Superstorm Sandy
Debris Removal – Legal Issues
May 2014

Jane Kozinski, Esq.
Assistant Commissioner
Environmental Management
(609)292-2795
Land-Based Debris
Waterway Debris Project Scope

- 127 miles of coastal shoreline
- Ocean
- Backbay
- Marinas
- Lagoons
- Wetlands
- Tidally influenced streams
- Lakes
Controlling Federal Law

- Robert T. Stafford Disaster Relief and Emergency Assistance Act
  - Public Law 93-288 (as amended)
- Multiple federal environmental laws & executive orders
  - Clean Water Act
  - Migratory Bird Treaty Act
  - Endangered Species Act
  - NEPA
  - National Historic Preservation Act
  - Coastal Barrier Resources Act
  - Coastal Zone Management Act
  - CERCLA
  - RCRA
  - Clean Air Act
  - Fishery Conservation & Management Act
  - Wild & Scenic Rivers Act
  - Rivers & Harbors
  - Wetlands
  - Invasive Species
  - Environmental Justice
  - Floodplain Management
• Regulations: 44 C.F.R. Section 206.224 (1/4 page)
• Guidance
  – 9522 General Work Eligibility
  – 9523 Emergency Work
  – 9523.4 Demolition of Private Structures (7/18/07), (PDF 1.76MB)
  – 9523.5 Debris Removal from Waterways (10/30/12) (PDF 527KB, TXT 18KB)
  – 9523.10 Eligibility of Vector Control (Mosquito Abatement) (9/12/06), (PDF 325KB)
  – 9523.11 Hazardous Stump Extraction and Removal Eligibility (5/15/07), (PDF 722KB)
  – 9523.12 Debris Operations – Hand-Loaded Trucks and Trailers (8/17/10)
  – 9523.13 Debris Removal from Private Property (7/18/07), (PDF 4.4MB)
  – 9524.4 Repair vs. Replacement of a Facility under 44 CFR §206.226(f) (The 50% Rule) (3/25/09), (PDF 1.42MB)
  – 9524.5 Trees and Plantings Associated with Eligible Facilities (9/4/13), (PDF 160KB)
  – 9525.3 Duplication of Benefits - Non-Government Funds (7/24/07), (PDF 989KB)
  – 9525.9 Section 324 Management Costs and Direct Administrative Costs (3/12/08), (PDF 2.6MB)
  – 9580. 9580.214 Fact Sheet: Debris Removal on Federal-Aid Highways (10/28/12), (PDF 827K)
  – 9580.215 Fact Sheet: Hurricane Sandy: Debris Removal Force Account Labor Costs (11/5/12) (PDF 440KB, TXT 2 KB)
  – 203 Fact Sheet: Debris Monitoring (5/3/07), (PDF 370KB)
Relevant State Law

• Governor’s Executive Order 104
• DEP Commissioner’s Executive Orders
• Procurement law
• Abandoned Vessel law – N.J.S.A. 12:7C-7 et seq.
• Environmental laws
  – Tidelands
  – Water Pollution/Land Use (sediment removal, wetlands)
FEMA – Basics on Disaster Debris

• Eligibility of the debris for cost reimbursement – Is removal of the debris in the “public interest”? 44 C.F.R. 206.224
  – Threat to life, public health and safety
  – Threat to improved property
  – Economic recovery
  – Storm-related
  – Shallow enough to be a threat (waterway debris)
FEMA – Basics on Disaster Debris

- Land-based debris in Public Right of Way
  - NOT demolition or reconstruction debris
  - NOT debris from businesses
- Land-based debris on private property (PPDR) – FEMA Guidance 9523.13
- Waterway debris
  - Who’s responsible? Who “owns” the water?
  - Who owns the submerged tidally-influenced lands?
  - How do we get access to the debris stuck in the wetlands?
Land-Based Debris: Relaxing Solid Waste Rules for Sandy

• Allowed all solid waste facilities and recycling centers to operate 24/7

• Solid waste transportation
  – Issued temporary A-901 and CPCN Approvals
  – Temporary Vehicle Registrations for licensed haulers
  – Allowed use of public entity vehicles for solid waste collection (if public entity’s name displayed)

• Waste Flow suspended in Monmouth, Essex, and Union Counties
Debris Totals

• 6,195,784 cubic yards removed from public right-of-way

• Waterway debris:
  – >100,000 CY construction & demolition debris
  – 195 cars & vessels
  – 4 houses
  – ~ 400,000 CY sediment
Estimated Tons of C&D Disposed Each Week From November 3 - June 15
From Monmouth, Middlesex, Ocean, Atlantic and Cape May Counties

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Air Quality Responses

- Air permits allowed unlimited use of emergency electrical generators during power outage
- WWTP Sludge
  - DEP approved short-term usage of backup sludge incinerators simultaneously with primary sludge incinerators
  - Required a waiver from USEPA
  - Required a risk assessment for metals and hydrogen sulfide
- Vapor recovery pollution control equipment on fuel transfer operations damaged or destroyed.
  - Obtained short-term waivers from USEPA to operate sources without control devices.
  - Required risk assessment (benzene) for the short-term operation of the equipment without controls.
Requesting exemptions from USEPA

• Standard: Extreme and unusual circumstance that could not have been foreseen or prevented.
  – Home heating oil for diesel onroad and nonroad.
  – Non-reformulated gasoline.
  – Loading and unloading of fuel at terminals without air pollution control devices.
CURBSIDE COLLECTION OF DEBRIS
Long-haul trailer being loaded up

Monitor inspecting out-going truck

Grapple trucks unloading debris
Debris is removed, usually by ‘picker barges’, assisted by small sonar boats to guide the operator.
- Hand-picking of debris
- Hand-loading it onto barges

- Picking debris by grapple
Challenges

• Everything was a “first”
  – Contracts
  – Waterway debris
  – Demolition – asbestos
  – State-maintained navigation channels

• Vegetative Debris

• Working around Endangered Species & Historic Resources

• Tension among contractors, debris monitors, project manager, FEMA and resource agencies

• Deadlines – Memorial Day, 4th of July, FEMA deadlines
Questions?