

Unit 3: Special Considerations



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Unit 3: Introduction

- This unit provides:
 - A brief review of the environmental and historic preservation laws, regulations, and executive orders that can be triggered by debris-related activities.
 - A discussion of how these laws, regulations, and executive orders can apply to a community's debris-related activities.
 - A discussion of the general roles and responsibilities of the community to ensure compliance with environmental and historic preservation laws, regulations, and executive orders.
- This unit provides the background necessary to understand the importance of environmental and historic preservation issues in the debris-related concepts introduced in later units of this course.

Notes:



Objectives

- Identify regulatory compliance in debris management.
- Explain consequences of compliance/non-compliance with regulations and policies.
- Address issues as they relate to debris management.

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At the end of this unit, you will be able to:

- Explain why environmental and historic preservation issues must be considered in disaster debris-related activities.
- Identify potential environmental and historic preservation issues related to debris-related activities.
- Address environmental and historic preservation considerations in debris planning.


Notes:



Introduction (Cont'd)

Why Compliance is Important

- Significant consequences
- Legal requirements at several levels
 - Federal
 - State
 - Local / Tribal



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- There are significant consequences for non-compliance which include:
 - Legal actions—based on violation of specific laws, non-compliance with processes, and adverse effects of debris-related activities.
 - Project delays—these usually occur when you can least afford them. They may result from such things as law suits, restraining orders, and permitting requirements.
 - Negative publicity—this may result from stories about violations or improper procedures, impacts that could have been avoided, or delays that resulted from either of these.
 - In some instances, it may hamper the effectiveness of other recovery efforts.
 - Often a community, although familiar with its own regulatory requirements, is surprised to find out that there are Federal regulatory requirements after the President declares an emergency or major disaster. These requirements are not implemented at FEMA’s discretion but are mandated by Congress.
 - If certain laws are violated or procedures not followed, Federal funding may not be available.

Notes:



Introduction (Cont'd)

Community Responsibilities

- Be familiar with applicable laws, regulations, and executive orders
- Be familiar with how debris activities can trigger compliance

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- Compliance issues with applicable laws, regulations, and executive orders should be addressed in the Debris Management Plan.
- Refer to Chapter 4 of the *Public Assistance Guide*.
 - Although the Federal laws, regulations, and executive order information presented in this document is not specific to debris activities only, the Guide is an excellent reference for general information about the typical Federal laws, regulations, and executive orders that could be triggered.
- Refer to the *Public Assistance Policy Digest*.
 - The Policy Digest can be used to reference general information about the various Federal laws, regulations, and executive orders that could apply to debris activities.
- Although these documents refer only to Federal laws, regulations, and executive orders, your own State and communities will often have parallel laws and regulations. For instance:
 - Endangered Species Act (ESA): Although this is a Federal law implemented by the U.S. Fish and Wildlife Service, States also have a State Endangered or Threatened Species list and law. Compliance is required at both the Federal and State level.
 - Clean Water Act (CWA): Although this is a Federal law implemented by the U.S. Army Corps of Engineers (USACE), States usually have their own State laws and requirements regarding water quality. If so, compliance is required at both the Federal and State levels.

Application to Debris Activities

State or Local Emergency vs. Federal Declaration

State or Local Emergency

- Community responsible for compliance (permitting)

Federal Declaration

- FEMA must consider impacts of funding action
- Community responsible for compliance (permitting)

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State or Local Emergency

- The community is responsible for compliance (permitting) with applicable State and local laws, regulations, and ordinances as they affect debris-related activities.
- It is important to identify applicable State and local laws in the debris management planning process and to identify what exemptions or expedited permitting procedures could apply to the intended debris-related activities.

For instance:

- If Debris Management Sites are to be pre-identified in the Debris Management Plan, then potential site locations must be reviewed by the State Historic Preservation Office for potential impacts to cultural resources. Be sure to document compliance clearances as necessary in the Debris Management Plan (possibly in an appendix of the plan) so they are readily referenced if the plan must be implemented.
- Even though a Federal disaster declaration has not been issued, the community will still have to comply with certain applicable Federal laws, regulations, and executive orders.

For instance:

- ESA
- CWA
- CAA—may be triggered if burning of debris is proposed. In general, States have been delegated the authority for permitting under this act by the EPA.

Application to Debris Activities (Cont'd)

- Resource Conservation and Recovery Act (RCRA).
- These and additional Federal laws, regulations, and executive orders and how they apply to debris-related activities will be covered in the next few slide.
- These laws, regulations, and executive orders and their permitting procedures or exemptions should also be addressed in the Debris Management Plan.

Federal Declaration

- In the event that a Federal Declaration is granted, the State, local, and Federal issues identified above are still applicable. Since Federal funding will now be used for the community's debris-related activities, additional Federal compliance requirements will apply.
 - In addition to the community obtaining the appropriate compliance (permitting) clearance for their debris-related projects, FEMA must also obtain and document clearance for their funding actions. FEMA is required to consider impacts to environmental and historical resources **BEFORE** making Federal funding available.
 - Now that Federal funding is involved, additional Federal laws, regulations, and executive orders must be addressed. For instance:
 - National Environmental Policy Act (NEPA): This act was introduced in the previous activity.
 - NEPA is a procedural law. Each agency must have procedures to comply with NEPA.
 - NEPA requires Federal agencies to follow a specific planning process, which
 1. Requires that agency decision makers are fully informed about the environmental consequences of their decision to fund or conduct an action;
 2. Mandates that the public be informed of the proposed actions, the consequences of those actions, and the ultimate agency decision; and
 3. Must be done **BEFORE** work is initiated.
 - In other words, for projects to which NEPA applies, the law requires that before a Federal agency can fund or implement an action, agency decision-makers must study the impacts that the proposed action and alternatives will have on the environment, and make that information available to the public.
 - Certain debris activities are exempt from the NEPA documentation process. This is called a Statutory Exemption (STATEX).
 - Debris activities that can be granted a STATEX include debris clearance, debris removal to a permitted or certified landfill, debris hauling on improved rights of way, demolition of unsafe structures (although a review under the National Historic Preservation Act (NHPA) (may be required).

Application to Debris Activities (Cont'd)

- Debris activities that will require additional environmental review under NEPA include new landfills, new staging areas, or Debris Management Sites.
- Only FEMA can make this determination.
- Another Federal executive order that must be addressed if a Federal Declaration is issued is Environmental Justice.
- A discussion on how debris-related activities may trigger Federal laws, regulations, and executive orders will be covered in the following slides.
- In order for FEMA to initiate Federal compliance, potential environmental and historic preservation issues must be first identified. You will be asked to provide information to assist in completing the *Special Considerations Questions* form (a copy of this form is included at the end of this unit).
 - Turn to the end of the unit and briefly review the form; identifying typical questions that would apply to debris-related activities.
 - This form must be completed for every debris-related project that will receive Federal assistance (and for all other projects as well).
- Communities should establish environmental and historic contacts in their Debris Management Plan and should identify a contact to work with FEMA on environmental and historic issues as they relate to debris-related activities.

Notes:



Special Considerations Compliance

- Environmental
- Historic
- Insurance
- Contracting

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In order to receive Federal funding for debris removal activities, all projects must comply with the FEMA Public Assistance Regulations and Policies. In addition the projects must comply with all Federal, State, and Local Environmental and Historic Preservations laws.

Notes:



Application to Debris Activities

Application to Debris Activities

Consider regulatory compliance issues during:

- Clearance
- Collection and Removal
- Demolition
- Debris management site operations
- Volume reduction
- Final disposal

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- What are some examples of potential environmental and historic preservation issues for several of the following debris-related activities:
 - Clearance
 - Collection and removal
 - Demolition
 - Debris Management Site development and operations
 - Volume reduction
 - Final disposal

Notes:



Application to Debris Activities (Cont'd)

Environmental

- Clean Air Act
- Clean Water Act
- Floodplain & Wetlands (E.O 11988 & 11990)

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- Clean Air Act—Stipulates the protection and enhancement of the Nation’s air resources
 - Clean Water Act—Regulates discharges of pollutants into waters of the United States
 - Floodplain and Wetlands—Requires Federal agencies to preserve or restore natural benefits of floodplains/wetlands

Notes:



Application to Debris Activities (Cont'd)

Environmental

- Resource Conservation and Recovery Act
- Endangered Species Act
- Environmental Justice (EO 12898)
- Coastal Barrier Resources Act

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- Resource Conservation and Recovery Act—Requires safe disposal of waste materials, and promotes the recycling of waste materials.
- Endangered Species Act—Requires that all entities consider the effects that their actions may have on threatened and endangered species.
- Environmental Justice—Each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health, environmental, economic and social effects of its programs, policies, and activities on minority and low-income populations.
- Coastal Barrier Resources Act—Restricts Federal assistance that encourages development so that damage to property, fish, wildlife, and other natural resources associated with coastal barrier islands is minimized.

Application to Debris Activities (Cont'd)

Environmental

National Environment Policy Act

- Directs federal agencies to thoroughly assess the environmental consequences of major federal actions significantly affecting the environment.
- Exempts certain debris operations from the NEPA review process. Such operations generally include debris removal, clearance of roads, and demolition of damaged structures

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Historic

National Historic Preservation Act

- Requires that Federal agencies take into account the effects a project will have on historic resources

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National Historic Preservation Act—Damage to cultural resources and Historic sites

Notes:



Application to Debris Activities (Cont'd)

Stafford Act

Insurance –Duplication of Benefits

“No entity will receive assistance for any loss for which financial assistance has already been received under any other program, or from insurance, or from any other source.”
(44 CFR206.226a-1)

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The instructor will briefly review the following slides to emphasize that insurance proceeds for debris removal/disposal activities must be considered before FEMA funds can be provided.

Notes:



Application to Debris Activities (Cont'd)

Stafford Act

Contract Procurement (44CFR Part 13)

- Must comply with Federal, State and local procurement processes
- Must meet or exceed all Federal contract requirements
- Must procure contracts in a manner that will provide full and open competition

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State and local governments must adhere, at a minimum, to the Federal procurement standards. State and local procurement laws must also be complied with when soliciting for debris removal contracts.

If the State and local procurement process does not meet or exceed the Federal procurement standards outlined in CFR Part 13.36, FEMA cannot provide reimbursement.

Notes:



Activity 3.1 – Self-Test



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Activity 3.1: Self-Test—Federal Environmental and Historic Preservation Laws, Regulations, and Executive Orders.

- This activity will provide you with the opportunity to assess your understanding of Federal Environmental and Historic Preservation Laws, Regulations, and Executive Orders.
- Turn to turn to Activity 3.1 in the Student Manual, Volume II (Group Activity Materials).
- Instructor will provide instructions using the Instructor Guide, Volume II (Group Activity Materials) information and will indicate the time for completion.

Notes:



Activity 3.2 – Environmental and Historic Preservation Scenario Review



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Activity 3.2: Environmental and Historic Preservation Scenario Review.

- This activity will begin to provide you with the opportunity to apply the teaching points covered in this unit.
- Turn to Activity 3.2 in Student Manual, Volume II (Group Activity Materials).

Notes:



FEDERAL EMERGENCY MANAGEMENT AGENCY SPECIAL CONSIDERATIONS QUESTIONS		
1. APPLICANT'S NAME	2. FIPS NUMBER	3. DATE
4. PROJECT NAME	5. LOCATION	
Form must be filled out—for each project.		
1. Does the damaged facility or item of work have insurance and/or is it an insurable risk? <i>(e.g., buildings, equipment, vehicles, etc.)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
2. Is the damaged facility located within a floodplain or coastal high hazard area, or does it have an impact on a floodplain or wetland? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
3. Is the damaged facility or item of work located within or adjacent to a Coastal Barrier Resource System Unit or an Otherwise Protected Area? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
4. Will the proposed facility repairs/reconstruction change the pre-disaster condition? <i>(e.g., footprint, material, location, capacity, use or function)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
5. Does the applicant have a hazard mitigation proposal or would the applicant like technical assistance for a hazard mitigation proposal? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
6. Is the damaged facility on the National Register of Historic Places or the state historic listing? Is it older than 50 years? Are there more, similar buildings near the site? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
7. Are there any pristine or undisturbed areas on, or near, the project site? Are there large tracts of forestland? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
8. Are there any hazardous materials at or adjacent to the damaged facility and/or item of work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		
9. Are there any other environmentally or controversial issues associated with the damaged facility and/or item of work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure Comments _____ _____		

FEMA Form 90-120, NOV 98