

Incorporating volunteer resources

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Volunteers are a vital resource for emergency management. Properly managed, they can prove to be a key element in the successful response to an emergency situation. Their contributions are particularly important when funding for many types of preparedness and response activities is shrinking as terrorism becomes the obsession of our national leadership. A number of legal issues may arise in connection with the utilization of volunteer resources.

WHO IS A VOLUNTEER?

The first question that must be addressed is the definitional issue—who is a volunteer? The answer is more complex than it might seem. One does not become a volunteer by simply showing up at the scene of an event. Rather, a person must be a member of an accredited organization or an integrated member of the emergency response team.

INCORPORATING VOLUNTEERS

The most important step that can be taken to prevent liability with regard to volunteers is properly integrating them into the emergency management team. This may be done in a couple of ways. The best approach is to establish ongoing relationships with the major volunteer groups prior to a crisis. Like other emergency response groups, volunteer organizations need to be included in planning, training, and exercising. Their role should be clearly spelled out in the plan. Typically, the parent organization takes

care of assuring that the individual volunteers are properly trained and provides them with the necessary documentation so they can be appropriately identified at the scene of an event. This removes a significant administrative burden from the incident commander (IC) during an event.

EMERGENT VOLUNTEERS

One of the IC's biggest headaches may be the crowd of well-meaning emergent volunteers that often congregates at the scene of an event. These folks are frequently not affiliated with the groups with which the unit of government has existing mutual aid agreements. They may or may not be trained responders.

One of the IC's major duties is scene control. The IC controls all personnel on and their actions at the scene. When trained responders arrive as the pre-arranged outcome of a mutual aid agreement, they can be a very useful addition of resources. Unfortunately, emergent responders will turn up at the location individually or as a group, despite not being asked for or even being actively discouraged. This happened both in New York and at the Pentagon after the 9/11 strikes.¹ When this happens, the IC must demonstrate decisiveness and tact to maintain control of the site.

One of the first responsibilities for an IC is the clear definition of a perimeter, which should be controlled by law enforcement.² People trying to come

into the perimeter without proper permission must be prevented from doing so and moved to a distant staging area.³ There, a potential volunteer's training and capabilities can be assessed and their proper role, if any, can be assigned. In the event that they are found to be trained responders with needed skills, a record of the assessment must be made. They can then be officially added to the roster as approved responders. Taking these steps will protect the emergency management and emergency response entities from liability, as it shows that they are taking reasonable steps to determine the competencies of the volunteers. Of course, there is an associated duty of assigning the volunteers to duties for which they are qualified.⁴

THE VOLUNTEER PROTECTION ACT OF 1997

Many members of Congress believe that the possibility of litigation may lessen the likelihood of people volunteering for public service. In response, they enacted the Volunteer Protection Act (VPA) of 1997 to make available statutory immunity to increase the labor pool for voluntary entities.⁵ The VPA pre-empts state laws providing higher levels of liability for volunteers than gross negligence. States may opt out of the VPA. In addition to shelter from negligence lawsuits, punitive damages may not be awarded against a volunteer acting within the scope of his/her responsibilities to a nonprofit organization, even when that volunteer is negligent or grossly negligent. The immunity does not apply to the volunteer's organization.

Notably, VPA does not exempt volunteers from liability for any harm caused while driving a motor vehicle. This exclusion is important, since research indicates that half the claims involving emergency response organizations arise from vehicle accidents. While the VPA alters the basis for a lawsuit, it probably

does not affect administrative actions taken on a negligence basis. Laws that name negligent conduct endangering persons as the basis for administrative penalties therefore continue to be valid.

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REFERENCES

1. See, e.g., Barry D: The Search: A Few Moments of Hope In a Mountain of Rubble. *New York Times*. Sept. 13, 2001. "There were volunteers everywhere, arguably more than were needed."
2. Brunacini AV: *Fire Command*. NFPA: 22. Police represent the community agency with the authority and ability to directly control the location and activity of the general public at an emergency scene. This capability makes them a unique support agency for the fire command system through their ability to control and manage spectators, traffic and other actions of people. The command system should integrate law enforcement functions into its operations as a matter of routine.
3. Brunacini AV: *Fire Command*. NFPA: 23-24. An example of standard operating procedures for staging at a fire scene.
4. See generally, Nicholson WC: 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 Management System. *Widener Symposium Law Journal*. 2003; 9(2): 295, 321-322.
5. Pub. L. No. 105-19, 111 Stat. 218 (codified at 42 U.S.C.A. §§ 14501-14505 (West Supp. III 2002)). As is the case with any type of tort reform, the VPA has come in for significant criticism. See, e.g., Andrew F. Popper, A One-Term Tort Reform Tale: Victimizing The Vulnerable, 35 *Harv J on Legis*. 123, 130-137 (Winter 1998). "An underlying principle of tort law is that the threat of personal liability creates individual accountability and thereby enhances the quality of goods and services. Accordingly, the common law imposes a minimum level of due care on people who choose to volunteer. The Volunteer Protection Act changes that standard, and in so doing, reduces the incentive to provide quality services." *Id.* at 134-35 (citations omitted).