-in-place options
- Vulnerable populations and special facilities
- Homeless and transient populations



Mass Evacuations, cont'd.

- Pet rescue: the three Ps
- Evacuation impacts from other states
- Evacuee considerations
- Securing safety perimeters
- Safe return to evacuated areas



Attractive Nuisance Considerations

- Roped off or unguarded spill areas may be attractive to the curious



Miscellaneous Considerations

- Vicarious liability
- Actions of volunteers may be beyond the scope of the “Good Samaritan” law
- Injuries to volunteers
- Sign-up sheets

Constitutional Considerations

- 1st Amendment – speech, assembly, and association
- 4th Amendment – searches and seizures
- 8th Amendment – excessive use of force
- 14th Amendment – due process and equal protection

Recent Thoughts

- Regionalized mutual aid and MABAS
- Practical mass evacuation plans
- Early identification of special populations
 - Communication issues
- Improve volunteer management capabilities
- Donation management plan

The Bottom Line

- Exercise sound and reasonable judgment
- Make decision with an appreciation of legal considerations
- Follow your unique standard of care
- Document, document, document!

Questions or Comments?

Thank you for your time and attention!