

## DEVELOPING ISSUES FOR SERCs

**Timothy R Gablehouse**  
 Member, Colorado Emergency Planning  
 Committee (SERC); Board Member  
 Colorado Emergency Preparedness  
 Partnership, Inc. & NASTTPO

1

- **EPA, CSB, FEMA, UN, OTHERS**
  - “NaTech” disasters - natural hazards contribute to chemical plant releases
  - Regulatory actions - more than just CWA worst case scenario regulations
- **CRIMINAL PROSECUTIONS**
  - Negligence or reckless disregard of the hazard and failure to prepare
- EPA updated its climate change web page with wildfire impacts on chemical storage
- NASTTPO guidance document for LEPCs

**CLIMATE  
 CHANGE -  
 CHEMICAL  
 RELEASE  
 POTENTIAL**

2

## **CLIMATE CHANGE REGULATORY ACTIONS ANTICIPATED**

- **REDUCTION OF EMISSIONS UNDER AIR PERMITS**
  - Substitution Of Fuels and Products - Unanticipated Changes
- **RMP REGULATION**
  - Management of Change
- **CLEAN WATER ACT § 311 (J)(5)(A)(I), WORST CASE DISCHARGE**
- **EXPECTATION THAT LEPCs WILL ASK FOR INFORMATION DURING COORDINATION AND COOPERATION**
  - ASTM STANDARD E3241

3

## **EPA RECOMMENDATIONS - PREVENTION**

- **CLIMATE CHANGE DRIVEN EVENTS CAN BE ANTICIPATED**
- **REVIEW SHUT DOWN PROCEDURES**
- **REVIEW SAFETY PROCEDURES FOR POWER LOSS & FLOODING**
- **ASSURE THAT EMPLOYEES ARE TRAINED ON PROCEDURES**
- **REVIEW RELEASE REPORTING REQUIREMENTS**
- **COORDINATION WITH LEPCs**
  - ASTM STANDARD E3241 ON COORDINATION/COOPERATION

4

## 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. [E]veryone enjoys:

- *The same degree of protection from environmental and health hazards, and*
- *Equal access to the decision-making AND planning process ...*

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

5

## HOW DOES THIS IMPACT SERCs & LEPCs?

*AS SOVEREIGNS DIFFERENT RULES APPLY TO TERCs & TEPCs*

- TWO PRIMARY CONCEPTS:

- *ADEQUATE EMERGENCY PLANNING IS A CIVIL RIGHT*
- *UNEQUAL RISKS OF CHEMICAL ACCIDENTS /RELEASES*

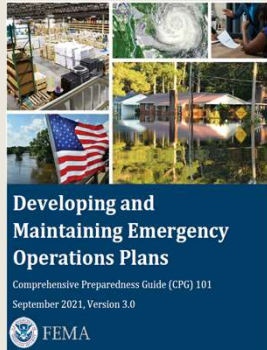
- LITIGATION OCCURS UNDER THE CIVIL RIGHTS ACT

- *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

6



## CPG 101 Ver. 3.0

**“State and local governments must comply with Title II of the 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, ... 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](http://ada.gov) to understand the magnitude of the mandate.

7

## HOW TO CREATE LIABILITY

- Being trapped by 20/20 hindsight
- Focus on response instead of preparedness & planning
- Fail to involve the community in preparedness & planning
- 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 all risks*

8

## PATH FORWARD - 1

### ■ 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 only responders
    - awareness, education, planning
- Compare risks with capabilities - (public and private).
- Outcome is identification of gaps in current preparedness

### ■ And then -

9

## PATH FORWARD - 2

- 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

This process is our defense.

Requires high expectations for participation.

10

10



**Timothy Gablehouse**

**[tgablehouse@att.net](mailto:tgablehouse@att.net) OR [tgablehouse@gcglc.com](mailto:tgablehouse@gcglc.com)**

**303.572.0050**

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