Workshop DD
Best Management Practices ... Disaster Prevention & Response

Wednesday, March 28, 2018
8:00 a.m. to 9:15 p.m.
Zane Hatahet practices in Dickinson Wright’s Corporate Department. Mr. Hatahet advises on matters involving securities regulation, corporate finance & governance, banking, and mergers & acquisitions. In addition, Mr. Hatahet, who was born in Detroit and spent part of his childhood growing up in Dubai, has a keen interest in energy law and environmental law. Prior to joining Dickinson Wright, Mr. Hatahet attended the University of Michigan Law School, where he gained experience working as a student attorney for the Unemployment Insurance Project, Environmental Law Clinic, and Low Income Taxpayers Clinic, and as a research assistant for J.J. Prescott, for whom he did research primarily regarding law & economics. He served as a Judicial Intern for Judge Julian Abele Cook, Jr. in Detroit in summer 2013, and he worked in-house at Marathon Petroleum Corporation in summer 2014. Last year, Mr. Hatahet participated in the MEC Symposium and presented on the subject of “zero waste.”

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Tom started his career as an accountant at the corporate headquarters of Ingersoll Rand Company in Woodcliff Lake, New Jersey in 1982. In 1985 Tom joined Waste Management as Division Controller for their Baltimore, Maryland operation. In 1988 Tom assumed financial analysis and reporting responsibility for WM’s lawn care and pest control operations in Michigan, Ohio and Kentucky. In 1991, Tom returned to the solid waste operations of WM, serving as Region Financial VP of the Eastern Region, leading the financial and accounting staff of operations located in the Mid-Atlantic region and central and western Pennsylvania.

Tom moved into operations management at WM’s North Jersey division in 1995. In 1998, Tom assumed a Business Development role at WM’s Southern Group office in Atlanta, Georgia, covering the southeastern United States. In 1999 Tom relocated to Orlando, Florida where he has assumed various operations management, sales & marketing management, business development and market planning roles for WM’s operations in Florida.

Tom is a graduate of Loyola College in Maryland with a B.A. in Accounting.

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Ms. Newlon has been assisting companies for over 25 years in evaluating the environmental issues associated with their operations. She oversees environmental risk management in multi-million dollar purchase, merger and financing transactions; chairs Superfund PRP Groups; serves as environmental crisis counsel on significant fire and spill incidents; and is national environmental audit counsel for chemical and manufacturing companies. She says that her degree in chemistry just helps her to properly pronounce the chemical names she works with every day, but she uses it to communicate most effectively with technical employees, consultants, expert witnesses and regulators. She holds a Bachelor of Science degree in chemistry from the University of Detroit and a JD from Notre Dame Law School.
Workshop DD
Best Management Practices:
Disaster Prevention & Response

2018 MEC Presentation
Sharon Newlon & Zane Hatahet (Dickinson Wright)
Tom Crummy (Waste Management, Inc.)
Overview of “Disaster Preparedness”: Basic Concepts

- Disaster preparedness covers all measures a company can take across all categories of risk (for which there are material incentives to prevent catastrophic outcomes).
- From fires to tornadoes to hurricanes to earthquakes to unauthorized personnel (e.g., gunmen or terrorists) to cyber-threats, the potential risks to a company can vary greatly.
- A good disaster plan and good preparation (training) can markedly distinguish the outcome for two nearly identical companies facing identical risks.
Overview of Problems and Causation

• LOCATION:
  • On-site physical facilities may be affected
  • On-line facilities / platforms may be affected
  • Off-site suppliers may be affected

• PRIMARY CAUSE
  • Some disasters occur without any human intervention or cause, per se, like in the case of a flood or earthquake
  • Some disasters are caused by accidents/errors in the workplace
  • Some disasters are caused by the intentional actions of those trying to create damage or chaos.
Overview of Problems and Causation, Continued

- **HUMAN ELEMENT:**
  - Whether and how humans prepare for and respond to natural disasters often dictates the extent and duration of problems caused by such events. Good infrastructure, good planning and good training improve outcomes when such extreme weather events occur.
  - Good planning and training is also essential in anticipating and responding to physical disasters arising from human error or direct human activity, like fires or security breaches (e.g., a break-in or shooting). Again, these types of events are probably impossible to stop fully, but good protocols can minimize damage.
  - Virtual disasters, such as computer viruses and phishing attempts are generally caused by humans who may have no direct connection to a target company. Cyber problems can start with computer systems, but can result in failures in physical systems (causing physical disasters) and undermine customer relations. Anticipating and taking precautions to prevent and respond to virtual disasters can minimize these negative outcomes.
Why “Disaster Preparedness” Matters: Benefits and Incentives

• Money – Loss of time and materials for lack of preparedness / payment of unnecessary expenses and penalties
• Reputation - potential loss of customer loyalty and trust / investor actions / governmental agency scrutiny / bad press
• Lives – At worst, even the “smallest” disaster (e.g., a fire affecting only a single room in a large facility) can cause injuries and even loss of life
• Alternate Outcomes – With the right plan, an inchoate / nascent emergency that would otherwise grow into a disaster can be managed
Disaster Preparedness: Examples of Companies & Outcomes

**GOOD**
- Marathon Petroleum Company & Gary, IN Tornado
- Google Chrome and “White Hat” Hacking
- The “Northeast Blackout” of 2003 (Consumers Energy, DTE, etc.)
- U of M and the “I’m Sorry” Policy with Surgery Accidents

**BAD**
- Deepwater Horizon and the Oil Spill of 2010
- Various Commercial Retailers in “Superstorm” Sandy
- Automotive Recall Disasters (Takata and Air Bags, GM and Ignition Issues, and Toyota and Unintended Acceleration)
- Bridge Collapses (e.g., the I-35W Mississippi River Bridge)
The Signs & Scope of a Good Plan

1. **Flexibility (If an Aspect of the Plan Fails, Is Recuperation Possible)**

2. **Practicality (Does the Plan Keep Logistics, Cost, and “Executability” in Mind)**

3. **Repeatability (Can Results Work for Everyone and Can Anyone Repeat-Back a Plan from Memory)**

4. **Improvability (Does the Plan / Management Acknowledge and Embrace Changes and Modifications Informed by Past Disasters)**
Preparing for a Storm Event

Hurricane Irma 2017

Tom Crummy
Director of Market Planning & Development
Waste Management Inc. of Florida

March 28, 2018
Preparing for a Storm Event
Waste Management Florida Area

Covers bulk of the Florida peninsula from Tallahassee to Key West

- 66 operating sites
- 3,600 employees
- 2,200 collection routes
- Local operations manage daily operations
- Area office in Pompano Beach provides support services to sites (EH&S, Legal, Finance, Sales & Marketing, etc.)
- Corporate office in Houston, TX provides additional support services to the Area.
Preparing for a Storm Event

A Look Back - 2004 and 2005 Hurricanes

Over two years Florida impacted by numerous hurricanes

- Charley, Dennis, Frances, Jeanne and Wilma
- Gulf Coast facilities impacted by Katrina
- Preparation and response was a local exercise
- Exposed the need for a systemic approach to preparation and response to a storm event.

• Corporation developed a standard template for implementation at each site to address preparation and recovery of:
  - Employee safety and communication pre and post storm
  - Service delivery to our customers - prioritize key customers
  - Prepare and protect physical assets

• Draws resources from throughout the enterprise
Preparing for a Storm Event

WM’s Systemic Approach to Storm Preparation

Preparation and Response template includes:

• Seven day pre-storm countdown
  - Tasks for each day addresses tasks including:
    • Communicating with customers on service capabilities pre and post storm
    • Preparing our employees with identification badges, communication plan
    • Hardening facilities to prepare for storm

• Supplies stored and ready for deployment
  - Generators, MRE’s, water, ice, reefer trailers

• Coordinate with procurement on other key items:
  - Fuel, hotel rooms, satellite phones

• Daily calls with operating sites to identify needs and deploy resources
Preparing for a Storm Event

WM’s Systemic Approach to Storm Preparation (cont.)

Preparation and Response template includes:

• Post storm tasks
  - Local management team secures facility and identifies any safety issues
  - Update employee communications to convey report to duty instructions
  - Coordinate activities with local Emergency Management officials
  - Prioritize customer service delivery and communicate accordingly

• Daily calls with operating sites to identify needs and deploy resources to re-establish service delivery

• Identify employee needs
Preparing for a Storm Event
Hurricane Irma September 2018

Hurricane Irma a Large Storm That Impacted All Facilities:
• Some facilities as little as water incursion
• FL Keys facilities devastated

• Implemented and followed our preparation and response plan
• All facilities up and running within four days after the storm passed
Preparing for a Storm Event

Takeaways from Irma

• Familiarize and dry-run the storm preparation plan prior to the start of hurricane season
• Make sure your employees have time to address their personal needs - they have family and home preparations
• Communicate with your customers - let them know current service capabilities
  - Call centers will be overwhelmed pre and post storms
  - Utilize internet and social media to communicate with customers
• Internal communication - daily calls are invaluable to manage internal preparations and post-storm response:
  - Keep calls fact-based and concise
  - Remember that local managers are running the business in addition to preparing and responding to the storm event
Preparing for a Storm Event

Questions?
Best Management Practices: Disaster Prevention & Response

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Are disasters really increasing, or is it just the coverage?

- Increases in extreme weather patterns attributed to climate change
- Increased demand on rail and other transportation corridors with aging infrastructure
- Increased dependence on technology
- Increased reliance on leaner and temporary staffs
- Increased scrutiny by government, public, investors
Phases of Emergency Management

- Mitigation
- Preparedness
- Response
- Recovery
Mitigation
Mitigation

• Understand the risks associated with your operations
• Mitigate those risks before a disaster strikes
  – Establish site security protocols
  – Purchase flood and fire insurance
  – Maintain off-site access to critical information
  – Keep hazardous materials containerized
  – Acquire appropriate response equipment
• Mitigate damage after a disaster strikes
  – Evacuations to prevent exposure to risks
Preparedness

Planning

Training

Communicating
“Bye, dear. Try not to spill anything.”
Common emergency response plans

- EPRCA Tier II Emergency Response Plans
- CAA Risk Management Plans
- CWA/OPA Spill Prevention Control and Countermeasures Plans (SPCC)
- CWA Stormwater Pollution Prevention Plans (SWPPP)
- RCRA Hazardous Waste Contingency Plans
- RSPA Pipeline Response Plans
- DOT Hazmat Security Plan
- Homeland Security Facility Site Security Plan
- Fire Response and Evacuation Plans
Common elements of plans

- Facility information
- Training requirements
- Prevention and response procedures & equipment
- Identification of personnel primarily responsible for implementing plan
- Notice requirements
- Updating requirements
- Recordkeeping requirements
Other elements that may be included

- Plan certification
- Secondary containment
- Drills (in addition to training)
- Site security provisions
- Exposure modelling
- Evacuation plans
- Availability of medical treatment
- Establishing priorities for recovery efforts
Training

- Drills
  - Do the plans work in simulated exercises?
  - Do the responsible personnel have access to the information and equipment they need to respond?
  - Do other personnel understand their roles?
  - Are third-party responders involved? (private and public)
- Are plans readily available and sufficiently clear?
- Is training frequent enough to prepare new staff?
“You’re fine. Keep going.”
Communication

• Has critical information been shared with first responders?
• Have I identified and summarized time critical reporting obligations in advance? (15 minutes)
• Have I identified personnel responsible for communications with the government, neighbors, and the media?
• Have I taken steps to protect confidential business information?
Response
Response

- First focus – life and safety
- Alert emergency responders
- Implement plans and security protocols
- Secure vital information, equipment, materials
- Document communications with government response authorities
- Preserve communications, potential evidence
Recovery
Recovery

- Establish priorities for restoration of workplace
- Communicate with employees re: resumption of work
- Confirm safe working conditions have been established
- Preserve evidence of incident and response
- Confirm any additional legal requirements
- Establish protocols for evaluating potential causes, preparedness and response
Legal Perspectives
“Now repeat after me, ‘I cross my heart and hope to die.’”
Legal perspectives on follow up

• Responding to governmental requests for inspection and information
  - What is agency’s interest and authority?
  - What is potential outcome – report, enforcement?
  - Centralized point(s) of contact
  - Communications with employees
  - Requiring requests for information to be in writing
  - Reviewing documents for privilege/CBI
  - Maintaining copies of information, samples, photos
Legal perspective on follow up (cont.)

- Authorization to conduct secondary response
  - Cleaning, emptying piping
- Maintaining evidence and communications
  - Capturing snapshot data/metering/video
  - Exercise control similar to NTSB after plane crash
- Conducting inquiries as to cause of incident
  - Non-privileged root cause analysis
  - Privileged inquiry in anticipation of litigation
  - Separate teams?
Lessons Learned
Lessons learned

- Don’t keep your only copy of response plans on-site
- Don’t rely on call to fire department as panacea
- Train employees on proper chain of command for incident reporting
- Have blank reporting forms available to focus information collection and track reporting
- Update reports as information develops
- Don’t forget to consider other all potentially affected authorities (e.g., POTW)
Lessons learned (cont.)

• Check credentials of emergency response contractors
• Governmental authorities are coordinating more on inspections, incident response
  - Information provided to OSHA will be shared
• Government follow ups may find more culpability in response than in initial incident
  - Deepwater case – destruction of evidence in deletion of personal e-mails and hypothetical modelling
  - When in doubt, preserve e-mails (argue privilege later)
Lessons learned (cont.)

- Government focus may be more on why an incident was allowed to happen and who did what, rather than on how the incident actually happened
  - Focus on corporate risk culture, what is rewarded
- Government view of cooperation is shifting
  - From – prompt, cooperative, good attitude
  - To – heavy burden on explaining incident, identifying weaknesses, doing engineering, preserving data
- New risks may require thinking outside the box
“Gee, you mean that’s it? ‘Go, and sin no more’?”
Resources

• Developing and Maintaining Emergency Operations Plans, FEMA 2010

• Emergency Preparedness Resources for Businesses, FEMA
  https://www.fema.gov/media-library/resources-documents/collections/357

• Vital Records and Records Disaster Mitigation and Recovery, National Archives 1999
  https://www.archives.gov/records-mgmt/vital-records

• IT Disaster Recovery Planning, Ready.gov
  https://www.ready.gov/business/implementation/IT