



# Extreme Weather Events and Emergency Planning



**Impacts on LEPCs**

# HAZARDOUS CHEMICAL RELEASE POTENTIAL



- **EPA, CSB, ACTIVIST GROUPS & OTHERS ARE RAISING AWARENESS**
  - “natech” disasters — when natural hazards contribute to chemical plant releases
  - UN agencies and EU are very loud on this issue
  - Regulatory actions likely
- **CRIMINAL PROSECUTIONS HAVE OCCURRED**
  - Negligence or reckless disregard of the hazard and failure to prepare
- EPA updated the climate change web page two weeks ago with lots of wildfire impacts information - impact on chemical storage
- NASTTPO does have a guidance document for LEPCs

# **CLIMATE CHANGE REGULATORY ACTIONS ANTICIPATED**



- **REDUCTION OF EMISSIONS ALLOWED UNDER AIR PERMITS**
  - Substitution Of Fuels And Products
    - Unanticipated Consequences
- **RMP REGULATION OF ENGINEERING & PROCESS CHANGES**
  - Analysis Of Material Incompatibilities
  - Address Unfamiliar Handling/Storage Requirements
  - New/Different Detection Equipment And PPE
  - New Transportation/Delivery Scenarios
- **EXPECTATION THAT LEPCs WILL ASK DURING COORDINATION AND COOPERATION - ASTM STANDARD E3241**

# CLIMATE CHANGE - 2



- **NEW REGULATIONS** (maybe we hear something today or tomorrow)
  - Clean Water Act section 311 (j)(5)(A)(i), mandates regulations for a worst case discharge plan.
  - Focus on intense precipitation, floods, increases in water temperatures, and rising sea levels.
- **EPA's assessment program for its facilities may provide a hint.**
  - **Identified extreme weather event potentials and facility-specific impacts:**
    - Below-grade areas
    - Mechanical and electrical systems
    - Chemical/materials storage
    - Facility construction details
    - Utility systems
    - Stormwater infrastructure
  - Created action plans to mitigate

# **EPA RECOMMENDATIONS - PREVENTION**

- **ASSUMES MOST OF THESE EVENTS CAN BE ANTICIPATED**
- **REVIEW SHUT DOWN PROCEDURES**
- **REVIEW AND REVISE SAFETY PROCEDURES FOR POWER LOSS AND FLOODING**
- **ASSURE THAT EMPLOYEES ARE TRAINED ON PROCEDURES**
- **REVIEW RELEASE REPORTING REQUIREMENTS**
- **COORDINATION WITH LEPCs**
  - **ASTM STANDARD E3241 ON COORDINATION/COOPERATION**

# Random Tidbit - Top Ten Counties Safest from Climate Change



- **Rhodium Group Study analyzed by ProPublica and The New York Times Magazine**
  - **Lowest combined impact to people and economies by 2050 from six factors—heat, wet bulb temperatures, sea level rise, crop yield, fires, and economic damage.**
    - Lamoille County, Vermont
    - Franklin County, Vermont
    - Orange County, Vermont
    - Essex County, Vermont
    - Piscataquis County, Maine
    - **Summit County, Colorado**
    - **Grand County, Colorado**
    - Orleans County, Vermont
    - Hamilton County, New York
    - Franklin County, Maine

The background features several overlapping, wavy bands of green lines that create a sense of movement and depth. The lines are thin and densely packed, with varying shades of green from light to dark, creating a layered effect.

# **EPCRA & ENVIRONMENTAL JUSTICE**

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# WHAT IS ENVIRONMENTAL JUSTICE?

- EPA HAS THE MOST RELEVANT DEFINITION FOR OUR PURPOSES:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:

- *The same degree of protection from environmental and health hazards, and*
- *Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.*

*THIS IS A FUNDAMENTAL CONSTITUTIONAL RIGHT REENFORCED BY THE FEDERAL CIVIL RIGHTS ACT and the AMERICAN'S WITH DISABILITIES ACT*

# HOW DOES THIS IMPACT SERCs & LEPCs?

*I HAVEN'T FORGOTTEN TERCs & TEPCs. AS SOVEREIGNS DIFFERENT APPROACHES APPLY TO TRIBES.*

- **TWO PRIMARY CONCEPTS:**
  - *A CONSTITUTIONAL RIGHT TO ADEQUATE EMERGENCY PLANNING.*
  - *A CONSTITUTIONAL RIGHT TO NOT BE SUBJECTED TO UNEQUAL RISKS OF CHEMICAL ACCIDENTS.*
- **LITIGATION NORMALLY OCCURS UNDER THE CIVIL RIGHTS ACT**
  - *Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq*
- **LITIGATION OFTEN LINKED WITH THE ADA**
- **STATES AND LOCAL GOVERNMENTS ARE THE TARGET**

# POTENTIAL FOR LIABILITY IS CLEAR

## CPG 101

**“When threatened by ... emergencies ..., people expect elected or appointed leaders to take immediate action...”**

**The elected leaders in each jurisdiction are legally responsible for ensuring that ... actions are taken to protect people ...”**

## Continuity Guidance Circular

**“Planning across the full range of continuity operations is an inherent responsibility of every level of government.”**

**“[E]nsure that essential functions continue to be performed...”**

**“Essential functions ... cannot be deferred during an emergency; ... legally mandated functions will be essential ...”**



### Developing and Maintaining Emergency Operations Plans

Comprehensive Preparedness Guide (CPG) 101  
Version 2.0

November 2010

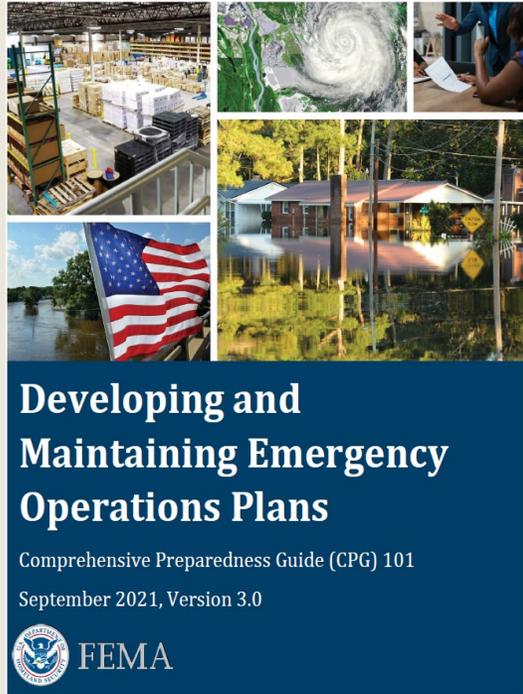


### Continuity Guidance Circular

February 2018

FEMA National Continuity Programs





## CPG 101 Ver. 3.0

**SPENDS 8 PAGES EXPANDING THE MESSAGE:**

“State and local governments must comply with Title II of the Americans with Disabilities Act (ADA) in emergency- and disaster-related programs, services and activities.”<sup>1</sup>

“In addition to the ADA, planners must comply with Title VI of the Civil Rights Act of 1964, Executive Order 13166, Section 504 of the Rehabilitation Act and other federal, state or local laws, to include anti-discrimination laws.”

**“In the nation’s system of emergency management, the local government acts first to address the public’s emergency needs. ... At a minimum, these measures include priorities such as warning, emergency public information, evacuation, shelter, security, emergency medical care and tactical communications.”**

<sup>1</sup>Look at *ada.gov* to understand the magnitude of the mandate.

# HOW TO CREATE LIABILITY

- Evaluate plans in 20/20 hindsight
- Focus on response instead of preparedness & planning
- Fail to involve the community in preparedness
  - *Creating “victims”*
- Pretending that regulatory compliance is enough
  - *Chemical lists and thresholds don’t correlate to risk*
- Failing to regulate is not a safe harbor
  - *Pretending risks don’t exist by not regulating doesn’t work*
  - *Community planning must consider risks*

# PATH FORWARD - 1

## ■ DEFINE THE PLANNING PROCESS FOR ALL STAKEHOLDERS

- What are the realistic risks in your community?
- What are the current community capabilities re those risks?
  - Whole of community - not responders
    - awareness, education, planning
    - response is not the point - broad view of preparedness
  - Compare risks with capabilities - (public and private).
  - Outcome is identification of gaps in current preparedness

## ■ And then -

# PATH FORWARD - 2

- We defend ourselves by measuring the success of the planning process

- Create strategic plan to prioritize & close capability gaps
- Prioritization requires involvement across the entire community

- Results in a step-wise approach to filling gaps

- Our progress can be measured

Requires high expectations for public and business participation



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**Let me know if you want to be on the email list or want documents.**