

Death in the Time of COVID-19: The New Laws for Final Arrangements, Funeral Homes, and Cemeteries



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Why are we talking about this?



- Although the law of the dead is a daily matter for me, most of you do not see it often.
- However, COVID is touching every aspect of legal practice and the chances that someone will have a funeral, cemetery, or other death-related issue is fairly high.

Where is the relevant Louisiana law?

- Matters of death care are largely regulated at the state level. Though there are some federal rules that cover certain aspects of human remains and mortuary matters, almost every law related to the dead and COVID is at the state level:
 - Title 8 (cemeteries)
 - Title 13 (coroners)
 - Title 29 (emergency powers)
 - Title 37 (funeral directors and cremation)
 - Title 40 (public health)

COVID Proclamations

Relevant Proclamations Thus Far

- 25 JBE 2020 – March 11, 2019
 - Initial order, established basic limitations on state functionality
- 27 JBE 2020 – March 13, 2019
 - Began social distancing
- 30 JBE 2020 – March 16, 2020
 - Stay-at-home, public meetings, legal suspensions, other matters
- 33 JBE 2020 – March 22, 2020
 - Stay-at-home, social distancing
- 38 JBE 2020 – March 31, 2020
 - Funeral and cemetery restrictions, social distancing
- 52 JBE 2020 – April 30, 2020
 - Continued funeral, cemetery, social distancing provisions
- 59 JBE 2020 – May 14, 2020
 - Continued funeral, cemetery, social distancing provisions

Deadline Extensions

LEGAL AND ADMINISTRATIVE DEADLINES

- 1) Legal deadlines, including liberative prescription and peremptive periods applicable to legal proceedings in all courts, administrative agencies, and boards, are hereby suspended until Friday, June 5, 2020, including, but not limited to, any such deadlines set forth by law within the following:
 - a) Louisiana Civil Code;
 - b) Louisiana Code of Civil Procedure;
 - c) Louisiana Code of Criminal Procedure;
 - d) Louisiana Children's Code;
 - e) Title 9 of Louisiana Revised Statutes, Civil Code Ancillaries;
 - f) Title 13 of Louisiana Revised Statutes, Courts and Judicial Procedure;
 - g) Title 14 of Louisiana Revised Statutes, Criminal Law;
 - h) Title 15 of Louisiana Revised Statutes, Criminal Procedure;
 - i) Title 18 of Louisiana Revised Statutes, Louisiana Election Code;
 - j) Title 23 of Louisiana Revised Statutes, Labor and Worker's Compensation;
 - k) Title 32 of Louisiana Revised Statutes, Motor Vehicles and Traffic Regulations;
 - l) Title 40 of Louisiana Revised Statutes, Public Health and Safety;
 - m) Title 46 of Louisiana Revised Statutes, Public Welfare and Assistance;
 - n) Title 47 of Louisiana Revised Statutes, Revenue and Taxation;
 - o) Title 49 of Louisiana Revised Statutes, State Administration; and
 - p) Title 56 of Louisiana Revised Statutes, Wildlife and Fisheries.
- 2) In addition, all other deadlines in legal proceedings in all courts, administrative agencies, and boards shall remain suspended until Friday, June 5, 2020.
- 3) Courts, administrative agencies and boards statewide shall continue to use due diligence in communicating with attorneys, parties to proceedings with pending deadlines, and the public how the court, agency or board will implement and interpret the provisions of this Order.
- 4) Paragraph 2 of this Subsection shall not be interpreted so as to prohibit an owner of immovable property from reclaiming leased property if abandoned as provided by law, or entering leased property to make necessary repairs as provided by law.

Any state department or agency or political subdivision is hereby granted authority to further extend any non-essential deadline for a period of no longer than 30 days if deemed necessary to respond to the threat of COVID-19.

- Beginning with 30 JBE 2020 on March 16, 2020.
- Continues in effect today.
- Has effectively suspended numerous court and administrative proceedings.
- Also contains a provision allowing regulatory entities to extend non-essential deadlines for 30 days.
 - Only allows for single extension.
 - Thus, things due, for example, on April 30, with the authority of a regulatory entity, may now be due on May 30, with no further extension.

Notary Issues

- 37 JBE 2020
 - Provided for remote notarization.
 - Important for several death-relation legal transactions.
 - Was not renewed after its lapse on April 13, 2020.
 - Some portions of later funeral orders cover this, but not all.

Early Human Remains Problems



- Hospitals, coroners' offices, nursing homes and even funeral homes were getting backed up with remains due to inability to conduct funerals from social distancing and gathering restrictions.
 - Proposals of direct burials or cremations were floated.
 - Some families agreed to this, but authorizing such drastic approaches for everyone would require a suspension of La. R.S. 8:655 by gubernatorial declaration.
 - Informal compromises were reached between industry and regulators that led to the funeral/cemetery-specific proclamations and to the establishment of a temporary morgue.

Funeral and Cemetery Guidance

- A) Pursuant to the Stay at Home Order issued by Proclamation Number 33 JBE 2020, funeral services must be limited to attendees of no more than 10 people. Funeral directors are directed to limit the number of personnel present at any such service to only one single funeral director and to ensure the enforcement of the CDC's social distancing guidelines during the conduct of the funeral.
- B) Pursuant to the Stay at Home Order issued by Proclamation Number 33 JBE 2020, graveside services must be limited to attendees of no more than 10 people. Funeral directors are directed to phase the individuals present at graveside services as follows:
 - i) Rather than the standard practice of several funeral directors, staff, clergy, and pallbearers being present for funerals or graveside committals, funeral directors shall limit non-family attendees to essential personnel only and follow CDC's social distancing guidelines at all times.
 - ii) Any family and mourners attending a funeral or graveside service shall not exceed the 10-person limit of Proclamation 33 JBE 2020 and such number shall include any funeral staff and clergy necessary to conduct the service, unless funeral staff and clergy are at a distance of no less than 10 feet from the family and mourners.
 - iii) In no event should funeral directors authorize or permit walking visitations or continuous streams of visitors to funeral homes or gravesides, as such activities violate the current Stay at Home Order and the CDC's social distancing guidelines and present an increased risk of COVID-19 spread.
 - iv) Any staff required to open or close graves shall be present in the respective cemetery at a distance of no less than 30 feet from the funeral or committal group at all times and shall not approach the grave until after that group has departed or before it has arrived.
- C) In order to facilitate the timely handling and interment or cremation of deceased in this State, funeral directors shall be considered "essential workers" for the purposes of obtaining access to personal protective equipment ("PPEs") and for the purposes of conducting the necessary business of death care in the State.
- D) The Department of Health is hereby directed to publish guidance that funerals for COVID-19 positive decedents be conducted, as recommended by the CDC, within three days, if practical.
- E) In order to facilitate the timely cremation of remains pursuant to the express wishes of the deceased or of those authorized to direct disposition under La. R.S. 8:655 (whichever is applicable under the law), the signatures and notarization required for cremation authorizations under La. R.S. 37:876-877 are hereby waived inasmuch as they can be replaced by faced, scanned,

or photographed signatures on the requisite paperwork and video conferencing without the need for a notary. In no event shall this waiver be interpreted as an authorization to proceed with cremation in the absence of the signatures of those required by La. R.S. 37:876-877 or against the express wishes of those individuals identified by La. R.S. 8:655. Rather, this limited waiver merely authorizes the obtaining of such signatures remotely to avoid violations of the Stay at Home Order of Proclamation Number 33 JBE 2020 and the CDC's social distancing guidelines.


F) To the extent necessary and as permitted by the orders of the Louisiana Supreme Court issued on March 16, 2020, and March 20, 2020, the district courts of this State shall consider petitions brought pursuant to La. R.S. 8:655(E) by funeral directors, hospitals, or coroners during the term of this proclamation as essential proceedings necessary to respond to the COVID-19 event.

G) In no event shall this proclamation be interpreted to waive any other provisions of Title 8 or Chapter 10 of Title 37 of the Louisiana Revised Statutes that are not expressly identified herein.

H) These provisions in Section I are effective upon signature and shall remain effective until Thursday, April 30, 2020, or as extended by any subsequent Proclamation, unless terminated sooner.

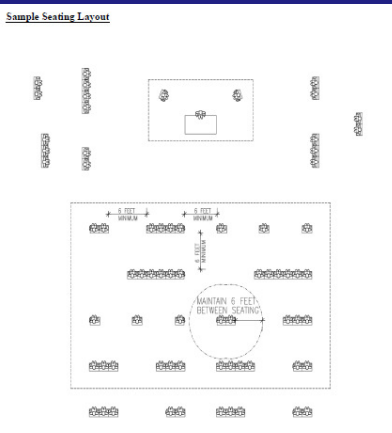
- Originated with 38 JBE 2020 on March 31, 2020.
- Substantially continued by 52 JBE 2020 (through May 15, 2020) and 59 JBE 2020 (through June 5, 2020)

Memorials and Social Distancing



LOUISIANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS
PUBLIC SAFETY SERVICES
OFFICE OF STATE FIRE MARSHAL

Sample Seating Layout



The diagram illustrates a rectangular seating arrangement. It shows multiple rows of chairs with a 6-foot gap between each row. There are also 6-foot gaps between the columns of chairs. A central aisle is marked with a 6-foot gap. A circular area in the center is labeled 'MAINTAIN 6 FEET BETWEEN SEATING'.

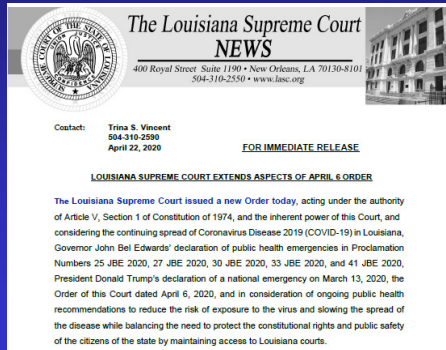
- Originally limited funeral services and graveside committals to 10 people, including officiants and staff.
 - Problems of noncompliance and second-lining.
- Now limited to 25% capacity of facility and outdoor religious service guidance of State Fire Marshall.
- Still no processions or traveling visitations.

Accused New Orleans second line organizer arrested; march defied coronavirus rules, NOPD says

BY RAMON ANTONIO VARGAS | STAFF WRITER APR 7, 2020 - 12:42 PM 1 min to read



Court Access



- Due to court closures, disputes over remains disposition have taken a back seat to the mandates in the law for cremation, embalming or interment.
- Gubernatorial proclamations have made some provision for priority classification of disposition matters.

CDC and LDH Guidance



Coronavirus Disease 2019 (COVID-19)

COVID-19 and Funerals

- Am I at risk if I go to a funeral or visitation service for someone who died of COVID-19? +
- Am I at risk if I touch someone who died of COVID-19 after they have passed away? +
- What do funeral home workers need to know about handling decedents who had COVID-19? +
- What should I do if my family member died from COVID-19 while overseas? +
- My family member died from COVID-19 while overseas. What are the requirements for returning the body to the United States? +



COVID-19: Funerals and Handling of Bodies: March 31, 2020

This information sheet has been developed to provide common guidance to all those who may participate in the removal of a decedent who is positive for COVID-19 or for those who conduct funeral services.

COVID-19 is a new disease and we are still learning how it spreads. The virus is thought to mainly spread from close contact (i.e., within about 6 feet) with a person who is currently sick with COVID-19. The virus likely spreads primarily through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

Funeral services

There is currently no known risk associated with being in the same room at a funeral or visitation service with the body of someone who died of COVID-19. However, the following guidance should be observed:

- Funerals cannot exceed 10 people while the order is in place.
- All funerals and cremations must occur within three days of the date of death.

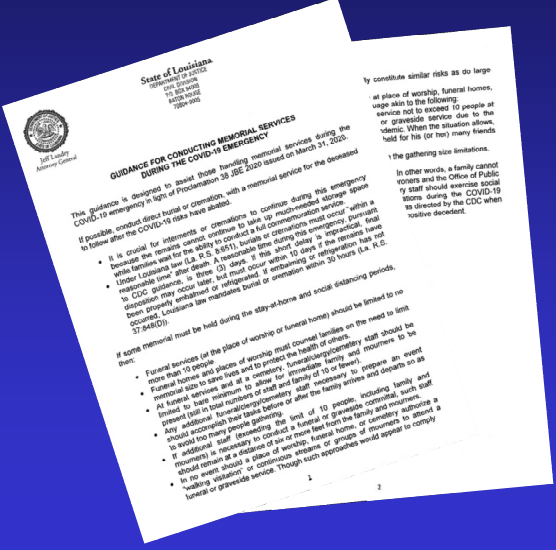
Handling a body

Funeral homes should be notified if the decedent they are to collect has been tested positive for COVID-19.

The act of moving a recently deceased patient may be sufficient to expel a small amount of air from the lungs, thereby presenting a risk of contamination. Those handling the body should use full PPE consisting of an impervious gown with full sleeve coverage, eye protection, N95 mask (or other approved mask) and double surgical gloves. Refer to the CDC guidance:

Federal and state guidance provided for some instruction on the handling of remains, but little on the logistics of conducting memorials and dealing with grieving families.

LDOJ Guidance



State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
1000 PINE ST.
BAGNOLE, LOUISIANA 70001

GUIDANCE FOR CONDUCTING MEMORIAL SERVICES DURING THE COVID-19 EMERGENCY
This guidance is designed to assist those providing memorial services during the COVID-19 emergency in light of Proclamation 30 JSE 2020 issued on March 31, 2020. If possible, avoid direct burial or cremation, with a memorial service for the deceased to follow after the COVID-19 risks have subsided.

- It is crucial for interments or cremations to continue during this emergency because the remains cannot otherwise be laid to rest. Interments or cremations must occur within a reasonable time after death. A reasonable time during this emergency depends on CDC guidance, is three (3) days if this short delay is impractical, final disposition may occur later, and must occur within 10 days if the remains have been properly embalmed or refrigerated, if embalming or refrigeration has not occurred. Louisiana law mandates burial or cremation within 30 hours (L.A.C. 37:448(B)).

If some memorial must be held during the stay-at-home and social distancing periods, then:

- Funeral services (at the place of worship or funeral home) should be limited to no more than 10 people.
- Funeral homes and places of worship must counsel families on the need to limit memorial services and places of worship to protect the health of others.
- Funeral homes and places of worship must advise for immediate family and mourners to be limited to a maximum of six (6) people for immediate family and mourners to be present (not in both funerals/cremations) staff necessary to prepare an event should acknowledge their status before or after the funeral arrives and deaths on as they occur into many people gathering.
- Any additional funeral/cremation staff necessary to prepare an event should be limited to a maximum of six (6) people from the funeral and cremation staff.
- If additional staff (including a funeral home or cemetery) are necessary to assist at a place of worship, funeral home, or cemetery, authorize a limited number of staff to be present at the funeral home or cemetery to assist a funeral home or cemetery. Limit the number of people to a maximum of six (6) people.
- In no event should a continuous stream of groups of mourners to comply with visitation or continuous stream of groups of mourners to comply with funeral or graveside service. Though such approaches would appear to constitute similar risks as do large gatherings, a family cannot exercise social distancing during the COVID-19 gathering size limitations. In other words, a family cannot exercise social distancing during the COVID-19 gathering size limitations. In other words, a family cannot exercise social distancing during the COVID-19 gathering size limitations.

- Merged legal guidance from the Governor and practical guidance from LDH and CDC to create a document that was easily understandable by non-lawyers and non-technicians.

Presidential Declaration – Regulatory Matters



EXECUTIVE ORDER
Executive Order on Regulatory Relief to Support Economic Recovery
ECONOMY & JOBS | Issued on May 19, 2020

In December 2019, a novel coronavirus known as SARS-CoV-2 ("the virus") was first detected in Wuhan, Hubei Province, People's Republic of China, causing an outbreak of the disease COVID-19, which has now spread globally. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 2476). In response to COVID-19, in Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak), I declared that the COVID-19 outbreak in the United States constituted a national emergency, beginning March 1, 2020.

- Executive Order issued May 19, 2020:
 - “Agencies should address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility.”
- Will likely provide little or no relief to funeral homes and cemeteries, as they are (largely) regulated at the state level.

Presidential Declaration – National Emergency

Presidential Documents

Proclamation 9994 of March 13, 2020

Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

By the President of the United States of America

A Proclamation

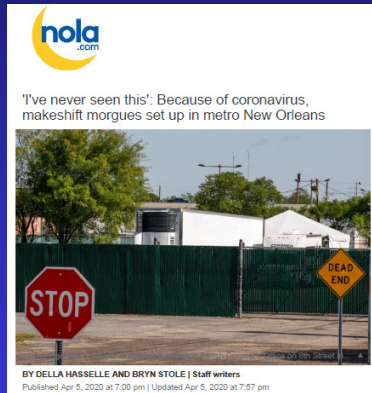
In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. I have taken sweeping action to control the spread of the virus in the United States, including by suspending entry of foreign nationals seeking entry who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 outbreaks have occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area of Europe. The Federal Government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and treat those affected, including by instituting Federal quarantines for individuals evacuated from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), and releasing policies to accelerate the acquisition of personal protective equipment and streamline bringing new diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

- The basic presidential declaration of emergency triggered certain disaster relief funding related to COVID.
 - None is specifically related to human remains issues or funeral matters.
 - Funeral Assistance under FEMA’s Individual Assistance program has not been authorized.

Federal COVID Assistance

- Neither Stafford Act (FEMA) assistance nor the CARES Act directly provide for funeral or burial assistance, regardless of whether a death is COVID-related.
- Certain Stafford Act assistance (Public Assistance) is providing partial funding to assist in mitigating human remains storage problems.

Human Remains Logistics



- To ease the burden on public and private facilities in the New Orleans area, several refrigerated trucks were leased and stood up as temporary morgues under the direction of the State's mass fatality contractor.
 - Location serves as a temporary holding site for remains before final disposition.
 - Heavy security and considerable redundant paperwork is the name of the game.

COVID Jurisprudence

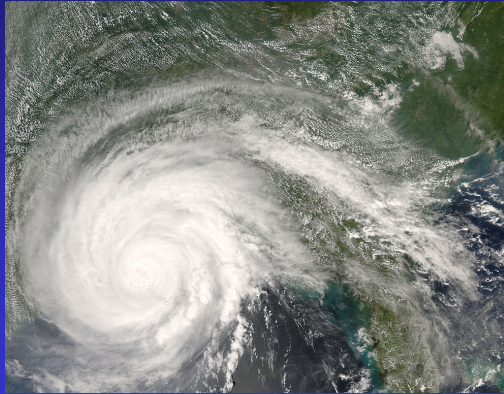
- Federal cases have been filed in Kansas, Maryland, New Jersey, New Mexico, New York, North Carolina, and Virginia.
 - Challenging gathering limitations.
 - First Amendment and civil rights challenges to funeral bans.

The Lurking Demon: Hurricane Season

Recent Response Efforts

- Katrina/Rita
 - Multi-parish impacts
 - The cemetery response was federalized and handled by the Disaster Mortuary Operational Response Team (DMORT).
- Gustav
 - Single parish (West Baton Rouge); one known cemetery impacted
 - No DMORT activation. Response handled by parish and LDOJ
- Isaac
 - Single parish (Plaquemines); three impacted cemeteries
 - No DMORT activation. Handled by *ad hoc* State/local response group.
- Harvey
 - Single parish (Calcasieu); one known cemetery impacted
 - No DMORT activation. Response handled by parish with some logistical support from LDOJ.

Hurricane Gustav – 2008

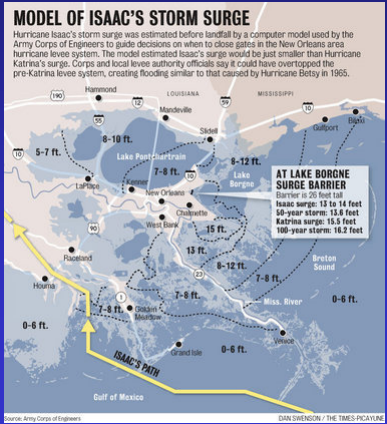
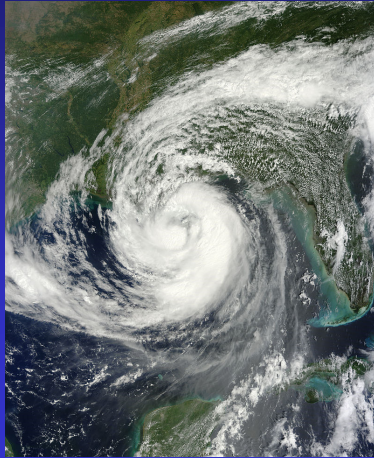


Hurricane Gustav

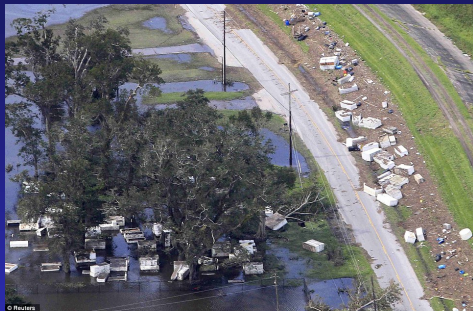


- Localized problems
- Damage was mostly wind-related
- Cemeteries impacted by falling trees.

Hurricane Isaac – 2012



Hurricane Isaac



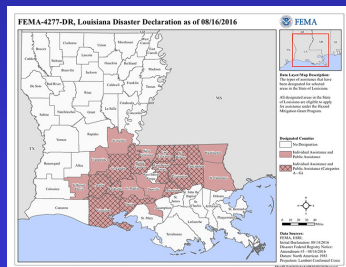
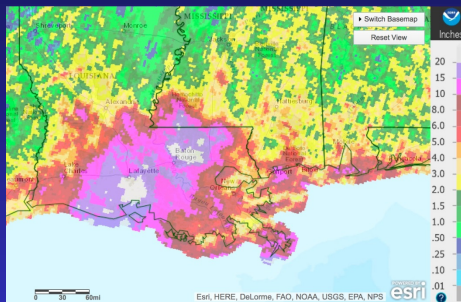
- Major impacts to 3 cemeteries in lower Plaquemines Parish
 - English Turn Cemetery
 - Braithwaite Cemetery
 - Promise Land Cemetery



Recent Response Efforts, Cont.

- 2016 Floods
 - Multi-parish impacts
 - The cemetery response was local and regional members.
- Hurricane Barry
 - Several southern parishes impacted, primary cemetery impacts located in three parishes (Jefferson, St. Landry, and St. Mary)
 - No DMORT activation. Response handled by CRTF and local/private entities
- 2019 Tornado
 - Three parishes impacted; two impacted cemeteries
 - No DMORT activation. Handled by CRTF.

The Great Flood of 2016 – A Game Changer



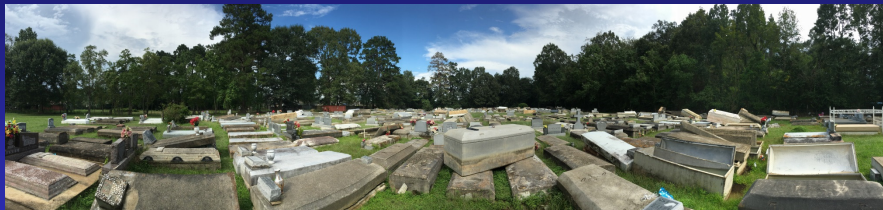
- Unprecedented rains caused flooding in areas generally inexperienced with such problems.
- 19 parishes were designated as disaster areas

2016 Floods

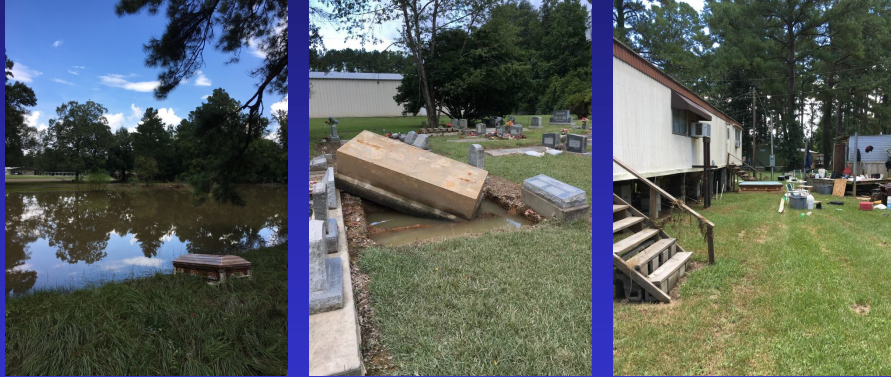
- Statistics:
 - 19 parishes
 - 74 impacted cemeteries
 - 801 damaged or disturbed graves
 - Response team of 4 people



What we found: Plainview Cemetery, Livingston Parish



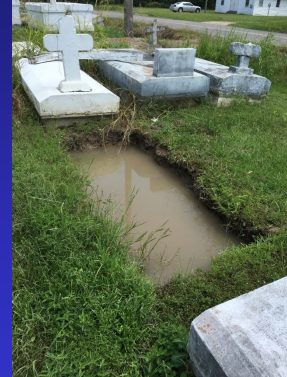
What we found: Felder Cemetery, Livingston Parish



What we found: Evening Star Cemetery, East Baton Rouge Parish



What we found: St. Mathew Cemetery, Evangeline Parish



Recovery Efforts



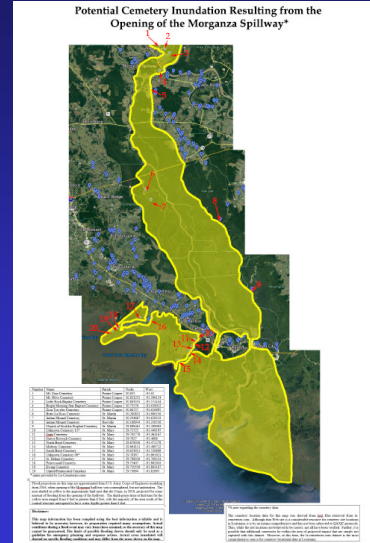
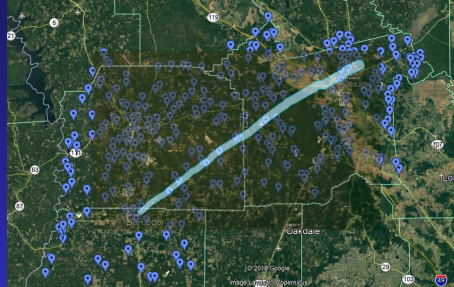
Recovery Efforts



Managing the Problem Without Federal Support

- Louisiana passed Act 713 of 2018
- Establishes the Statewide Cemetery Response Task Force for activation in declared emergencies
 - Intended to deal with damage to cemeteries and the return of human remains following a disaster
 - Composed of personnel from: FACES, LDH, DOJ, LCB, GOHSEP, Coroner's Association

Tropical Storm Barry, Morganza Opening, 2019 Tornado



Managing Public Expectations

- Ensure that there is a press and outreach point of contact
- Transparency is key
- This process is going to take a long time

STATE OF LOUISIANA
 PARISH OF ST. HELENA
 TWENTY-FIRST JUDICIAL DISTRICT COURT
 DOCKET NO. 83240 DIVISION C
 IN RE: DARLINGTON CEMETERY
 FILED: 11/21/14 DEPUTY CLERK: Tetiana Lee
 PETITION TO AUTHORIZE REINTERMENT UNDER LA. R.S. 8:659 AND TO DESIGNATE AUTHORIZED STAND-IN TO APPLY FOR INDIVIDUAL ASSISTANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY
 NOW INTO COURT, through undersigned counsel, comes the ST. HELENA PARISH POLICE JURY, the STATE OF LOUISIANA; and the DARLINGTON CEMETERY BOARD OF REPRESENTATIVES, who pray that this Honorable Court grant them the authority to



Easing Recovery Operations

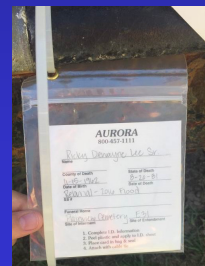
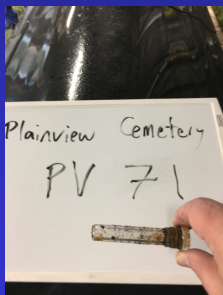
Fill out memory tube papers
 Affix some permanent record of the deceased to the external casket

La. R.S. 37:853. Identification of caskets; promulgation of rules.

A. Funeral establishments operating in the state shall affix, on a permanent-type material, the following information on all caskets used by such establishment for burial:

- (1) The name of the deceased contained in the casket.
- (2) The date of death of the deceased.
- (3) The name of the funeral home.

MEMORIES
 JANUARY 27, 1984
 BIRCH SPRINGS, LA
 507 BOND AVE.
 OFFICE FUNERAL HOME
 ANDREA TRAVIS
 2114 WOODBINE AVENUE
 SUITE 201 ST. LOUIS, LOUISIANA 70305
 ROBERT JONES
 PLAINVIEW BIRCH SPRINGS, LA.



Money Issues

- Pitfalls of FEMA’s current funding process:
 - IA was not really designed for this sort of project.
 - St. Matthews – rumor mill problems
 - Macedonia – misappropriation of funds
 - Plainview – individuals not turning over funds
 - Darlington – funeral directors charging thousands for “identifications”

3 KATC.COM
Evangeline Parish residents concerned with how FEMA checks are being spent
Posted: Feb 01, 2017 6:31 PM CST
Updated: Feb 01, 2017 9:32 PM CST
By Kendria LaFleur

Evangeline Parish - There are concerns about how checks issued by FEMA for flood recovery are being used in one cemetery in Ville Platte.

The cemetery in question is St. Matthew's Church Cemetery in Ville Platte. Tombs shifted from the ground during the August floods and are now unrecognizable. In total, 113 tombs were damaged.



Questions

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