

## CHAPTER 18

### LEGAL

#### 18-1 GENERAL

The occurrence of a nuclear weapon accident will present a myriad of complex legal problems for the On-Scene Commander (OSC) of the Initial Response Force (IRF) and the Service Response Force (SRF). The OSC represents the U.S. Government to the general public, state, and local officials, the Executive departments, and other federal agencies. Legal issues range from complex questions regarding jurisdiction and authority to exclude the general public from specific areas, to payment of simple personal property claims. The response force organization should include a legal element to advise and assist the OSC in resolving these issues. The Senior military member of the legal element responding with the staff of the OSC is the Department of Defense (DoD) Principal Legal Advisor (PLA) to the OSC.

#### 18-2 PURPOSE AND SCOPE

This Chapter identifies specific requirements, resources, and actions to resolve legal issues. Also it provides a reference list of statutory authorities, regulations, and instructions.

#### 18-3 SPECIFIC REQUIREMENTS

The PLA will:

- a. Advise the OSC and functional staff elements on any matters related to the accident.
- b. Organize and supervise the legal functional element at the site of the accident, including establishing and operating a claims processing facility.
- c. Coordinate technical legal matters with a higher authority when required.
- d. Coordinate legal issues with the principal legal advisors of other participating departments or agencies as required.
- e. Provide legal advice and assistance to other Federal officials upon request.

- f. Review operational plans to identify potential legal problems and to ensure that they are legally sufficient, with emphasis on security, radiological safety, and documentation of factual evidence for use in resolving claims or in litigation.

- g. Review proposed public statements for legal sufficiency and implications.

#### 18-4 RESOURCES

- a. The provision of timely and sound legal advice and assistance is dependent upon adequate personnel and communication among functional elements. The designated legal element of the SRF response force should include, at a minimum, two attorneys and one legal clerk. The legal element of the IRF response force should remain at the site as an additional resource. Depending upon the nature of, and circumstances surrounding an accident, additional personnel may be required. Predesignated response forces should ensure that the assigned legal element is aware and capable of addressing the complex and politically sensitive national defense *issues* which evolve from a nuclear weapons accident as well as managing and administering a claims processing facility.

- b. Other Federal Departments and Agencies may include a legal advisor as an element of their response force. To assure consistency, all legal advice and assistance **should** be coordinated jointly through the DoD PLA.

- c. The General Counsel, Defense Nuclear Agency (DNA), is a member of the DNA Advisory Team (DNAAT), and will deploy to the accident site to provide expert advice and assistance to the PLA.

#### 18-5 CONCEPT OF OPERATIONS

This concept establishes guidelines for the operation of the PLA and his or her staff. Circumstances surrounding an accident are the driving force of the sequential order.

“ a. Planning. The PLA must be knowledgeable concerning the authority and responsibility of the DoD

as well as that of the various other Federal departments and agencies in a nuclear weapon accident. Inherent in this event are the relationships between local, State, national, and international authorities, as well as jurisdictional principles, security requirements, and claims administration. Inasmuch as requests for legal advice require immediate response, and adequate research facilities are unlikely to be available on-site, designated legal elements should prepare a handbook of references, including those listed at Appendix 18-A. These references provide the authority and some background for subject areas, such as establishment of the National Defense Area (NDA), law enforcement, use of force, evacuation of civilians, and damage to public or private property. The handbook should be tailored to the respective Service or Agency.

#### b. Initial Actions

(1) The OSC and staff must have immediate access to the PLA; accordingly, the legal element should be located in or near the operations center/command post.

(2) The provision of timely and legally sound advice and assistance is based primarily upon communication; therefore, liaison must be established with all of the major functional elements of the OSC's staff to make all elements aware of the need for coordination of planned actions.

(3) The claims processing facility should be established at a location easily accessible to the public and mutually agreeable to local officials. Dependent upon circumstances, more than one claims facility may be required. When possible, the claims processing facility should be collocated with the civil emergency relief and assistance office. As soon as the claims processing facility is established, information regarding the location should be provided to the Joint Information Center (JIC) for inclusion in a news release.

(4) Claims processing personnel should be aware of the sensitive nature surrounding the accident. The PLA ensures that any information provided to claimants is according to established policies, and that queries for any information other than claims procedures are referred to the Public Affairs Officer (PAO).

(5) Response efforts may necessarily result in the disturbance and/ or destruction of physical evidence which may prove later to be significant in resolution of claims or litigation. Accordingly, the PLA should take immediate action to ensure preservation of factual and evidentiary information for both safety investigations and claims resolution. This includes photographs and/ or videos, interviews with witnesses, documentation of radiological hazards and safety procedures, identi-

fication of responding forces and civilians at or near the accident scene, and appropriate recording and receipting of property.

(6) The PLA must identify and establish liaison immediately with local law enforcement officials, legal authorities, and local and state emergency response organizations.

(7) To ensure that legal advice is timely, responsive, and consistent, the PLA should establish liaison with legal advisors representing other federal agencies at the accident site.

c. Follow-on Actions. The PLA, or a representative remains at the scene until the response operation is complete. The PLA advises the OSC when the claims processing facility should cease operation.

d. Public Affairs. Adverse publicity is inherent to a nuclear weapon accident simply by its occurrence. Mishandling of public affairs may impact on claims and litigation, result in a loss of confidence by the public in the actions of the U.S. Government in the cleanup process, or have long-term political and financial implications that could undermine support for the nation's nuclear deterrent capability. It is therefore essential that:

(1) Public statements are coordinated prior to release to ensure that no hidden legal implications will impact on response efforts.

(2) All personnel involved in the response effort are required to refer all queries for information to the PAO.

## 18-6 ACCIDENT RESPONSE PLAN ANNEX

Accident response plans should include a Legal Annex which:

a. Identifies the resources to be deployed with the legal element.

b. Provides a checklist or synopsis of the actions to be taken by the PLA immediately upon arrival at the site.

c. Establishes a policy requiring all functional elements to coordinate actions with the PLA.

d. Provides guidelines for documentation of physical evidence which may be significant in "the resolution of claims or litigation.

e. Describes procedures for establishing and operating a claims processing facility.

f. Identifies technical channels of communication.

## **APPENDIX 18-A**

### **PERTINENT STATUTES AND INSTRUCTIONS**

#### **AUTHORITY FOR RESPONSE TO ACCIDENT**

1. Executive Order (EO) 12656, "Assignment of Emergency Preparedness Responsibilities."

2. White House Memorandum, 19 January 1988, Subject "National System for Emergency Coordination."

3.42 U. S.C.A. Sec. 5121 et. seq., (Public Law 93-288, amended by Public Law 100-107), "The Robert T. Stafford Disaster Relief and Emergency Assistance Act."

4. EO 12148, "Federal Emergency Management."

5. EO 12241, "National Contingency Plan."

6. 50 Fed. Reg. 46542, "Federal Radiological Emergency Response Plan (FRERP)."

7. DoD Directive 5100.52, "DoD Response to an Accident or Significant Incident Involving Radioactive Materials."

8. DoD Directive 3025.1, "Use of Military Resources During Peacetime Civil Emergencies Within the United States, Its Territories, and Possessions."

9. DoD Directive 5230.16, "Nuclear Accident and Incident Public Affairs Guidance."

10. DoD Directive 5410.14, "Cooperation with U.S. News Media Representatives at the Scene of Military Accidents Occurring Outside Military Installations."

#### **AUTHORITY TO ESTABLISH RESTRICTED AREA TO PROTECT CLASSIFIED INFORMATION**

1. 50 U. S.C.A. Sec. 797, "Security Regulations."

2. 42 U. S.C.A. Sec. 2271, "General Provisions."

3. DoD Directive 5200.8, "Security of Military, Installations and Resources."

4. DoD Directive 5210.2, "Access to and Dissemination of Restricted Data."

5. DoD Directive 5210.41, "Security Criteria and Standards for Protecting Nuclear Weapons."

6. DoD Directive 5210.56, "Use of Force by Personnel Engaged in Law Enforcement and Security Duties."

#### **CRIMINAL STATUTES**

1. 18 U. S.C.A. Sec. 111, "Assaulting, Resisting or Impeding Certain Officers or Employees."

2. 18 U. S.C.A. Sec. 231, "Civil Disorders."

3. 18 U. S.C.A. Sec. 241, "Conspiracy Against Rights."

4. 18 U. S.C. A. Sec. 245, "Federally Protected Activities."

5. 18 U. S.C.A. Sec. 372, "Conspiracy to Impede or Injure Officer."

6. 18 U. S.C.A. Sec. 641, "Public Money, Property or Records."

7. 18 U. S.C.A. Sec. 793, "Gathering, Transmitting, or Losing Defense Information."

8. 18 U. S.C.A. Sec. 795, "Photographing and Sketching Defense Installations."

9. 18 U. S.C.A. Sec. 796, "Use of Aircraft for Photographing Defense Installations."

10. 18 U. S.C.A. Sec. 797, "Publication and Sale of Photographs of Defense Installations?"

11. 18 U. S.C.A. Sec. 831, "Prohibited Transactions Involving Nuclear Materials."

12. 18 U. S.C.A. Sec. 1361, "Government Property or Contracts."

13. 18 U. S.C.A. Sec. 1362, "Communication Lines, Stations or Systems."

14. 18 U. S.C.A. Sec. 1382, "Entering Military, Naval or Coast Guard Property. "

15. 18 U. S.C.A. Sec. 1385, "Use of Army and Air Force as Posse Comitatus. "

a. 10 U. S.C. A. Sec. 331, "Federal Aid for State Governments. "

b. 10 U. S.C.A. Sec. 332, "Use of Militia and Armed Forces to Enforce Federal Authority."

c. 10 U. S.C.A. Sec. 333, "Interference with State and Federal Law."

16. 18 U. S.C.A. Sec. 2101, "Riots."

17. 18 U. S.C.A. Sec. 2231, "Assault or Resistance."

18. 18 U. S.C.A. Sec. 2381, "Treason."

19. 18 U. S.C.A. Sec. 2384, "Seditious Conspiracy."

#### **AUTHORITY OF FEDERAL BUREAU OF INVESTIGATION**

1. 18 U. S.C.A. Sec. 3052, "Powers of Federal Bureau of Investigation."

2. 42 U. S.C.A. Sec. 227 l(b), "General Provisions."

#### **AUTHORITY FOR MILITARY ACQUISITION OF LAND AND JUST COMPENSATION FOR PROPERTY**

10 U. S.C. A. Sec. 2672a, "Acquisition: Interests in Land When Need is Urgent. "

Amendment V - Constitution

#### **AUTHORITY FOR PAYMENT OF CLAIMS**

1. 10 U. S.C.A. Subset. 2733-2737, "Property Loss; Personal Injury or Death: Incident to Noncombat Activities of Department of the Army, Navy or Air Force."

2. 28 U. S.C.A. Sec. 2672, "Administrative Adjustment of Claims. "

#### **NATIONAL ENVIRONMENTAL POLICY**

1. 42 U. S.C.A. Sec. 4321, et. seq., "National Environmental Policy Act."

2. 42 U. S.C.A. Sec. 9601 et. seq., "Comprehensive Environmental Response, Compensation, and Liability Act of 1980."

3. EO 11514, as amended by EO 11991, "Protection and Enhancement of Environmental Policy. "

4. EO 12580, "Superfund Implementation."

5. DoD Directive 5100.50, "Protection and Enhancement of Environmental Policy. "

6. DoD Directive 6050.1, "Environmental Effects in the United States of DoD Actions."

#### **MISCELLANEOUS**

1. 5 U. S.C.A. Sec. 552, as amended, "Freedom of Information Act."

2. 5 U. S.C.A. Sec. 552a, as amended, "privacy Act."

3. 5 U. S.C.A. Sec. 552b, "Government in Sunshine Act."