

***WMD CONSEQUENCE MANAGEMENT  
LEGAL SEMINAR III***

**SEMINAR REPORT**



**Defense Threat Reduction Agency  
Advanced Systems and Concepts Office**

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SAIC **strategies** GROUP  
CREATING KNOWLEDGE, INTEGRATING SOLUTIONS

**1710 SAIC Drive  
McLean, VA 22102**

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## ***Executive Summary***

On June 24, 2003, Defense Threat Reduction Agency (DTRA) – Advanced Systems and Concepts Office (ASCO) sponsored and the Office of General Counsel hosted the *Weapons of Mass Destruction Consequence Management Legal Seminar III*, the third in a series of seminars designed to explore the legal issues regarding the responsibilities and authorities of Federal and State departments and agencies that may arise during the consequence management (CM) phase of a weapons of mass destruction (WMD) event in the United States. This four-part seminar series will:

- Identify and develop a consensus on the applicable Federal statutes, directives, regulations, and instructions pertaining to CM;
- Identify applicable state statutes pertaining to such issues as martial law and quarantine;
- Identify shortfalls in, and potential solutions for, Federal legislation and guidance documents pertinent to WMD-CM;
- Contribute to the development of a Federal Legal Reference Deskbook for WMD-CM.

During the first Seminar (2-3 May 2002), the Participants evaluated a CM Scenario based on the detonation of a radiological dispersal device in a metropolis in the United States. The Seminar resulted in the identification of three topics for inter-sessional exploration and presentation by Working Groups at the second Seminar: *The Military's Role in WMD Consequence Management*; *Quarantine and Medical Responders*, and; *Issues of Communication in WMD Consequence Management*.

During the second Seminar (19-20 November 2002), the Working Groups explored and presented the three topics and associated legal issues: they identified and prioritized the legal references applicable to each topic; identified shortfalls, if any, with the existing authorities, and; identified relevant issues lacking interagency consensus.

Three Working Groups assembled in this Seminar to develop presentations focused on WMD consequence management given a particular type of event: chemical/high-yield explosive, biological, or radiological/nuclear. Prior to the Seminar, the Working Groups received three sets of tables detailing principal activities, roles, and authorities of Federal agencies/departments for WMD Consequence Management for each type of incident (See **Attachment 1**). The Charts included reference to the Department of Homeland Security and related current authorities, but did not incorporate the uncertain effects of Homeland Security Presidential Directive-5 and the National Response Plan. The latter is not a final document but it will have a significant effect on domestic consequence management. In addition, an overview of the Federal organization and response for domestic WMD consequence management was presented prior to the Working Group discussions (**Appendix C**) and a chart storyboarding the Federal response to a WMD event was distributed (**Appendix D**).

Using the charts and the Overview as starting points, the Working Groups identified the current roles and responsibilities of their respective organizations for domestic consequence management and identified changes in their Agencies' roles and responsibilities that have occurred since the first WMD CM Legal Seminar in May 2002. The efforts of the Working

Groups during the Seminar, to include the Working Group reports, will contribute to the development of the Federal Legal Reference Deskbook for consequence management, the ultimate product of this DTRA undertaking, which will be distributed at the final Seminar in the third week of October, 2003.

Figure 1 below lists the participants of the Seminar.

Ms. Patricia Allen	DTRA, OGC
LTC Keith Anderson	HQ, USMC
Maj Ken Arnold	OSD, OGC
Ms. Lisa Baker	FBI
LTC Arthur Beasely	Joint Staff, J3
Mr. Robert Brittigan	GC, DTRA
Mr. Kerry Clark	DOE
LTC Joseph Dice	CLAMO
Mr. Howard Donaldson	NORTHCOM
Ms. Julie Edmunds	OSD, OGC
Mr. G.R. Gillette	DTRA, OGC
LTC Allen Goshi	U.S. Army Forces Command
Ms. Jean Hardin	AFDO
Mr. Raymond Heddings	DTRA, OGC
LCDR Thomas Herold	Navy JAG
LTC Gregory Huckabee	HQ, First U.S. Army
LTC David Johnson	HQ, USMC
Mr. Steve Maleson	USAMRMC
Mr. Leo Masciana	CIAO
COL Robert Minor	U.S. Army Reserve Command
Mr. James Misrahi	CDC
Mr. Rick Neal	FEMA
COL Mark Riley (USMC)	NORTHCOM
Mr. Larry Sanders	DTRA, ASCO
CDR Bryan Schroder	NORTHCOM
Lt Col Gordon Schukei	NGB
CAPT Eugene Quarrie	USMC
LTC Mike Smith	U.S. Army JAG
LTC Debra Thedford	Joint Staff J3
Ms. Lee Tyner	EPA

**Figure 1: Seminar Participants and Respective Agencies**

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## Weapons of Mass Destruction Consequence Management Legal Seminar III

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### *Opening Remarks*

**Mr. Robert Brittigan**, General Counsel of the Defense Threat Reduction Agency (DTRA) opened the seminar by thanking everyone for their attendance and emphasizing that the role of DTRA in sponsoring the seminar is to facilitate the group's work, not provide answers to the questions raised by the Participants. He thanked the Advanced Systems Concepts Office for its support of the project and introduced the keynote speaker, Mr. J.R. Reddig, Deputy Assistant Secretary for Emergency Preparedness, Department of Health and Human Services.

### ***Consequences of and Response to Bio-Terrorism***

Mr. Reddig discussed the threat of bio-terrorism to our nation's medical infrastructure, particularly focusing on dangers facing the United States from international terrorist organizations.

Among the primary terrorist threats currently known to the U.S. Government, Mr. Reddig cited terrorists or terrorist sympathizers who may be embedded in various levels of American life, including government contractors that may be potential terrorists. Mr. Reddig described these individuals as ordinary, tax-paying citizens who are legally in this country, but who could mobilize at any time at the command of an Osama bin Laden-type figure. These are individuals who are scouting the United States for further terrorist attacks on our soil. They study all facets of the American response to the threat of terrorism -- from actions taken during a heightened national terrorist threat level to actions of emergency response teams in potential crises. Additionally, U.S.-based terrorists have learned, through media leaks and observing law enforcement operations, how the U.S. Government collects its intelligence, as well as how that intelligence is then filtered down to various Federal agencies and State and local governments. Emphasizing that terrorists will devise new ways to attack Americans, Mr. Reddig posited that first responders likely will be targets of terrorist operations, to include decoy attacks conducted to bring in the responders.

*"First responders will be targeted by terrorists."*

Discussing the use of quarantine to halt the spread of infectious disease, Mr. Reddig emphasized that the Centers for Disease Control (CDC) has quarantine authority over seven specific diseases, pursuant to [Executive Order 13295](#) -- Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; Viral Hemorrhagic Fevers; and Severe Acute Respiratory Syndrome (SARS). In general, the responsibility for issuing and enforcing quarantine falls under the jurisdiction of State and local governments. CDC, however, may declare quarantines with respect to the seven specified diseases for persons arriving from foreign countries, with respect to interstate movement, and in the event of inadequate local control.

Mr. Reddig described how the United States might respond to an act of bio-terrorism, comparing that with the way we responded to the SARS (Severe Acute Respiratory Syndrome) outbreak in China and Canada. He began his discussion with a review of the potential impact on public health from the spread of a contagious disease, using the example of the 1918-1919 influenza pandemic, which started in China and spread across the world with devastating effects. The pandemic killed between 20 and 40 million people worldwide. Approximately 700,000 died in the United States, about 500,000 of those during the pandemic's second wave. Many were otherwise healthy middle-aged persons, Health professionals were some of the first to contract the disease.

Mr. Reddig stated that the key to halting the spread of a disease such as SARS, which cannot be verified until 24 days after exposure, is maintaining a social distance - keeping people out of crowded places where the disease might more easily be spread. This may involve steps like closing schools, though the nature of threat as well as the need for quarantine is based on a medical assessment of the situation that informs the policy decision. The Canadian approach to the SARS quarantine was to make compliance with the quarantine a voluntary undertaking. The voluntary quarantine worked well in Toronto because the government made an effort to educate the population on the risks of violating the quarantine. The United States saw little public panic over the SARS outbreak because preventive actions short of quarantine restricted the disease from spreading uncontrollably or resulting in any American casualties. The CDC is reluctant to institute quarantines because quarantines frighten the general population and inherently limit the freedom of movement of those affected by it. Healthy citizens will be quarantined along with those infected, and the likely resulting uproar and heightened political sensitivities suggests that quarantine be declared only when other options have been exhausted.

*"How do we deal with 10,000 casualties?"*

The recent terror attack simulations that took place in Seattle and Chicago in the Top Officials II (TOPOFF II) exercise highlighted that the United States lacks the facilities and resources to deal with a catastrophic attack of the magnitude of those simulated. In the case of the Chicago simulated attack, biological warfare causing an outbreak of plague, Mr. Reddig questioned how response teams would stockpile enough vaccines for the more than 8,000 infected citizens, how those drugs would be distributed, and how a quarantine large enough to be effective would be enforced. The plague does not present symptoms until four days after exposure. In the Chicago simulation, there were 10,000 casualties and 70,000 people were sequestered at O'Hare International Airport against their will. Mr. Reddig stated that it is not clear that we adequately have addressed handling mass casualties. Additionally, Mr. Reddig noted that the National Guard simulated quarantine enforcement. While armed quarantine enforcement may be most effective, it raises the dilemma of balancing personal rights with protection of the community.

In exchanges with the audience, Mr. Reddig further elaborated on the CDC's authority to impose quarantines and on the necessity of effectively coordinating the responses of Federal Agencies to bio-terrorism. Mr. Reddig stated that, in the case of the seven diseases laid out in E.O. 13295, the quarantine authority of the CDC could override the actions or lack of action of State and local governments. Finally, while the CDC has the responsibility of assessing the biological warfare threat and the authority to regulate the movement of individuals in specified instances,

the Department of Homeland Security (DHS) controls the [Strategic National Pharmaceutical Stockpile](#). Ultimately, according to [Homeland Security Presidential Directive \(HSPD\)-5](#), all agencies involved in responding to a WMD event are responsible to Secretary Ridge at DHS. Thus, at the Federal level, it is important to have a clear concept of supported and supporting Agencies and a clear articulation of how the deployment of Federal resources such as the Strategic National Stockpile will be coordinated and effected.

## ***Working Group Sessions***

**Mr. Raymond Heddings**, DTRA Associate General Counsel, gave a brief overview of the Working Groups' efforts to date, noting that the project commenced with a meeting of 34 people at DTRA in May 2001 where participants agreed to work toward the creation of a legal reference deskbook. Since the project began, 115 people from most of the Federal agencies involved in WMD consequence management have participated and a library of over 400 legal authorities has been compiled as a basis for the Legal Reference Deskbook. The Deskbook will be unveiled at the final seminar in October 2003 and published for distribution, in both hardcopy and CD-ROM formats, in December 2003.

To establish the context for the Working Group discussions, Mr. Heddings provided an overview of important legal authorities and the federal government's organization for WMD consequence management, from the commencement of the project to the present. Major developments since the project began include:

- Creation of the Department of Homeland Security (DHS) through the Homeland Security Act of 2002.
- Transfer of WMD consequence management Lead Federal Agency (LFA) responsibility from FEMA to DHS under [Executive Order 13284](#).
- Promulgation of [HSPD-5](#), directing the Secretary of Homeland Security to accomplish the following:
  - Integrate the Federal government's various response plans into one all-discipline, all-hazards National Response Plan (NRP)
  - Create a comprehensive national incident management system (NIMS) to serve as a nationwide approach for Federal, State, and local governments to respond to and recover from domestic incidents.

Mr. Heddings opined that [HSPD-5](#) represents a paradigm shift for CM operations in that it directs agencies to treat crisis management and consequence management as single, integrated functions. [HSPD-5](#) is also significant because the future status of the government's various response plans<sup>1</sup> are "to be determined" pending the completion of the NRP.

Mr. Heddings discussed changes internal to the Department of Defense (DoD), noting the transfer of civil support responsibilities from the Secretary of the Army to the newly-created

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<sup>1</sup> These plans include the [United States Government Interagency Domestic Terrorism Concept of Operations Plan \(CONOPS\)](#), the [Federal Response Plan \(FRP\)](#), the Federal Radiological Emergency Response Plan (FRERP), and the [National Oil and Hazardous Substances Pollution Contingency Plan \(NCP\)](#).

position of Assistant Secretary of Defense for Homeland Defense (ASD(HLD)). He also highlighted the creation of United States Northern Command (NORTHCOM), which has an area of responsibility (AOR) encompassing the United States and responsibility for providing military forces to assist civil authorities in domestic consequence management operations, among other things.

Mr. Heddings identified the following areas, which may cause legal uncertainties to arise during domestic WMD consequence management operations:

- The effect of the NRP on Federal agency roles and responsibilities
- The integration of NORTHCOM into the WMD consequence management community
- The future role of the National Guard in homeland security
- The effect of the NIMS on local, State, and federal agency responsibilities

Mr. Heddings concluded his remarks by lauding one of the contributions of the National Guard Bureau to the project -- providing many of the references for State and local authorities related to emergency response. Finally, Mr. Heddings stated that the purpose of the day's discussions was to identify gaps and ambiguities in the legal aspects of domestic WMD consequence management in light of new legal authorities and new organizations since the beginning of the project in May 2001.

The Working Groups focused on identifying changes in their legal authorities, and how those changes may affect inter-agency roles and interactions during a response to a WMD event. This articulation of the changes ultimately will be incorporated in the WMD-CM legal reference deskbook. The substance of the Working Groups discussions is detailed below and incorporated in the report of their presentations during the Plenary Session.

## ***Chemical/High-Yield Explosive Incident Response Working Group***

The Chemical/HE Explosive Incident Working Group was co-chaired by Lee Tyner, of the Environmental Protection Agency, and LTC Allen Goshi of U.S. Army Reserve Command. The Group agreed to work through the Chemical/HE Incident CM Response tables, *Current Department/Agency Principal Activities and Functions* and *Current Department/Agency Principal Authorities*, provided as a tool to focus the discussion. (See **Attachment 1**) During the extensive discussion on and editing of the format and content of the tables, several important points were raised which illustrate well the focus of the Working Group with respect to the tables. First, several recent documents needed to be included because they impacted the roles and responsibilities of the Federal Agencies involved in response to a WMD event. These documents are: [HSPD-5](#), [Public Law 107-40](#), the draft National Response Plan, the Homeland Security Act of 2002, and the [Public Health Security and Bio-terrorism Preparedness and Response Act of 2002](#). Second, articulating the roles and responsibilities of the Federal entities involved in CM should focus on the agency level, as highlighting key components within the Agencies leads to omission of other smaller components with critical roles in emergency response. Third, the tables should be organized alphabetically by Department rather than in



order of precedence. Fourth, parenthetical citations within the table on activities and functions would enable participants to see easily where the roles/responsibilities were documented.

### **Effect of the National Response Plan**

Significant discussion involved the changes in activities and functions that would be reflected in the draft National Response Plan, and the need for these changes to be reflected in the products of the Working Groups. Consequently, the group recommended that current headings reflecting the stages of response as reflected in the [Federal Response Plan](#) -- planning, notification, activation, response, and deactivation -- should be changed to reflect the five life-cycle domains as listed in the draft NRP: awareness, prevention, preparedness, response, recovery. It was determined that the current headings, with the exception of planning, could be subsumed in the response domain. The Group also recommended that the terms “consequence management” and “crisis management” be re-examined in light of the draft NRP. In particular, compliant with [HSPD-5](#) which states U.S. policy to treat “crisis management and consequence management as a single, integrated function, rather than as two separate functions” and the draft NRP, “consequence management” and “crisis management” should be referred to as “incident management.” There was also consensus that, in accordance with the terminology of the NRP, the agency in charge of coordinating the federal response effort should be referred to as the Primary Federal Agency (PFA) and not the LFA. Finally, once the Group began reviewing the tables, it identified several overlapping areas of responsibility between the chemical, radiological, and biological responsibility and authority tables. The Group recommended that the three tables be combined into a single all-incident table, consonant with the all-incident approach of [HSPD-5](#) and the NRP.

Some members of the Working Group believed that it would be helpful to redesign the tables, incorporating the above recommendations, and discuss the content within the new format. Ultimately, the Group decided that time did not permit re-formatting the tables to make them consonant with the emerging emergency response framework and still complete the task at hand, so it was agreed to note the recommendations and continue substantive editing within the current format.

### **Traditional Authorities for Agencies to Act Versus Coordinated Federal Response**

As the Working Group examined the Department of Homeland Security activities/functions table, it became apparent that the focus was a Federal response coordinated by the DHS. The discussion then turned to the issue of where to draw the line between the traditional response functions of Federal agencies and a response coordinated by the Department of Homeland Security. One participant indicated that agencies and departments have internal guidelines and procedures, such as the [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#) in the case of the Environmental Protection Agency (EPA) and [Public Law 107-40](#), in the case of the Department of Defense (DoD), which can be implemented in the absence of a DHS response. Since virtually every Agency has its own internal authorities, there was considerable uncertainty about exactly how these procedures would interact, and all participants agreed that this issue needed to be addressed further at a later time.

A major theme of the Chemical Incident Working Group discussion was the question of when it was appropriate for Agencies/Departments to act pursuant to internal directives vice acting after

the Department of Homeland Security coordinates the response. This theme was reflected in the exploration of Immediate Response Authority, whereby the military has the authority to respond where life or property is endangered without waiting for formal instructions. Several members opined that the military's Immediate Response Authority could place the local military installation on the scene before the DHS response got underway. Related to the issue was the discussion of [Public Law 107-40](#), which, one participant pointed out, allows the President to use the military to respond to terrorism as necessary. Some members of the Group thought that the decision for immediate response actions should spring from internal Agency/Department authorities, while information passes and further decisions are taken up the chain of command. Others thought it better for DHS to assume immediate responsibility for Federal response coordination, with internal directives simply providing support for the DHS-led response, as necessary. The Group did not resolve the issue, but agreed that the most important thing was a timely, effective response.

The Group recommended no significant changes to the activities and functions noted for the Department of Justice, DHS, and Department of Health and Human Services in the respective tables. Reiterating that the EPA and other Agencies have Agency-specific emergency response authorities that do not require DHS involvement, the Group incorporated [CERCLA](#) and the [National Contingency Plan](#) into the Authorities table for the Environmental Protection Agency. One participant also pointed out that the Coast Guard staffs the National Response Center, which is under the DHS. The Biological Incident and Radiological Incident Activities and Functions tables erroneously listed the NRC as a resource staffed by the EPA.

### **Key Components**

The Working Group recommended the deletion of references to specific components and other resources, e.g., the deletion of the Chemical, Biological Incident Response Force (CBIRF) from the DoD chart, to remain consistent with the determination to omit designation of key components within the Federal Agencies. In addition, several participants agreed that the CBIRF was simply one of several important resources available to the Department of Defense rather than a key component. One participant pointed out that DoD would use whatever component was most appropriate, as instructed by internal directives.

### **Supporting the Department of State in Overseas Incident Response**

The Working Group discussion proceeded smoothly with minor changes to the majority of the remainder of the tables. Reflecting on the tables for the Department of State, the Group pointed out the inherent problems when the Department of State (DOS) is in charge of overseas incidents and relies on the DoD and other agencies to respond appropriately. One participant called attention to the existence of Foreign Emergency Support Teams (FESTs) and queried whether such teams would not suffice for DOS overseas response requirements. Another participant stated FESTs are liaison teams, potentially capable of fulfilling the command and control function, but do not have the forces required or the plans in place to render the type of support that might be required. Of particular concern was the fact that the DOS has not provided guidance on force recommendations to the DoD for overseas incident responses, yet if a chemical incident occurred overseas, DOS would request personnel and materials from DoD that had not been previously allocated, potentially causing a strain on other DoD operations. All participants agreed that could present a serious problem, and that it would be helpful if the DOS

could create a guidance document that would allow the DoD to create additional response teams as necessary.

## ***Biological Incident Response Working Group***

The Biological Incident Response Working Group was chaired by James Misrahi, an attorney from the Centers for Disease Control (CDC), and included, among others, five representatives from various DoD components. The participants agreed that the roles of many agencies in responding to a biological WMD incident, to include that of the CDC, had not changed dramatically, while the role of DoD had been altered by the creation of U.S. Northern Command (NORTHCOM). Participants adopted the approach of focusing on roles and responsibilities during a biological WMD incident that they felt were not adequately articulated in existing plans, hopeful that such issues would be addressed in the upcoming National Response Plan.

### **Distinguishing Quarantine, Isolation, and *Cordon Sanitaire***

Quarantine, a police power traditionally administered by the States at the community or population level, is generally characterized by restriction of person or persons presumed exposed to a communicable disease. The classic definition of isolation is the separation of infected persons from healthy persons, usually in a hospital setting. *Cordon sanitaire* is the erection of a sanitary barrier around an affected area. An interesting question raised was whether there was an issue of a Federal “taking” when the Federal government blocks access to and normal use of an area subject to *cordon sanitaire*.

### **State and Federal Quarantine Authority**

Pursuant to the [Tenth Amendment](#), States reserve the right to quarantine healthy, but exposed, citizens and the right to isolate people who already have a specific infectious illness. The Working Group agreed that, as specified in all Federal plans, Federal agency involvement in a biological WMD event would occur only when State and local resources are overwhelmed. In that case, the Federal quarantine authority would supersede the State quarantine authority.

The President may order a Federal quarantine under [Article II](#) of the U.S. Constitution. In addition, foreign and inter-state quarantine is a Federal power generally considered to be a regulation of foreign and interstate commerce, in accordance with the [Commerce Clause](#).

The CDC is always responsible for declaring quarantine for the purpose of triggering a Federal response to a biological WMD incident. This authority would generally be used in circumstances indicating a possible public health emergency, whether the emergency occurs naturally or because of bio-terrorism, involving one of the following biological agents: cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fever, and SARS. [Executive Order 13295](#) added SARS to the list of diseases for which CDC is granted Federal quarantine authority by [42 USC §264](#) (Section 361 of the Public Health Service Act). One participant emphasized that the very nature of biological agents makes it hard to determine the source of the causality (i.e., terrorist act or natural occurrence) until there have been extensive epidemiological investigations. Thus, the initial response by the CDC for the terrorist release of a bio-weapon is the same as the response for a natural epidemic.

One participant stated that [21 U.S.C. § 114, et seq.](#) gives the Department of Agriculture (USDA) the authority to quarantine potentially infected livestock, whereas the CDC's authority is limited to the quarantine of humans. Diseases such as Monkey pox affect both humans and animals, and the use of such diseases as bio-weapons could involve conflicts between the authorities of the USDA and the CDC to respond to an incident.

### **Enforcement of Quarantine**

One participant pointed out that, while the CDC has the authority to direct the implementation of quarantine, it has no real power to enforce said quarantine. It was noted that while it is a Federal misdemeanor to violate a federal quarantine, civilians panicking after a WMD event may not be deterred by a misdemeanor punishment. The CDC must rely on other agencies to enforce quarantine, whether state law enforcement or federal agencies. Another participant pointed out that a person could progress beyond committing a misdemeanor if they commit another crime while being apprehended by enforcement agencies.

A Participant asked what methods agencies would currently use to enforce quarantine, short of using lethal force. The CDC can request that the Department of Transportation (DOT) stop traffic, use roadblocks, ground planes, and in general shut down transportation routes. Citizens will be ordered to stay within the boundaries of their homes or a hospital. If they go beyond those boundaries, they can be apprehended and moved to a guarded facility for quarantine. Thus the initial deterrent may be the threat of being forcibly moved to a more uncomfortable place for quarantine. One participant posited a scenario in which a panicking citizen, armed with a shotgun, attempts to break quarantine. This led to discussion without resolution concerning the levels of force Federal agencies should be willing to use to enforce quarantine.

### ***NORTHCOM and Enforcement of Quarantine***

NORTHCOM is now responsible for the command and control of units deployed within the United States for consequence management. NORTHCOM can be responsible for enforcing quarantine under the Insurrection Act ([10 USC §331 et. seq.](#)), if invoked by the President. Participants agreed that the military cannot provide support to State or Federal agencies in enforcing a misdemeanor, e.g., the breaking of quarantine, but can protect national security interests as required by the President. Because of the nature of a biological WMD event, any person who is potentially infected by a biological agent can pose a threat to national security because of their capacity to spread the disease.

Normally, the military can only perform support operations for quarantine, not actively enforce one, since the military cannot become involved in law enforcement activities unless directed to by the President under [Article II](#) powers or the [Insurrection Act](#). The Posse Comitatus Act, [18 U.S.C. §1385](#), coupled with [DoD Directive 5525.5](#), which prohibits the use of military forces to enforce civilian laws, makes the Act applicable to active and reserve components of not only the Army and the Air Force, but also the Marine Corps and Navy. The Military Support to Civilian Law Enforcement Agencies Statutes, [10 U.S.C. §371, et seq.](#), clarifies the limits of the Posse Comitatus Act. The military can provide equipment and supplies ([10 U.S.C. §372, §381](#)); technical assistance ([10 U.S.C. §373\(2\)](#)); information ([10 U.S.C. §371](#)); and training in connection with the equipment provided ([10 U.S.C. §373 \(1\)](#)). In addition, the Secretary of

Defense is authorized to prescribe regulations prohibiting the direct participation of any service member (Army, Navy, Air Force, or Marine Corps) in a search, seizure, arrest, or similar activity, unless otherwise authorized by law. ([10 U.S.C. §375](#))

The Working Group agreed that members of the military have the right to defend themselves if attacked. Participants agreed that an example of justified self-defense was an incident near the United States-Mexico border involving U.S. Marines of Joint Task Force-6, who found themselves under fire during an anti-narcotics mission and returned fire on the shooter, a shepherd who had mistaken them for predators. The Group also agreed that those enforcing quarantine would have the right to defend themselves if fired upon by a panicked citizen attempting to break quarantine. The Group agreed that the issue of military enforcement of quarantine should be more thoroughly addressed in the National Response Plan.

A chemical, radiological, or high-yield explosive WMD incident CM may not involve quarantine of healthy, but exposed citizens, for both their own good and in the interest of safeguarding public health. However, a consequence management response to the introduction into the general population and spread of a biological agent must always involve some sort of sequestering or quarantine, or the incident will repeat itself and require Crisis Response in other locations when the disease spreads. The Group agreed that the unique elements of a Biological WMD incident should be more thoroughly emphasized in the NRP.

#### ***Rules on the Use of Force***

The Working Group agreed that Rules on the Use of Force (RUF) for such incidents should be made more specific and standardized across all relevant agencies. Currently, non-lethal methods of enforcement differ across organizations responding to a domestic biological incident. State law enforcement, Federal agencies overseeing operations, and the branches of the military all have different RUFs.

One participant introduced the concept of “leaky” quarantine as a guideline for determining RUF. A scenario was described in which the CDC requests quarantine but the biological agent is easily treatable. In one version of the scenario, the CDC determines that 85% quarantine with a 15% leakage rate, *i.e.*, the number of citizens violating quarantine, is acceptable. The Group discussed the “leaky” quarantine in this scenario and reached consensus on certain guidelines for the RUF. Enforcement would include setting up roadblocks, grounding planes, and generally freezing all transportation, but would not involve person-to-person confrontations. Alternatively, in the unlikely event that CDC determines that the particular biological agent poses such a grave threat to national security that no leakage is permitted, it is conceivable that the RUF could allow the use of deadly force. One participant suggested that if agencies can enforce quarantine, agencies also should be able to require vaccinations and mass inoculations.

The consensus of the Working Group was that advice from the experts on the seriousness of the biological threat will help to determine levels of enforcement. In addition, the Group agreed that it is vital that health experts specify the level of the threat and provide containment recommendations to quarantine enforcers.

### **Liability Associated with Quarantine**

A number of participants raised the issue of compensation to citizens who have been quarantined. A compensation program was proposed in Toronto to reimburse those citizens quarantined during the SARS outbreak. The Working Group agreed that compensating those quarantined could result in a more effective quarantine by minimizing the panic of citizens and maximizing their peaceful cooperation.

### **Communicating Information Regarding Biological Incidents**

The Working Group agreed that a more efficient system of communication between all relevant agencies should be developed for biological WMD incident response. Efficient communication among agencies about the incident and the threat posed by the disease could help speed the determination whether symptoms elsewhere signal a similar, or wider, attack. Participants agreed that a uniform message across all entities involved is important to minimize confusion and public panic.

## ***Radiological Incident Response Working Group***

The Radiological Incident Response Working Group began discussions with a focus on the impending cancellation of the [Federal Response Plan \(FRP\)](#) and other response plans in favor of a unified, all-incident National Response Plan (NRP). The Department of Homeland Security (DHS) currently relies on the FRP. DHS believes the [FRP](#) generally has evolved into a good plan through time and experience. One group member expressed regret that such a well-honed plan might be cast aside in favor of something fresh. The participant opined that while the [Federal Radiological Emergency Response Plan \(FRERP\)](#) was useful in establishing the LFA for different types of crises, the [FRP](#), reflecting decades of thinking about crisis management, ought to continue to play a prominent role in the way the government responds to crises.

### **Shaping the National Response Plan**

The Working Group discussed specific emergency response plans and other authorities that should be reflected in the treatment of responses to radiological incidents of the unified response plan. While participants wondered under which new authorities departments and agencies would operate when implementing the NRP, they advocated integrating numerous existing authorities and directives into the National Response Plan. The documents offered for inclusion and integration were the [FRERP](#), the [FRP](#), the [National Contingency Plan](#), the [Nuclear Weapons Accident Response \(NARP\) Manual](#), [Presidential Decision Directive \(PDD\)-39](#) and [PDD-62](#), and the [Maritime Transportation Security Act of 2002](#). The Maritime Homeland Security Act altered the mission and structure of the Coast Guard by providing greater emphasis on and authority for preventing and responding to maritime terrorism against the United States. Additionally, while certain aspects of the [Stafford Act](#) will continue to apply, participants stated that the [Homeland Security Act of 2002](#) preempts some of the Stafford Act. Some plans could be folded into the NRP, while others could stand alone as annexes to the main text. All plans should be updated to reflect prior experience and current thinking.

It was pointed out that while some agencies, most notably the DoD, rely on the [FRERP](#) for radiological incidents, most Federal agencies model their emergency responses after the [Federal](#)

[Response Plan](#). While the [FRERP](#) designates the LFA responsible for responding to a radiological attack, the [FRP](#) describes peacetime response activity in the radiological annex to the [FRP](#).

The DoD's [Nuclear Weapons Accident Response \(NARP\) Manual](#), a plan with which fewer Participants were familiar, was mentioned for possible inclusion. The [NARP](#) is not as high level a plan as the [FRP](#) or the NRP. Rather, it functions as a department-level procedural manual that tackles the “nuts and bolts” of emergency response. It was pointed out that military personnel value the [NARP](#) more than do civilian authorities.

### **Managing Classified Information for Response Purposes**

The Working Group focused on the recent [Executive Order 13292](#) (Executive Order (E.O.) 12958 on National Security Classification, amended), which is intended, among other things, to loosen the restrictions on providing to emergency first responders access to classified information. In cases where access to such information might dramatically affect the nature of the response, [E.O. 13292](#) authorizes those with access to classified information to release it “in an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland.”<sup>2</sup> It governs all types of weapons and incidents, including chemical, biological, and nuclear attacks. Though the Order applies across all agencies, there was consensus that DoD, the Department of Justice (DOJ), and the Department of Energy (DOE) are most affected by it. The Group highlighted but did not come to consensus on some of the legal questions surrounding release of classified information, including the questions of who, in an emergency response situation, had the authority to authorize and who would take responsibility for the release of such information.

### **HSPD-5**

The Working Group discussed the impending “turf” battle brought about by [Homeland Security Presidential Directive-5 \(HSPD-5\)](#). As HSPD-5 blurs the lines between consequence management (CM) and crisis management, incidents that will eventually fall under the jurisdiction of the Secretary of DHS. This raises the question, also surfaced in the Chemical/HA Incident Working Group, of where the lines will be drawn between DHS' Federal response coordinating functions and the traditional response authorities of Federal agencies. Several participants expressed the opinion that despite direction to “establish appropriate relationships” between responding agencies, nothing really will change. There seemed to be consensus that HSPD-5 simply would lead to business as usual, for example, in the relationship between the Attorney General and the Secretary of Defense. There was a sense that though the names of certain agencies and departments might change, their fundamental responsibilities would not.

#### ***Department of Justice Crisis Response Function***

The language of HSPD-5 suggests that even the Federal Bureau of Investigation (FBI) may be subordinated to DHS. One Participant emphasized, however, that no structure currently exists within DHS for assuming the task of law enforcement. Until such a structure is established, the

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<sup>2</sup> Executive Order 13292, Further Amendment to Executive Order 12958, As Amended, Classified National Security Information. [www.whitehouse.gov/news/releases/2003/03/20030325-11.html](http://www.whitehouse.gov/news/releases/2003/03/20030325-11.html)

FBI likely will continue to function as it has previously. In addition, there was little disagreement among Working Group participants that the FBI and the Attorney General would attempt to preserve their responsibility for criminal investigations resulting from a crisis, even if DHS contained a law enforcement/criminal investigation Department. Participants acknowledged that this issue had yet to be decided between the FBI and DHS. During TOPOFF II, a conflict between the two organizations was avoided because the response was based on the existing [USG Interagency Domestic Terrorism Concept of Operations Plan \(CONPLAN\)](#), and not around newer authorities that elevate DHS above the FBI. According to the existing CONPLAN, the Attorney General is in charge of crisis management, and DHS is in charge of CM.

### ***DoD Organization for Domestic Incident Response***

One participant stated that the Department of Defense is modifying its directives related to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD (SO/LIC)) to reflect the consolidation of crisis and consequence management responsibility under the new Assistant Secretary of Defense for Homeland Defense (ASD (HD)). The revisions are due October 2003 and, among other things, may clarify how the ASD (HD) will exercise oversight of NORTHCOM. The downside to the revisions is that their completion will coincide with the publication of DTRA's Legal Reference Deskbook. It is likely that the final changes to DoD's emergency response authorities will not be reflected in the Deskbook.

The Working Group discussed the role the DoD could play in domestic law enforcement in light of the Posse Comitatus Act. However there was no consensus on the lengths to which DoD could go in domestic law enforcement in the event of a WMD attack.

### **State and Local Response**

The Working Group also focused on State and local authorities, and their roles in responding to a WMD attack. Participants stressed that despite [Executive Order 13292](#), classified information will be released to State and local authorities strictly on need-to-know basis. The Group also discussed the right of State and local governments to remuneration following a WMD attack, and whether local jurisdictions could be reimbursed for damage caused by Federal employees in the course of a WMD response. Federal funds are available in the case of a disaster declaration, and the [Federal Tort Claims Act](#) provides an avenue for legal claims against the government. The [Resource Conservation and Recovery Act \(RCRA\)](#) and the [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#) are important WMD response authorities. RCRA gives the Environmental Protection Agency (EPA) control over hazardous material, to include its storage and disposal. CERCLA, or Superfund, grants the EPA authority to clean up hazardous waste sites.

## ***The Role of NORTHCOM in Domestic WMD Incident Response***

A brief overview of NORTHCOM's role in WMD incident response was provided to the Seminar participants..



The DoD has divided the globe into eight separate zones, each with a Command, under the direction of a Combatant Commander, responsible for that zone. Prior to September 11, 2001, the United States (CONUS) was not the responsibility of any Combatant Commanders. The standup of NORTHCOM represents the first time that the U.S. has been designated an area of responsibility (AOR). Initial operational capability for NORTHCOM was October 10, 2002; full operational capability, with approximately 1300 employees, is scheduled for October 1, 2003. This may be delayed as less than half of NORTHCOM's billets are currently filled and NORTHCOM continues to refine its understanding of and communicates its mission. Strictly a supported Command, NORTHCOM has no assigned military forces other than its headquarters personnel; all troops deployed by NORTHCOM will be provided by other commands. This may present some difficulties with ensuring rapid response. In addition, NORTHCOM's AOR overlaps those of other Commands.

Historically, the consequence management role of the military has been delegated to the Army Forces Command (FORSCOM) because that command has the preponderance of forces able to respond domestically. FORSCOM likely will provide NORTHCOM with the bulk of forces

*"NORTHCOM is the tool DoD will use to respond to requests for support from other agencies."*

required for response to a WMD event. NORTHCOM will "take the homeland defense missions being performed by other DoD organizations and put them under a single command."<sup>3</sup> NORTHCOM will perform the command and control function for DoD assets in

their homeland defense and civil support roles. NORTHCOM will support other agencies in times of crises, and NORTHCOM will draw forces from other Commands in order to meet those requests. NORTHCOM has responsibility for the nation's land and sea defenses, while responsibility for its air defense remains with NORAD.


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<sup>3</sup> [www.northcom.mil](http://www.northcom.mil)

## Plenary Session

Mr. Ray Heddings, Associate General Counsel, DTRA, opened the Plenary Session of the Conference, inviting the Chairs of the Working Groups to share the results of the day's discussions.

### Working Group 1 – Chemical/HE Incident Response Presentation



**Working Group 1: Chemical Incident CM Response  
Current Department/Agency Principal Authorities &  
Directives**

- \*No need for Key Components
- \*Alphabetical Order for Agencies/Departments.
- \*Need to create an all-incident chart instead of three threat-based charts
- \*Include parenthetical citations of authorities in functions matrix
- \*Change CoM Phases (6) to the five Life Cycle Domains from NRP
- \*Add CERCLA to existing authorities for EPA
- \*National Response Center is staffed by USCG, not EPA, under the NCP (correction)
- \*Immediate Response Authority (IRA) under the DoD Response matrix


**Figure 2: Current Department/Agency Principle Authorities and Directives**

alphabetically by agency/department, rather than in order of perceived precedence. Additional suggestions focused on changes to the charts so that they would reflect the emerging National Response Plan rather than soon-to-be-cancelled Federal Response Plan. Other key suggestions included adding CERCLA as an authority on the chart for the Environmental Protection Agency and adding the Immediate Response Authority as a role/responsibility of the Department of Defense. Because the IRA allows the DoD significant freedom to deploy forces as necessary, it would likely play a large role in the aftermath of a chemical incident.

The second category, Significant Changes in Department/Agency Activities and Functions from Pre-DHS (Figure 3), focused on the

The Chemical Working Group presented its findings, which were grouped in three categories.

The first category, Current Department/Agency Principle Authorities and Directives (Figure 2), reflected suggestions to improve the format and content of the table of the same title provided to the Working Group prior to the Seminar (**Attachment 1**). It was noted that the information on key components was not necessary because it would minimize the roles of other components of the relevant agencies. The Working Group found it easier to work with the table arranged



**Working Group 1: Chemical Incident CM Response  
Significant Changes in Department/Agency Activities  
and Functions from Pre-DHS**

- \*Homeland Security Act of 2002
  - \*Public Health Security and Bioterrorism Preparedness and Response Act of 2002
- \*HSPD-5
- \*Draft NRP
- \*PL 107-40
- \*USA PATRIOT Act
  
- \*We must change the way we look at Consequence Management IAW HSPD-5 and NRP


**Figure 3: Significant Changes in Department/Agency Activities**

recent changes and additions to Federal emergency response guidance documents. This included a recommendation to change the view of consequence management to be consonant with [Homeland Security Presidential Directive-5](#) and the NRP. Other documents also cited as contributing to change include the [Homeland Security Act of 2002](#), the [Public Health Security and Bioterrorism Preparedness and Response Act of 2002](#), [Public Law 107-40](#), which authorizes the President to use armed forces for terrorism-related activities, and the [USA PATRIOT Act of 2001](#).

The third category, Recommendations (Figure 4), provided suggestions for future consideration. The Group highlighted the need for the National Response Plan, to clarify the distinctions between the day-to-day operations of Federal agencies basis and an incident for which DHS has responsibility. Because Federal Departments/Agencies have internal directives that are implemented on routine and non-routine bases, it may not always be clear when an incident qualifies as subject to coordination by DHS. Thus, the main question is when do the agencies hand off responsibility?

The Group noted the practical aspects of the Department of State coordinating overseas responses to chemical incidents. When the State Department requests support from other agencies, providing this support could detract from the ability of the supporting agencies to perform their missions at home. Therefore, a planning process to define resource requirements from the Department of Defense and other agencies in such instances is necessary.

Finally, it was noted that incident response terms at all levels should be standardized while remaining consistent with evolving definitions and statutory authorities.



**Working Group 1: Chemical Incident CM Response**  
**Recommendations**

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- \*NRP needs to clarify difference between what EPA does on day to day basis and what is an incident under DHS responsibility (applies to all agencies)
  
- \*Department of State authority is clear, but planning that will affect DoD and other resources is in its nascent stages
  
- \*Need to keep current with and standardize interagency nomenclature, e.g.:
  - CrM and CoM become Incident Management
  - LFA becomes PFA
  - Response phases align w/ *five domains*

**Figure 4: Recommendations**

## **Working Group 2: Biological Incident Response Presentation**

The Biological Incident Response Working Group summarized its results in Figure 5.

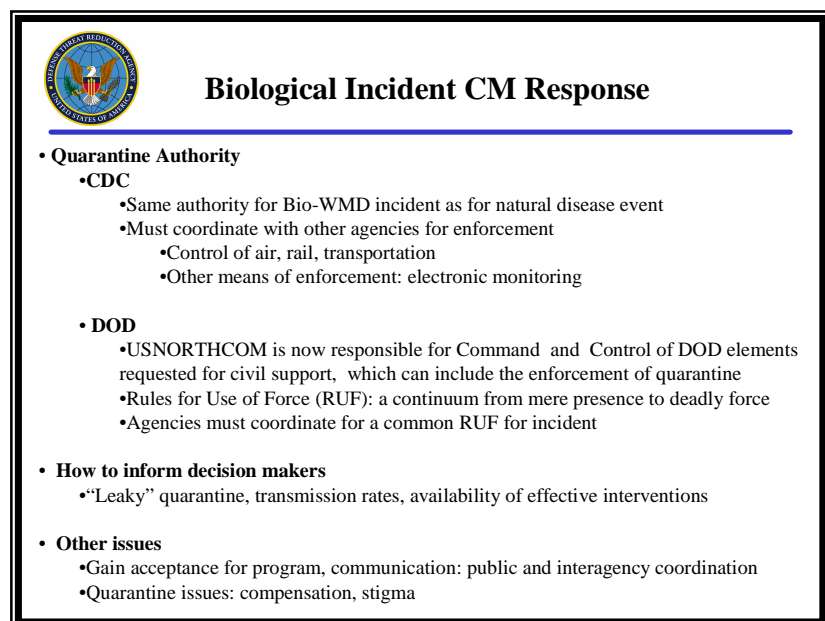
Other than the addition, by [Executive Order 13295](#), of SARS to the list of diseases for which the Centers for Disease Control (CDC) can take immediate action to protect the public health, CDC authority has not changed significantly since the creation of DHS. The initial response by the CDC will be the same, whether the threat is natural or a terrorist event. The CDC has the authority to declare a Federal quarantine, but must rely on other agencies to enforce quarantine.


In the Department of Defense, U.S. Northern Command is now responsible for the command and control of military elements requested for civil support.

The Working Group recommended that agencies coordinate a common set of Rules for the Use of Force for enforcement of quarantines.

There is a strong need for interagency coordination for quarantine, especially with respect to information sharing and disseminating information to the public. The range of acceptable breaks (“leaks”) from quarantine will determine the level of enforcement necessary to control the spread of communicable diseases.

Finally, providing compensation to quarantined citizens for lost time and money should be investigated as a means of alleviating the panic and burden associated with quarantines. Such programs were effectively implemented in Canada during the SARS outbreak.




 **Biological Incident CM Response**

- **Quarantine Authority**
  - **CDC**
    - Same authority for Bio-WMD incident as for natural disease event
    - Must coordinate with other agencies for enforcement
      - Control of air, rail, transportation
      - Other means of enforcement: electronic monitoring
  - **DOD**
    - USNORTHCOM is now responsible for Command and Control of DOD elements requested for civil support, which can include the enforcement of quarantine
    - Rules for Use of Force (RUF): a continuum from mere presence to deadly force
    - Agencies must coordinate for a common RUF for incident
- **How to inform decision makers**
  - “Leaky” quarantine, transmission rates, availability of effective interventions
- **Other issues**
  - Gain acceptance for program, communication: public and interagency coordination
  - Quarantine issues: compensation, stigma

**Figure 5: Biological Incident CM Response**

## Radiological Incident Working Group

The Radiological Incident Working Group summarized its results as shown in Figure 6. First, the Group agreed that additional authorities and directives needed to be included or considered in the drafting of the final National Response Plan (NRP). Among these are an [Executive Order 13292](#), outlining the sharing of classified information with WMD first responders, the [Maritime Transportation Security Act](#), and authorities dealing with hazardous waste containment. The Group recommended taking into account DoD's revision of its ASD (HD) related directives and the effect those revisions will have on the Seminar's forthcoming Deskbook.



### Radiological WG Issues

- New/additional authorities
  - E.O. 13292 (amends 12958)
  - Maritime Homeland Security Act
  - CERCLA/RCRA
  - Upcoming DoD Directives re: ASD/HD
- Integration of various existing plans into NRP UP HSPD-5 - - present options?
  - FRP
  - FRERP
  - NCP
  - NARP
  - National Capital Region Plan
- E.O. 13292: Classified Info Sharing
- Security/Law Enforcement in Incident Management
- Primary v. Secondary Authorities/Source of Agency Authority
  - e.g. H.S.A. for DHS, others?
  - Stafford Act v. H.S.A.
  - Which takes precedence for various agencies in NRP roles?

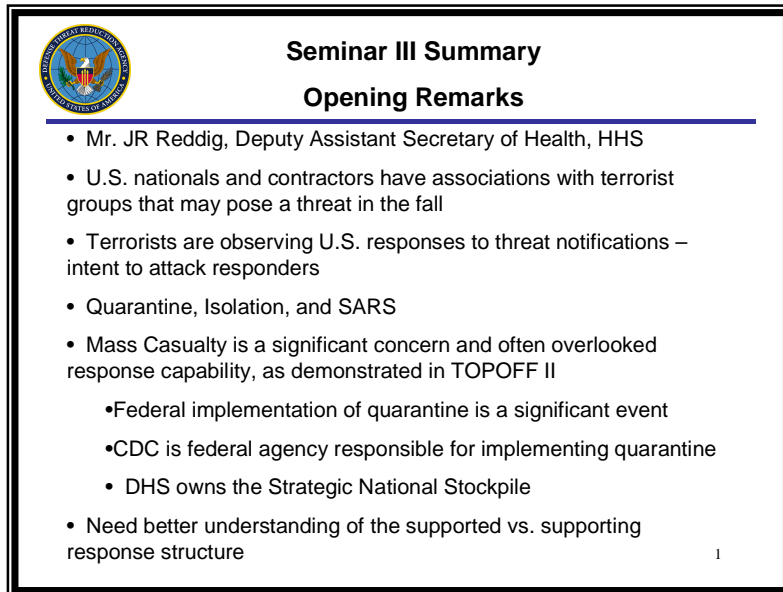
The Group discussed options for integrating various existing emergency response plans into the National Response Plan to reflect the standards of [HSPD-5](#), which requires the Department of Homeland Security (DHS) to coordinate the Federal response in the event of a WMD attack. In addition, DHS and the FBI should reach consensus on each organization's role in criminal investigations resulting from a WMD attack.

Finally, the Working Group suggested prioritizing existing authorities and directives to reflect the relative importance of each. For example, the [Homeland Security Act](#) plays a key role for DHS, as well as many Federal agencies responding to a WMD attack. Other authorities, like the [Stafford Act](#), may only apply to some agencies in part, and may be superseded by more current authorities. Clarifying responsibilities and authorities will be crucial to the development an effective response plan.

Figure 6: Radiological Working Group Issues

## Summary

To conclude the Legal WMD CM Seminar III, Mr. Robert Brittigan, DTRA GC, reviewed the day's events as summarized in figures 7 through 12. Referencing Mr. J.R. Reddig's address, Mr. Brittigan highlighted the importance of understanding that U.S. nationals and contractors may

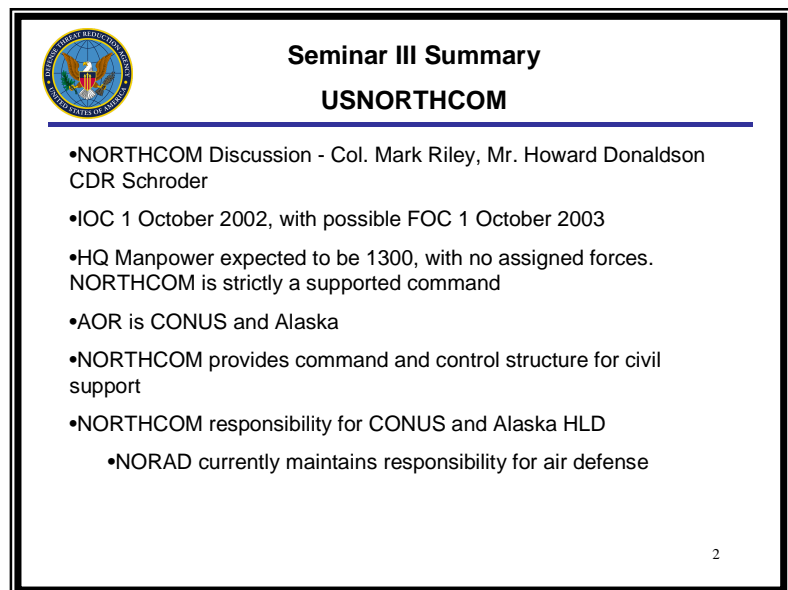


The slide features the Department of Defense seal in the top left corner. The title is "Seminar III Summary" with a subtitle "Opening Remarks". A blue horizontal line separates the title from the bulleted content. The content includes points about Mr. JR Reddig's role, U.S. national associations with terrorist groups, threat notifications, quarantine measures, mass casualty concerns, and the need for better response structures. A small number "1" is in the bottom right corner.

- Mr. JR Reddig, Deputy Assistant Secretary of Health, HHS
- U.S. nationals and contractors have associations with terrorist groups that may pose a threat in the fall
- Terrorists are observing U.S. responses to threat notifications – intent to attack responders
- Quarantine, Isolation, and SARS
- Mass Casualty is a significant concern and often overlooked response capability, as demonstrated in TOPOFF II
  - Federal implementation of quarantine is a significant event
  - CDC is federal agency responsible for implementing quarantine
  - DHS owns the Strategic National Stockpile
- Need better understanding of the supported vs. supporting response structure

Figure 7: Summary of Opening Remarks

of the Radiological Incident Response Working Group (figure 10) that new authorities need to be incorporated into the Legal Reference Deskbook on a rolling basis, which presents a challenge to keep the final product current and relevant. Finally, in reviewing the presentation of the Biological Incident Response Working Group (figure 11), Mr. Brittigan emphasized the importance of the continuum for rules for the use of force when dealing with a possible quarantine situation. He also underscored that the CDC has the ability to declare quarantine situation but must rely on the assistance of other agencies to enforce it.



The slide features the Department of Defense seal in the top left corner. The title is "Seminar III Summary" with a subtitle "USNORTHCOM". A blue horizontal line separates the title from the bulleted content. The content includes points about NORTHCOM discussion, IOC dates, HQ manpower, AOR, and command structures. A small number "2" is in the bottom right corner.

- NORTHCOM Discussion - Col. Mark Riley, Mr. Howard Donaldson CDR Schroder
- IOC 1 October 2002, with possible FOC 1 October 2003
- HQ Manpower expected to be 1300, with no assigned forces. NORTHCOM is strictly a supported command
- AOR is CONUS and Alaska
- NORTHCOM provides command and control structure for civil support
- NORTHCOM responsibility for CONUS and Alaska HLD
  - NORAD currently maintains responsibility for air defense


Mr. Brittigan informed the **Figure 8: USNORTHCOM**

have associations with terrorist organizations. Citing the overview presentation on NORTHCOM (figure 8), Mr. Brittigan reiterated the distinction between NORTHCOM's jurisdiction of the sea and land and NORAD's jurisdiction over air defense for the United States.

In reviewing the conclusions of the three Working Groups, he highlighted the recommendation of the Chemical Incident Response Working Group (figure 9) that the National Response Plan clarify what constitutes a DHS coordinated response versus what agencies do on a daily basis. He drew attention to the suggestion

participants that the final Seminar (figure 12) was tentatively scheduled for the second Thursday in October (9 October 2003). Congresswoman Rita Wilson (R-NM) has been invited as the

Guest Speaker. At that Seminar, the Deskbook would be disseminated for input from the Participants. The Deskbook will be distributed in both hard copy and CD-ROM, with the latter including hyperlinks to the complete text of references cited within the text. The Deskbook would also be available online with password accessibility. At the conclusion of this series of seminars in October, DTRA will visit relevant Federal agencies, along with the agency representatives that attended the seminars, to present a summary of the Seminar proceedings and to build agency advocacy for the



**Seminar III Summary**  
**Chemical/HE Incident Working Group**


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- Chairs: LTC Allen Goshi, AFRC; Ms. Lee Tyner, EPA
- We must change the way we look at consequence management, IAW NRP and HSPD-5
  - Keep current with and standardize interagency nomenclature
  - All-incident instead of threat-based approach
- NRP needs to clarify what Federal Agencies do on a daily basis vice what is an incident for which DHS has cognizance

3

**Figure 9: Chemical/HE Incident Working Group**

Deskbook.




**Seminar III Summary**  
**Radiological Incident Working Group**

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- Chair: Rocky Gillette, DTRA
- New authorities resulting from reorganization under DHS need to be integrated into NRP
- Jurisdiction over law enforcement aspects of WMD response needs to be clarified
  - HSPD-5 integrates CrM and CoM
- E.O. 13292 – Loosens the restrictions on dissemination of classified information to WMD responders

4

**Figure 10: Radiological Incident Working Group**




**Seminar III Summary**  
**Biological Incident Working Group**

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- Chair: Jim Misrahi, CDC
- Creation of NORTHCOM to handle DOD Civil Support
- CDC has authority to declare quarantine, but other Agencies are required to enforce
- Necessary to develop common understanding of and continuum for rules for the use of force to enforce quarantine

5

**Figure 11: Biological Incident Working Group**



**Seminar III Summary**

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- Final Seminar – Second Thursday in October 2003
  - Congresswoman Wilson (R-NM) Invited Guest Speaker
  - Legal Reference Deskbook Unveiled and Disseminated
- DTRA to Tour Federal Agencies to Present Summary of Seminar Proceedings and Highlight Deskbook

6

**Figure 12: Summary**



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# Weapons of Mass Destruction Consequence Management Legal Seminar

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## ***APPENDIX A: Agenda***

**June 24, 2003**

*Registration and Refreshments*

*Welcome and Opening Remarks by Conference Host*

**Mr. Robert Brittigan**, General Counsel of the Defense Threat Reduction Agency

*Keynote Address: United States Response to Bioterrorism*

**Mr. J.R. Reddig**, Deputy Assistant Secretary for Public Health Emergency Preparedness, HHS

*Overview of Federal Organization for CM; Working Group Goals and Objectives*

**Mr. Raymond Heddings**, Associate General Counsel of the Defense Threat Reduction Agency (DTRA)

*Working Group Review Federal Responsibilities and Authorities for Chemical/HE Incident Consequence Management*

**Co-Chairs - Ms. Lee Tyner**, Senior Attorney, Solid Waste & Emergency Response Law Office, EPA  
**LTC Allen Goshi**, Deputy Staff Judge Advocate, Office of the Staff Judge Advocate, U.S. Army Reserve Command

*Working Group Review Federal Responsibilities and Authorities for Biological Incident Consequence Management*

**Chair – Mr. James Misrahi**, Attorney Advisor, Centers for Disease Control and Prevention

*Working Group Review Federal Responsibilities and Authorities for Radiological Incident Consequence Management*

**Chair – Mr. G.R. Gillette**, Associate General Counsel, Office of the General Counsel, DTRA

*Lunch*

*The Role of NORTHCOM*

*Working Group Facilitators Exchange Information; Working Groups Continue Review of Topics and Finalize Presentations*

*Presentation I: Chemical/High-Yield Explosive Incident CM Response*

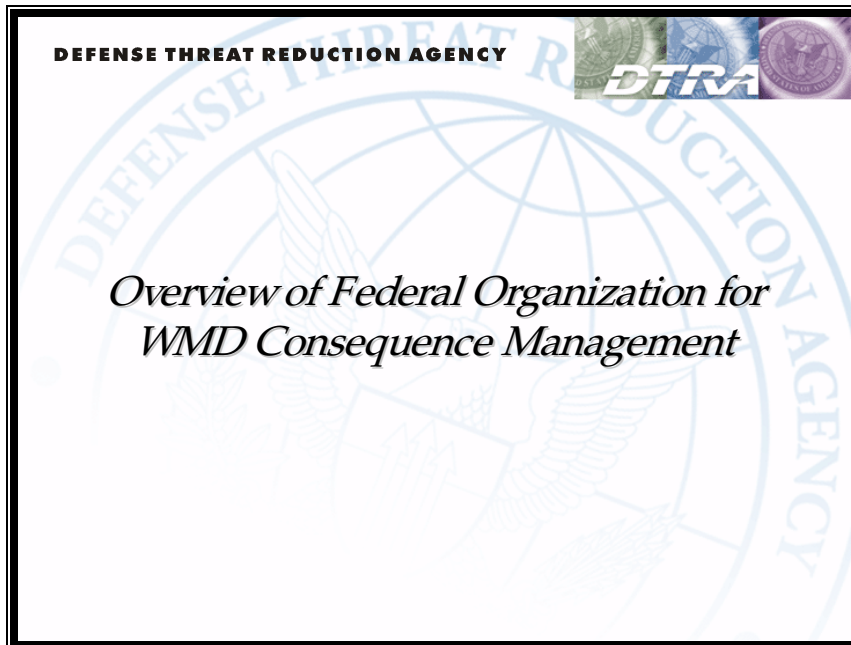
*Presentation II: Biological Incident CM Response*

*Presentation III: Radiological Incident CM Response*

*Summary and Closing Remarks*

**Mr. Robert Brittigan**, DTRA/GC, summarizes events and identifies goals and a tentative date for the final seminar

## ***APPENDIX B: Overview of Federal WMD - CM Organization***



### **Objectives**

- Review purpose and progress of WMD Consequence Management Legal Seminars
- Examine pre 9-11 WMD legal and organizational landscape
- Examine changes to WMD legal and organizational landscape, post 9-11
- Identify gaps and ambiguities
- Discuss agenda for Working Group Activities



## WMD CM Legal Seminars – Purpose and Progress

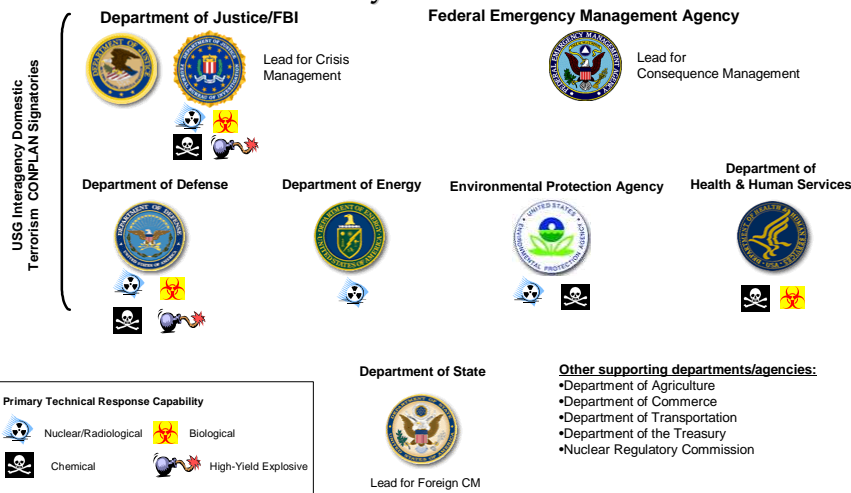
- Interagency seminars to explore legal issues related to Federal CM response to a domestic WMD event
  - Identify gaps and ambiguities, as well as areas of consensus
  - Contribute to developing a legal reference deskbook for WMD consequence management
- Seminar I, 31 May 2001
- Seminar II, 2-3 May 2002
- Seminar III, 19-20 November 2002



## Pre 9-11 WMD Consequence Management Legal and Organizational Landscape



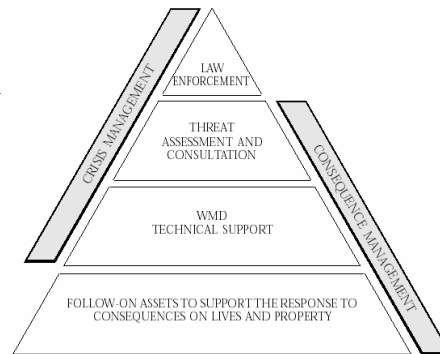
## Federal WMD Consequence Management Community, May 2001



## Relationship between Crisis and Consequence Management

**Crisis Management:** predominantly a law enforcement function and includes measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism.

**Consequence Management:** predominantly an emergency management function and includes measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism.



Source: IHSI/FEMA



## Selected Consequence Management Authorities Pre 9-11

- **CONPLAN** - FEMA, United States Government Interagency Domestic Terrorism Concept of Operations Plan, January 2001
- **FRERP** - FEMA, Federal Radiological Emergency Response Plan, May 1996
- **FRP**- FEMA, Federal Response Plan, April 1999
- **E.O. 12656** - Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," November 18, 1988, as amended.
- **NCP** - National Oil and Hazardous Substances Contingency Plan (300.175 6 IV) , December 30, 1982. (See 40 C.F.R. 300, *et seq.*)
- **PDD-39** - Presidential Decision Directive 39, "U.S. Policy on Counterterrorism," June 21, 1995
- **PDD-62** - Presidential Decision Directive 62, "Protection Against Unconventional Homeland Threats," May 22, 1998
- **Stafford Act** - Robert T. Stafford Disaster and Emergency Assistance Act, (42 U.S. Code (U.S.C.) 5121, *et seq.*)



## Pre 9-11 Consequence Management Responsibilities of Selected Agencies



## Department/Agency Roles & Responsibilities

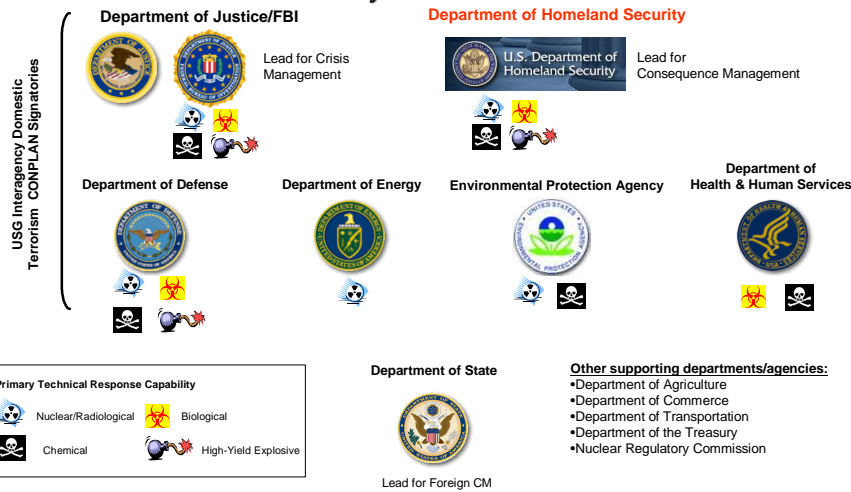
- Department of Justice/Federal Bureau of Investigation (DOJ / FBI)  
Lead Federal Agency (LFA) for Crisis Management
- Federal Emergency Management Agency (FEMA)  
LFA for Consequence Management
- Dept. of Defense (DoD)  
Provides support to DOJ/FBI and FEMA
- Dept. of Energy (DOE)  
Provides support for nuclear/radiological incidents.
- Environmental Protection Agency (EPA)  
Administers the NCP
- Health and Human Services (HHS)  
Primary Agency for health and medical services



## Post 9-11 WMD Consequence Management Legal and Organizational Landscape



## Federal WMD Consequence Management Community, May 2003



## Post 9-11 Selected Authorities Presidential Guidance

### HSPD-5: Management of Domestic Incidents (2003)

- Directs Agencies to treat crisis management and consequence management as a single, integrated function (for domestic incidents)
- Directs the Secretary of DHS to develop:
  - National Response Plan (NRP).
    - Integration of Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan
  - Comprehensive National Incident Management System (NIMS)
    - Nationwide approach for Federal, State, and local governments to work together to respond to, and recover from domestic incidents
    - System must include a core set of concepts, principles, terminology and technologies



White House photo by Eric Draper

### Executive Order 13284: Management of Domestic Incidents (2003)

- Amends Executive Orders 12148, 12656 and 12657, among others
- Recognizes the creation of DHS and the transfer of LFA role and responsibilities from FEMA to DHS





## Changes in Consequence Management Authorities

AUTHORITY	CURRENT STATUS
CONPLAN	Unchanged*
FRERP	Unchanged*
FRP	Revised, January 2003*
E.O. 12656	Amended by E.O. 13284, E.O. 13286
NCP	Revised, January 2002*
PDD-39	Unchanged
PDD-62	Unchanged
Stafford Act	Agency functions transferred by Homeland Security Act of 2002

\*Future Status TBD Pending Publication of the National Response Plan (NRP)



## Post 9-11 Consequence Management Responsibilities of Selected Agencies



## Department/Agency Roles & Responsibilities

- Department of Justice/Federal Bureau of Investigation (DOJ/FBI)  
Lead Federal Agency (LFA) for Crisis Management
- Department of Homeland Security (DHS)  
LFA for Consequence Management
- Dept. of Defense (DoD)  
Provides support to DOJ/FBI, and DHS  
Office of the Assistant Secretary of Defense for Homeland Defense established  
U.S. Northern Command (USNORTHCOM) established
- Dept. of Energy (DOE)  
Provides support for nuclear/radiological incidents
- Environmental Protection Agency (EPA)  
Administers the NCP
- Health and Human Services (HHS)  
Primary Agency for health and medical services



## Department/Agency Roles and Responsibilities Assistant Secretary of Defense for Homeland Defense



- Established by the FY 2003 National Defense Authorization Act
- Executive agent for DoD support to civil authorities
- Supervises all DoD homeland defense activities, including oversight of U.S. Northern Command
- Provides policy direction on homeland defense matters through the Chairman of the Joint Chiefs of Staff to Combatant Commands



## Department/Agency Roles & Responsibilities United States Northern Command (USNORTHCOM)



- Initial operational capability 1 October 2002 pursuant to the new Unified Command Plan.
- Headquartered at Peterson AFB in Colorado Springs
- Mission:
  - Deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests; and
  - As directed by the President or Secretary of Defense, provide military assistance to civil authorities including consequence management operations.



## Gaps and Ambiguities in the Legal Aspects of Domestic WMD CM

- Effect of National Response Plan on Federal agency roles and responsibilities
- Integration of U.S. NORTHCOM into WMD CM community
- Roles of the National Guard in homeland security
- Effect of National Incident Management System (NIMS) on local, state, and federal agency responsibilities



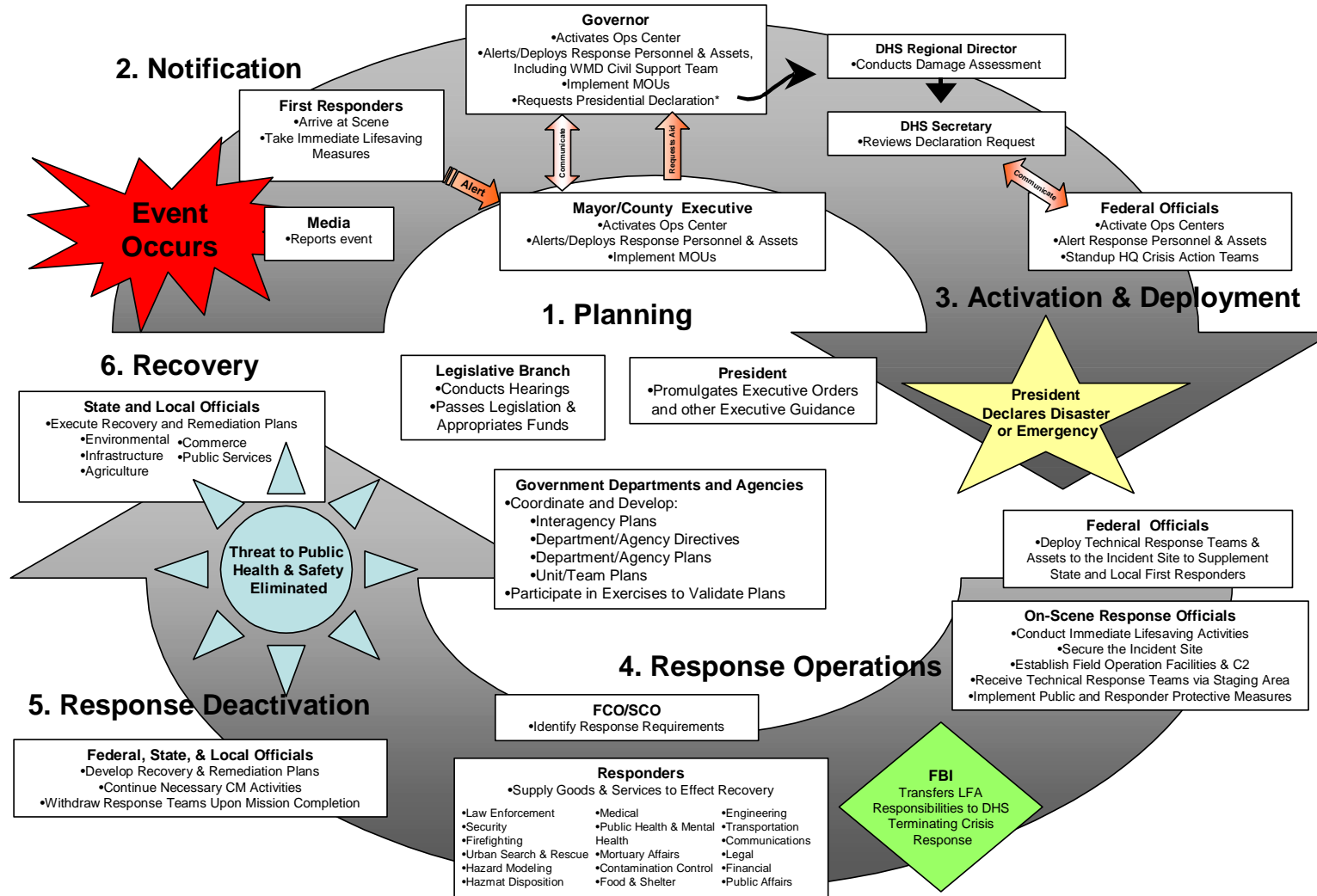
## Agenda - Working Group Activities

- Introduction of Working Group Chairs
- Review charts on Agency/Department Roles and Authorities
- Identify and discuss specific changes to Agencies'/Departments' roles, legal authorities, policies, and plans since November, 2002; to include gaps and ambiguities, if any
- Draft and deliver presentation of such changes



## APPENDIX C: WMD CM Response Storyboard

# WMD Consequence Management Phases & Associated Activities



\*This chart assumes that the event will tax state and local resources and be of a magnitude that requires implementation of the Federal Response Plan.

