

# IMPACT OF THE HAZMAT ROUNDTABLE ON SERC/LEPC OPERATIONS

CIVIL RIGHTS & ENVIRONMENTAL JUSTICE  
IN PRACTICAL APPLICATION

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## HAZMAT ROUNDTABLE REPORT

- Extensive 2021, 2022 & 2023 meetings sponsored by PHMSA and IAFC.
- Key findings/recommendations:
  - Local-based strategic planning to identify, prioritize and fill capability gaps.
  - Emphasis on community hazard awareness and public involvement.
  - LEPCs and TERCs are a critical and foundational element in promoting community discussion, awareness and setting priorities.
  - Strategic planning at the community level to prioritize and fill capability gaps.

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## WHY THIS IS IMPORTANT TO SERCS/LEPCS

- Liability In Emergency Planning Is Real
  - There is a “Civil Right” to an adequate **planning process**
- Community Right-to-Know Makes EPCRA Important in addressing EJ and Civil Rights
- LEPCs Are Important To Satisfying These Obligations
  - Not by writing “free-standing” hazmat plans.

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## POTENTIAL FOR LIABILITY IS CLEAR

### CPG 101

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

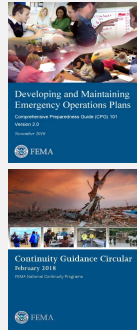
The elected leaders in each jurisdiction are **legally responsible** for ensuring that ... actions are taken to protect people ..."

### 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 ..."



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## LOCAL OFFICIALS GUIDE



From planning ... to responding and recovering ... senior officials have the responsibility to develop and maintain partnerships with those most affected by disasters.

Individuals with disabilities are protected by the ... (ADA) ...  
...[S]ervices and activities provided by state and local governments, as well as those provided through third parties ...  
... must be accessible ....

A "One-Size-Fits-All" approach to emergency management planning, resourcing and information dissemination does not work .... Actions ... include:

### Key Message:

**Support equitable and comprehensive disaster preparedness, response and recovery.**

Establishing a core planning team with ... representatives from among people with access and functional needs;

Integrating people with access and functional needs through public outreach in local and regional plans, trainings and exercises;

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## HAZARDOUS MATERIALS INCIDENTS GUIDANCE FOR STATE, LOCAL, TRIBAL, TERRITORIAL AND PRIVATE SECTOR PARTNERS



**LEPCs form partnerships** ... as a resource for ... hazardous materials preparedness.

**Local governments are responsible** for ... planning ... within their jurisdictions.

• **Ensuring the local hazard analysis adequately addresses hazardous materials incidents;**

• Incorporating planning for hazardous materials incidents into the local ... emergency plan ...;

• **[I]nformation ... accessible to all community members,** including individuals with access and functional needs, ... those with disabilities and those who do not speak English or speak it as a second language.

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## CIVIL RIGHTS & ENVIRONMENTAL JUSTICE

A fundamental constitutional right enforced by the federal civil rights act and the American's with Disabilities Act.

[T]he **fair treatment** and **meaningful involvement** of all people ...

[E]veryone enjoys:

- the **same degree of protection** from ... hazards, and
- **equal access to the decision-making AND planning process ...**
- with respect to the development, implementation and enforcement of environmental laws, regulations and policies.



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## MEANINGFUL INVOLVEMENT

- People have an **opportunity** to participate in decisions about activities that may affect their environment and/or health;

### ▪ BUT IT'S ONLY MEANINGFUL IF:

- The public's contribution can influence the government's decisions;
- Concerns will be considered in the decision-making process; and
- Decision makers will **seek out and facilitate** the involvement of those potentially affected.



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## SERCs, LEPCs & CIVIL RIGHTS

- Local governments & SERCs are the defendants in planning failures
  - Being an LEPC member is not a shield even though some states provide immunity for state claims
- A free-standing LEPC hazmat plan, rather than integrated all-hazards plan, increases risk of civil rights & ADA suits.
  - A civil rights claim of inadequate emergency planning could be based on a free-standing LEPC plan.

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### THE PLANNING PROCESS IS KEY

- The process must allow you to show that evacuation, sheltering, communication and transportation plans work.
- The process must show that people have “access” to services.
  - Availability isn’t enough.
- The process must **meaningfully involve** all communities
  - Non-English speaking, AFN, Low income
- Fail to engage people protected by the ADA in evaluation of services.

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### PATH FORWARD

- Identify and reach out so the process involves all stakeholders
- Discuss the realistic risks in your community
- Discuss the community’s capabilities for those risks
  - Entire community, not only responders.
- **THEN TELL PEOPLE WHAT YOU CANNOT DO**
- Outcome is identification of gaps in current preparedness
- And then -

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### PATH FORWARD - 2

- Create strategic plan to prioritize & close capability gaps
- *Prioritization across the entire community*
  - Results in a step-wise approach to filling gaps where our progress can be measured.
- This process is our defense.**
- Requires high expectations for participation and persistence.

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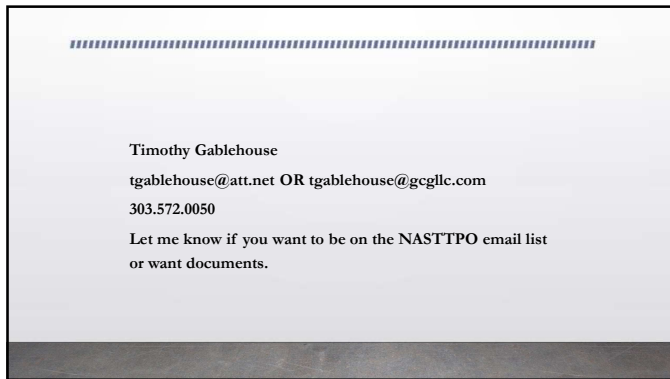
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