

## **HURRICANE HAVOC HAS HIT REGULATORS, TOO**

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Hurricanes Katrina and Rita have inspired environmental havoc and strained the capacity of every government agency impacted by these natural disasters. According to some, this is only the beginning. At the American Bar Association Section of Environment, Energy and Resources 2005 Fall Meeting in Nashville on Sept. 22, Dean James Gustave Speth, dean and professor of environmental policy and sustainable development at the School of Forestry & Environmental Studies at Yale University, provided the meeting's keynote address.

The irony of listening to Dean Speth discussing the consequences of global warming in the wake of Hurricane Katrina and on the eve of Hurricane Rita was lost on no one. His recent book, *Red Sky at Morning*, focuses on the urgent need to address the climate problem that many believe threatens our very existence. Against the backdrop of hurricanes Katrina and Rita, Dean Speth had everyone's attention.

The aftermath of these storms has everyone's attention now, especially the U.S. Environmental Protection Agency (EPA) and the state and local government agencies that must now deal with the aftermath. There are a few issues on which EPA is devoting considerable attention.

### **EPA Environmental Priorities**

EPA sprung into high gear immediately after Aug. 29, the day Hurricane Katrina made landfall as a Category 4 storm. The damage breached levees around New Orleans that protected the city from the water in Lake Pontchartrain. The breach caused 80 percent of the city to flood. In some areas, water reached a depth of as much as 25 feet.

Shortly after the hurricane, the Department of Health and Human Services, EPA, and the Centers for Disease Control and Prevention (CDC) created the Environmental Health Needs and Habitability Task Force. The task force was charged with identifying environmental health issues faced by New Orleans to reinhabit the city. The report is detailed, and identifies 13 environmental health and supporting infrastructure issues to address.

The task force was guided by the following questions: where are the core fundamental environmental health issues to be addressed; which agencies and organizations at the federal, state and local level are responsible for these issues; what progress has been made; what is the timetable to address these issues; what resources exist or need to be brought to bear to address them; and what are the key milestones and endpoints to define success?

## Health and Infrastructure

The task force categorized the 13 identified issues by increasing time and complexity to full restoration of services, with Level 4 being the most complex and requiring the most time for restoration. The categories and issues are: Level 1 -- unwatering, power, natural gas, vector/rodent/animal control, underground storage tanks (e.g., gasoline), and food safety; Level 2 -- drinking water, wastewater, and road conditions; Level 3 -- solid waste/debris and sediments/soil contamination (toxic chemicals); and Level 4 -- housing. More information on the current status and issues involved for each is below.

As of Sept. 8, 60 percent of the city on the east side of the Mississippi River was under water. The water is being pumped into Lake Pontchartrain, and estimates, before Hurricane Rita, suggested three to four weeks to completion. Barriers to address include the resumption of non-emergency power to pumping stations; restoration of the pumping station capacity; and potential delays due to concerns about the quality of water pumped into Lake Pontchartrain.

Issues and decisions identified by the task force include the need to evaluate the quality of water going into Lake Pontchartrain and other associated water systems, and, long-term, the need to determine the extent of restoration and modernization of the unwatering and levee systems.

Power is on in some portions of the downtown business area and is being restored as areas are unwatered given the available work force. It is likely power will be restored by sections of the city soon after they are unwatered. Unanticipated slowdown in the unwatering process is a barrier. The need to reconfigure the power system based on redevelopment decisions is a long-term issue.

Adequate pressure was maintained at the central natural gas facility and throughout much of the distribution system. Currently workers are assessing areas as they unwater; finding limited leaks that are being repaired; and shutting off ruptured lines in the 17th Street levee break area. Because of extensive flooding and potential damage to the system, valves were closed and eastern New Orleans was isolated from the remainder of the system.

Barriers to restoration include unanticipated slowdown in the unwatering process to allow access for repairs and restoring natural gas flow to eastern New Orleans. The need to reconfigure the natural gas system based on redevelopment decisions is a long-term issue.

Standing water within New Orleans will likely result in a population increase of mosquitoes and flies. The New Orleans Mosquito and Termite Control Board can resume normal operations as soon as unwatering operations are completed and major road blockage is removed.

The flood waters caused the rodent population to relocate to higher ground, and stray household pets and animals may be a hazard.

Unanticipated delays in unwatering and the unavailability of equipment will be a barrier to addressing vector/rodent/animal control. Frequency and extent of control activities will need to be determined.

Structural damage to tanks and flood waters entering tanks may have caused release of contents, and the flood water is contaminated with gasoline. Assessment of storage tanks will begin after unwatering.

Qualified inspectors are needed to assess rapidly the conditions for all tank sites. The capacity to remove and replace damaged tanks and clean up contamination is unknown. With adequate staff, assessment can be quickly completed. There is a need for adequate resources if extensive damage to storage tanks exists.

Wind and flood damage resulted in structural damage to the building infrastructures of the food wholesale and retail establishments (approximately 3,800 within Orleans Parish). Power loss in the impacted areas caused food spoilage. Additionally, some food items came in direct contact with contaminated flood waters.

The Louisiana Department of Health and Hospitals needs many additional sanitarians to conduct timely inspections of food establishments. Potable drinking water and electricity need to be available at the food establishments before inspections and foodservice permits are issued.

Issues that need to be addressed include developing a strategy for retail and wholesale food inspections and permitting when potable water and electricity are available; and preparing explicit guidance to retailers, consumers and residents on the proper handling or disposition of food items that came in contact with flood waters or that spoiled because lack of refrigeration.

The water supply for New Orleans on the East Bank (approximately 90 percent of the population) is not potable. Limited provision of potable water will be available in approximately one month. Carrollton, the major water treatment plant, is operating, but water pressure is low throughout the distribution system. Damage to the distribution system is anticipated. Barriers to restoration of the drinking water supply include repair of antiquated equipment and significant damage to the distribution system. Full restoration of the system could take a year or more. Service on a limited basis must be restored to serve recovery workers. The drinking water system will need to be reconfigured based on redevelopment decisions.

The treatment plant serving most of the East Bank of New Orleans is flooded and not functioning but may be returned to limited operation in the near term. The treatment plant serving most the West Bank of New Orleans is not fully functional.

Raw sewage is being discharged into the Mississippi River, and damage to the collection system on the East Bank is anticipated. Antiquated equipment must be repaired, and the collection system is significantly damaged. Flood water removal and institution of sewage treatment capacity could take up to several months for the East Bank of New Orleans.

Full restoration of the system could take one year or more. The extent of raw sewage outflow that is acceptable on a temporary basis must be determined. The wastewater system will need to be reconfigured based on redevelopment decisions.

Road access is available to New Orleans from all directions except east, and road access from the east will require a minimum of several months. Approximately 60 percent of city roads are still under water with 30 to 40 percent of roads passable. The city is currently patching asphalt in the central business district.

Issues include unanticipated delays in unwatering or inadequate fuel, equipment or support and hidden damage to flooded roads. The road system will need to be reconfigured based on redevelopment decisions.

Huge quantities of debris, with estimates ranging as high as 30 million cubic yards, will need to be removed and managed as a result of storm damage and future demolition and reconstruction activities. Some of these materials are hazardous.

The Inter-Agency Task Force is developing a plan for management, disposition and containment of debris. The treatment, disposal and containment methods must be determined, and sufficient appropriate sites for landfill, incineration or other method of volume reduction must be selected. Hazardous materials must be separated from other debris. Regulatory issues must be addressed.

Demolition and debris treatment, disposal, and containment could be ongoing for more than one year. The extent of demolition can significantly alter the amount and scope of debris. The amount and method of environmental monitoring to be done during debris treatment, disposal, containment and transport must be determined.

Releases at chemical plants, manufacturing facilities, refineries, homes, and other buildings are possible because of flooding and other hurricane-related damage. Distribution of contamination is unknown in the city. Sampling and analysis of sediments and soil is just beginning.

Potentially large areas of the city may need to be assessed and cleaned up. Unanticipated delays in unwatering may delay sampling. The degree to which repeated, costly and time-consuming analysis may be required must be decided. A comprehensive sampling and analysis plan must be designed. The appropriate clean-up levels (standards and regulations) must be determined. Contaminated materials must be safely treated, transported and disposed. The timeline is difficult to predict until

extent of contamination is determined. Up to 80 percent of the residential structures in New Orleans sustained flood damage.

A large portion of New Orleans homes may have sustained severe structural damage and may not be viable. The full extent of the problem is not known, and will be fully known only when unwatering is complete, assessments done, and policy guidance developed and agreed upon.

The legal and procedural issues need to be resolved. It is difficult to track and communicate with a large and widely-dispersed displaced population.

Procedures are needed on how to permit safe and controlled access to the city for recovery workers, transient, and temporary visitation to homes and businesses, and rehabilitation neighborhood by neighborhood.

Key decisions need to be made before it is possible to move people back to minimally damaged structures; begin cleanup of buildings that are damaged but do not require demolition and other buildings that are of particular historical significance; and begin inspection and demolition of buildings that are structurally unsound or uninhabitable.

In all cases, methods to communicate with building owners and non-owner residents are needed. The rehabilitation, cleanup, demolition and reconstruction process will take years to complete.

### **The Waiver Issue**

While these issues, and many more, are being addressed, Washington, D.C., politicians are assessing the need to authorize more power for the EPA administrator to suspend environmental laws and regulations. This issue promises to get far more divisive in the months ahead as many question the prudence of legislative proposals to, as Representative Waxman puts it “authorize sweeping waivers of environmental protections.”

In a letter dated Sept. 22, Representative Waxman wrote EPA Administrator Johnson and cautioned EPA not to “compound Katrina’s harms by attempting to eviscerate the laws that Americans depend on to provide healthy air, safe drinking water, clean lakes and rivers, and protection from toxic pollutants.”

According to Waxman, legislative proposals that EPA “reportedly is developing” have six components targeting different portions of the Clean Air Act (CAA):

- Vest sole authority for waiving laws and regulations in the administration, subject only, in some instances, to a requirement to “consult” with the governors of states that would be directly affected.

- Allow the administrator to grant waivers whenever the administration finds that “emergency conditions exist,” “due to an Act of God or another event that could not have reasonably been foreseen or prevented.”
- Allow extended waivers without any time limits.
- Waive current requirements to conduct a rulemaking, allowing the administrator to waive Clean Air provisions without the opportunity for comment by the public or any affected party.
- Lack any deadline for notifying the public that a law or regulation has been waived.

Reportedly, the administration also has drafted more proposals that allow the administrator to waive other CAA provisions. Other legislation already introduced by Senator Inofe would authorize waivers and modifications of the applicability of certain environmental laws as necessary and in the public interest.

While it is unclear where any legislative initiative is headed, it is clear now that the administration will be in for a fight as it seeks to enact broad-based legislation intended to waive environmental requirements.

### **Collateral EPA Impacts**

The impact of the storms is being felt in other ways. First, EPA resources are stretched to the max.

Typically, EPA staff is frantic in September preparing for the end of the fiscal year on Sept. 30.

The avalanche of work inspired by hurricanes Katrina and Rita displaced the extremely limited capacity of agency offices already largely depleted by the press of day-to-day business needs.

This means that matters that were on the front burner for decisions or other types of focus action have been displaced. Decisions that were to be made will need to wait and further delays are in store.

The storms also might cause EPA to reconsider its mid- and longer-term priorities. The Government Accountability Office issued a report on Sept. 26, reporting that federal funding for climate change programs rose 55 percent on inflation-adjusted dollars between 1998 and 2004, or from \$3.28 billion to \$5.09 billion.

The report, *Federal Reports on Climate Change Funding Should be Clearer and More Complete*, is available at [www.gao.gov.new.items/do5461](http://www.gao.gov/new.items/do5461).

While it is too soon to comment on this aspect of EPA's response actions, it is not inconceivable that EPA would take a more strategic view of emergency response actions occasioned by natural disasters and realign its priorities accordingly. Even if this does not happen at the top EPA level, certain program offices, such as the Office of Water and Office of Solid Waste and Emergency Response, would appear to be uniquely and severely impacted by the consequences of the storms, and may need to realign their priorities.

Finally, EPA's enforcement personnel are also struggling to respond. As in any disaster, EPA can expect to see acts of non-compliance with the laws and regulations EPA and delegated state agencies are charged with enforcing.

Not surprisingly, manufacturers that have products that are believed to offer assistance in affected areas can be expected to promote them.

For example, vector control products to blunt the almost certain increase in mosquitoes and flies given the standing water in New Orleans will be needed.

Whether manufacturers have pesticide products with approved pesticide claims will be an area EPA's Office of Enforcement and Compliance Assurance can be expected to monitor.

Similarly, federal and state agencies can be expected to monitor waste disposal practices to ensure the enormous amounts of waste generated as a result of cleanup efforts are properly disposed.

The storms' aftermath will be felt for a long time to come. Precisely how policies will change, priorities will shift, and laws will be influenced remains to be seen.

Environmental safety and health professionals need to stay tuned, engaged, and otherwise be aware of all such changes and respond to them accordingly. **MT**

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