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**How Your City Can Survive and Thrive After a Disaster:**  
Successful Strategies from Real-World Experiences

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City of San Bruno

## **When Disaster Strikes: What Will Your City be Expected to Do?**



## A Potential Disaster Averted: Unsafe Drinking Water

- City uses well water in addition to water purchased from other sources
- Automatic water quality notification system
- How long is too long to respond?



## After the Initial Response...

- Contain the potential damage
- Notify residents
- Diagnose the problem
  - Can you be sure you're right?
- Take corrective action
- Notify residents of progress and resolution



## System Failure or Human Error?

- Five factors
  - Circuit failure
  - No automatic shut down
  - Delayed text notification
  - Delayed employee response
  - Inadequate remedial action by employee
- Aren't the first three system failures?
  - Maybe not...



## It's all About People

- Review response times in city protocols
  - In a disaster, every minute counts
- Employees with performance issues
  - We shouldn't expect them to perform well in emergencies



## Lessons Learned

- Prepare, prepare, prepare
  - Supplies, notification systems, written SOPs, training, practice drills
- Could have, would have, should have
  - Think about risk management by first identifying what can go wrong
  - Identify universe of actions city could take to reduce risk
    - Focus on what employees could do to avert an emergency
  - Decide which actions to take
    - Reasonable, effective, within budget
    - Supports explanation of what you did, and why you didn't do other things

## Lessons Learned

- The critical role of reviewing employee performance regularly
  - No one wants to; most supervisors aren't very good at writing reviews; no one wants to receive them
  - Result: they're not done; they're done late or inconsistently; recommendations aren't monitored or implemented
  - Result: future potential discipline is compromised

## Lessons Learned

- Establish Culture of Fair and Productive Performance Reviews
  - We're a team; not everyone on the team is expected to be good at everything or the same things
  - Performance reviews are about how employee skills can complement the team
  - Provide training on how to write reviews
    - Clear, neutral words, specific examples of strengths and areas to improve
      - "John is consistently late to work" or "Jane does a great job interacting with the public" isn't good enough
    - Provide measureable goals, and then monitor achievement
  - Praise achievements regularly; address problems immediately
  - Evaluate supervisors on how well they perform reviews of subordinates
- There's a lot you can control before and after an emergency

## San Bruno Gas Pipeline Explosion: A Disaster Waiting to Happen?

- Underground utility lines
  - What's there?
  - When were they last checked?
  - How have they been maintained or repaired?
  - Assumption: safe until they blow?



## Declaration of Emergency

- Consequences of local emergency
  - No public bidding for repairs
  - FEMA/CalEMA money
  - Use to get injunctive relief in court
  - Media implications
    - Press release/conference
    - Have a plan
    - Anticipate PRA requests
    - Closure when it's over
- Duration: as long as city says; resolution to terminate

## First Steps in Responding to an Emergency

- Role of city attorney: the big picture
- Communication
  - Single point of contact: internal and external
  - Talking points: what city's doing and why; one message for all
  - No blame
- Assign others to get the details right
  - Specific staff assignments with external organizations
  - Frequent de-briefs
  - Track all costs

## First Steps in Responding to an Emergency

- Assess potential liability: city and third parties
  - What was done, what was not done: be creative, the lawyers will be
  - Media doesn't care about your immunities and defenses
  - Insurance/risk pool coverage
    - Complete copy of all policies
    - Immediate notice
    - Create complete spreadsheet
    - Liability coverage: PR costs, outside counsel

## First Steps in Responding to an Emergency

- Corral the documents
  - Litigation hold
  - Implement consistent response/production policy
    - 10 days, or sooner, or later?
  - Single point of contact for submission and response
  - Track what was produced for whom
  - Decide on exemptions: ongoing investigation, drafts, official information, confidential information (privacy), attorney client and work product
  - Document management system needed?
  - Regulatory agency rules?



## First Steps in Responding to an Emergency

- Mental health: employees and residents
  - For employees: encourage use of EAP
  - For residents: consider city-sponsored program
    - Source of funds?
    - Contracts with mental health care providers
    - Used, not abused: immeasurable good will generated

## City's needs, residents' expectations: the short term

- What the city needs: money
  - Emergency reserve or general fund
  - FEMA/CalEMA: do this first
    - Immediate costs reimbursed relatively quickly
    - Percentage for overhead
    - Retain consultant; claim fees from insurance
  - Insurance: wait to make a claim
    - Avoid double-dipping
    - Claim everything else, regardless of what you think policy says
    - Retain coverage counsel and/or consultant to facilitate submission of claim





## City's needs, residents' expectations: the short term

- If third-party responsible, consider:
  - Asking for unrestricted donation: PG&E paid \$3M
  - Asking for restricted contribution for repairs and other related expenses
    - If utility, check Public Utilities Code for obligation to pay (Gas: PUC section 6295)
  - San Bruno's solution: irrevocable trust, funded by PG&E, independent trustee, \$70M, expires 2020
    - Advantages for city: avoids insurance claim (thus no subrogation), money always available when city needs it, covers everything
    - Advantages for 3<sup>rd</sup> party: great PR, avoid subrogation costs, cap compensatory damages

## City's needs, residents' expectations: the short term

- 6-month statute will arrive soon
- Consider tolling agreements: resident claimants, homeowner's insurance carriers, potential third parties
  - Advantages:
    - Allows facts to be investigated and sorted out
    - Tolling time in city's control
    - Media will leave city alone
  - Disadvantages:
    - Potential late involvement in litigation
    - Still subject to discovery

## City's needs, residents' expectations: the short term

- Hire a PR consultant
  - Test all messages
- Issue proactive statements
  - No room for error: 100% accuracy is the only option
- Hold informational public meetings
  - Anticipate questions and follow-up questions
  - Prepare chairperson to acknowledge and deflect anger and frustration
- Set up online forum, or monitor those that residents are using
- Consider informal gatherings sponsored by city to remember victims



## Desperately seeking normalcy: the medium term

- Rebuilding: private property
  - Transition from temporary housing to rebuilt homes or businesses
  - What can be built?
    - Relaxed zoning for victims?
    - Expedited plan check
    - Waiver of fees
  - If potentially responsible third party:
    - Purchase or repair of private property
  - Some can't decide; conflicts with those who can decide
  - Explore purchase and development of damaged or destroyed properties

## Desperately seeking normalcy: the medium term

- Rebuilding: public property
  - Consider retaining construction management firm to coordinate all efforts
  - Timing of private and public repairs
  - Residents will expect city to solve all contractor issues to residents' satisfaction
    - Consider tighter standards and bonus provision for contractors
- City repairs of private property improvements
  - "I've always wanted the city to fix my private drainage swale..."
- What to do with donated money
  - There's no good answer, but keep it simple

## Desperately seeking normalcy: the medium term

- City involvement in regulatory agency proceedings
  - Mandatory or optional?
    - Residents may demand participation
  - Retain experts specifically familiar with rules and proceedings
  - Media and litigation minefield
    - Coordinate with PR expert and outside counsel
  - San Bruno required to participate in NTSB proceedings
    - One year of intense work
    - PG&E tried to blame city
    - NTSB found PG&E and CPUC solely responsible



## Litigation and the long term

- City not involved
  - Monitor existing case closely
  - Resident expectations will be in part driven by progress of case
    - San Bruno's experience: residents least damaged had highest expectations of city
- City involved
  - Everyone will sue everyone for everything
  - Read and consider all pleadings from media perspective

## Litigation and the long term

- What can the city recover?
  - Check statutory provisions (PUC section 6296)
  - Compensatory damages
    - Lost revenue
    - Diminution in value of property
    - Out-of-pocket expenses proximately related
    - Intangible losses: CB&I case
  - Punitive damages
    - Compensatory X 9
    - No insurance coverage



## Litigation and the long term

- San Bruno's experience
  - Already recovered \$3M unrestricted gift and \$70M restricted trust
  - Tolling agreements were still in place
  - Leverage: punitive damages plus media pressure
  - Negotiating team secured \$70M new funds, contributed to city-created non-profit
    - Trust obligation reduced to \$50M
  - Total recovery: \$123M; mutual release, plus specific indemnity agreement for any future third-party claims
  - No litigation filed by or against city

## Litigation and the Long Term

- Litigation Against CPUC
  - City asked for public records relating to regulatory proceedings; not forthcoming
  - City initiated PRA suit against CPUC
  - Settled for production of most documents requested; revised PRA procedures
  - Catalyst for PG&E decision to disclose over 100K documents that implicated PG&E and CPUC employees in illegal ex parte communications
    - Unexpected disclosures of back room deal re closure of San Onofre Nuclear Power Plant
  - Resulted in independent audit of CPUC, ouster of various high-level officials and employees
  - Ongoing CPUC proceedings to fine PG&E for misdeeds
  - Ongoing criminal trial

## Lessons learned

- Prepared for the expected
  - Check underground and other facilities; demand repairs
  - Check insurance policies
  - Establish emergency reserves
  - Practice emergency drills
- Hire experts, especially for PR and regulatory agency proceedings
- Don't ascribe blame until all the facts are in, and preferably only after an outside agency or a court has done so

## Lessons learned

- Work to keep the entire city council and staff on the same message
- Do whatever you can for victims
  - But, expect unreasonable expectations
  - One small miscue can undo a lot of goodwill
- If possible, find creative ways to stay out of litigation

