



# **NOVEMBER 2025 NASTTPO CONFERENCE REGULATORY/LEGISLATIVE/LITIGATION UPDATES**

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- Timothy R Gablehouse

# Who am I? So you can decide if you care about what I say.

- Practicing environmental attorney
- Member Colorado SERC
- Long ago ran ambulances, SAR and was a police officer
- Several Federal Advisory Committees
- Testified several times before Congress on emergency preparedness
- Board member InfraGard
- Board member and past-president of CO Emergency Preparedness Partnership (501c3)
- Past-president and board member NASTTPO
- Author UN Environmental Program handbook on emergency preparedness (APELL)
- Technical advisor United Nations OECD on chemical accident prevention
- Member NFPA 1600 & ASTM E50 and E54 technical committees
- Participant in Hazmat Roundtables & Summit of Railroad HAZMAT Thought Leaders



**OUR  
WORLD IS  
CHANGING**

**CHAOS &  
DISPAIR**

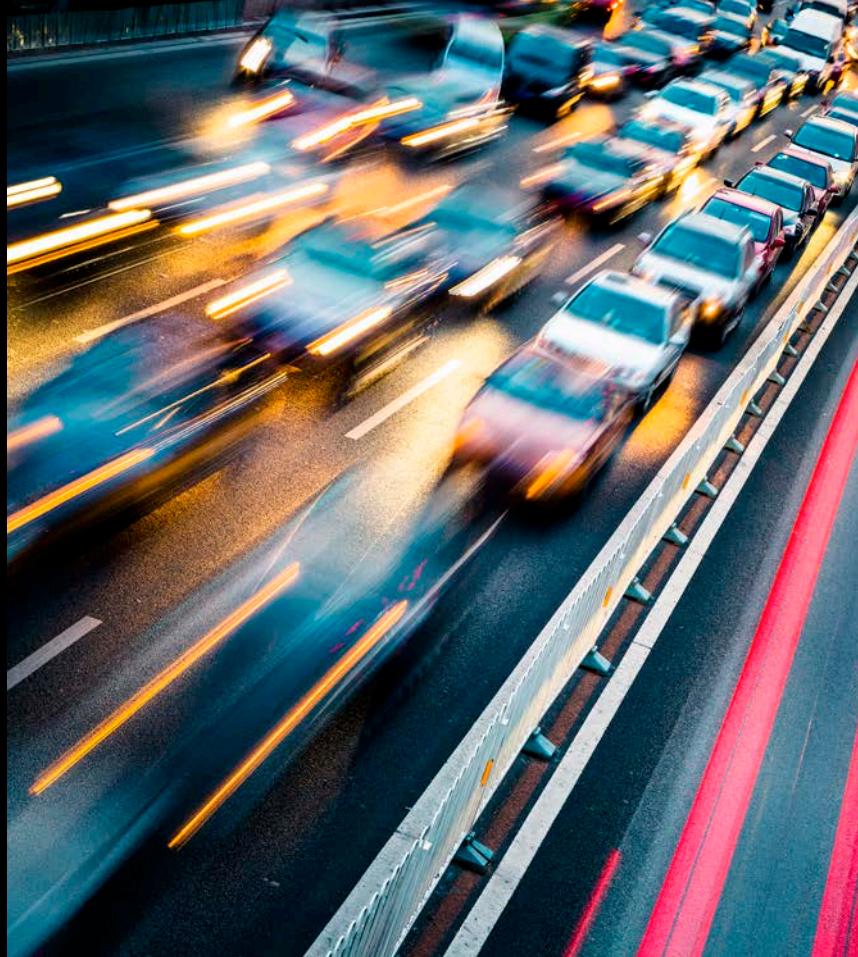
# Let's get some PERSPECTIVE

- “Small” Accidents Are The Greatest Risk
  - *Responders, Public & Workers Still Routinely Hurt*
  - *Standards, Lists & Thresholds Do Not Define Risk*
- Public Does Not Have A Sense Of Responsibility
  - *Lack Of Information/Awareness.*
- Access and Functional Needs & Non-English Speakers
- Reliance on SOPs – HABIT vs ANALYSIS
- 20/20 Hindsight –The Last Incident always looks like a Planning Failure
- Local governments get sued.

# REGULATORY ACTIONS ??

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- THE RMP RULE IS BEING “RECONSIDERED”
- TECHNICAL AMENDMENTS TO EPCRA HAZARDOUS CHEMICAL INVENTORY REPORTING
  - COMPLETE REVISION OF 40 CFR Part 370
  - APPROVED BY OMB - PUBLISHED IN THE FR SHORTLY
  - SENT OUT TO NASTTPO EMAIL LIST LAST WEEK



## TECHNICAL AMENDMENTS RULE

EPA invented direct final rulemaking in the 1980s.

The purpose is to streamline the process for noncontroversial rules.

If no significant opposition it goes into effect immediately.

Parallel proposed rule is published in the Federal Register just in case.

# Purpose of the Rule

## Alignment with OSHA Standards

**The rule aligns EPCRA reporting with the 2024 OSHA Hazard Communication Standard for consistency.**

## Modernization of Reporting

**Outdated MSDS references are replaced with updated Safety Data Sheets to modernize practices.**

## Reduced Reporting Burden

**Streamlining definitions and hazard categories reduces reporting burden on facilities.**

## Improved Emergency Planning

**The rule enhances emergency response planning and community safety through clearer communication.**





## Compliance Timeline

**The rule takes effect 60 days after publication in the Federal Register, allowing initial preparation time.**

**Facilities must meet updated requirements by December 1, 2026.**

**The initial reporting deadline is March 1, 2027, for calendar year 2026.**

# Hazard Category Updates

**Hazard categories increased for more detailed chemical classification.**

**EPCRA now fully aligns with OSHA hazard classification for consistency and accuracy.**

**'Flammable Aerosols' split, 'Pyrophoric Gas' merged, and 'Desensitized Explosives' added.**



# Regulatory and Legal Context

## Statutory Authority

The rule is based on EPCRA statutes 42 U.S.C. §§11021, 11022, and 11049 that provide legal foundation.

## Executive Order Review

Multiple Executive Orders including 12866, 14192, and 13132 reviewed in creating this rule to ensure compliance. OMB concurs.

## Deregulatory Classification

The rule is classified as deregulatory and does not impose new costs or burdens on regulated entities. (Key to Executive Order Compliance)

## Clarification and Streamlining

It clarifies and streamlines existing hazardous chemical reporting without expanding obligations.



# NASTTPO RESPONSE

- THE NASTTPO BOARD HAS DECIDED NOT TO FILE AN OBJECTION AND WILL FILE A STATEMENT OF SUPPORT



# BUDGET ACTIONS

TRUMP TRIED  
TO DEFUND CSB  
BEFORE

THE FUTURE  
FEMA ?  
EPA ?

GRANTS ?

• HE WILL AGAIN

- ADVISORY GROUP NAMED – BUT?
- STAFF & FUNCTIONS REDUCED
- EQUITY & CLIMATE RESILIENCE CUT
- MITIGATION FUNDING CUTS
- LEGAL AID FOR DISASTER VICTIMS DEFUNDED

- DELAYS ARE CERTAIN
- REDUCTIONS WILL OCCUR
- TERMS AND CONDITIONS PROBLEMATIC

## **RECENT EPA ACTIVITY**

**EPA Admin. Zeldin's Press Conference with Long Island Residents Concerned About Safety in New York's Push for Battery Energy Storage Systems (BESS)**

The message was NY's climate initiatives are inappropriate; BESS systems are scary; oil and gas production is safe.

**“EPA is the only federal agency with standardized procedures for safely deactivating and disposing of lithium batteries after incidents. While local fire departments struggle with these complex fires, EPA has specialized protocols”**

**EPA guidance document was distributed to NASTTPO email list.**

# RECENT LITIGATION



Discretionary choices do not create liability. Failing to establish ICS is a violation of policy that may result in liability. [American Reliable Insurance Company v. United States, CA-6, 2024.](#)



To have liability a government policy must be mandatory and specific. Maps showing possible USFS wildfire tactics are not mandatory. [Strawberry Water Users Asso. v. US, CA-10, 2024](#)



A local government can have civil rights liability when the policy maker is the individual that violates a person's rights. [Whitson v. Hanna, CA-10, 2024.](#)



A company owes a duty where injuries could be reasonably foreseen. Eliminate hazards and if that is not feasible, warn and require protective equipment. [Scott v. Dyno Nobel, Inc., CA-8, 2024.](#)



EPCRA reporting required for railcars used as storage when no motive power is attached and no bills of lading existed. [US v. Multistar Industries, \(E.D. Wash. August 1, 2023\)](#)



EPA regulation exempting CAFOs from release reporting is lawful. [Rural Empowerment Ass'n for Cmtv. Help v. U.S. Envtl. Protection Agency, No. 1:18-cv-02260 \(D. D.C. Aug.7, 2025\)](#) Appeal pending.

# SUING SERCs & LEPCs UNDER EPCRA

- ▶ No EPCRA suit against LEPC or host local government
- ▶ Sue the SERC
- ▶ Limited citizen suit provisions against facilities under EPCRA
- ▶ No LEPC has been sued for civil rights
- ▶ Lack of “standing” & failure to state a claim under EPCRA
- ▶ Local governments are the targets

# OUR NEW REALITY

## MONEY IS DISAPPEARING

- FEWER PEOPLE
  - RETENTION, HIRING FREEZES
- OLD EQUIPMENT CAN'T BE REPLACED
- NEW EQUIPMENT CAN'T BE PURCHASED
- CAPABILITIES DEGRADE
  - PUBLIC WILL NOT NOTICE IMMEDIATELY, BUT THE BAD DAY WILL COME

## PUBLIC EXPECTATIONS HAVE NOT CHANGED

- DISAPPOINTED PEOPLE GET MAD AND LOOK FOR SOMEONE TO BLAME (LAWSUITS)

# POLICY RESPONSE OPTIONS



**EMs AND  
LEPCs MUST  
PRACTICE  
SELF-DEFENSE**

**GOAL IS TO IMPROVE PUBLIC  
AWARENESS & INVOLVEMENT IN  
PREPAREDNESS PLANNING**

- POLICIES AND EXPECTATIONS
- FIND NEW MONEY - 501(c)(3) OPTION



**INCREASE DIRECT  
OUTREACH TO LOCAL  
LEADERS AND PUBLIC**

**IN-PERSON AND CREATE EXPECTATIONS**



## **Liability In Planning Is Real**

**There is a “Civil Right” to adequate planning**



## **Avoid Liability - Planning Success**

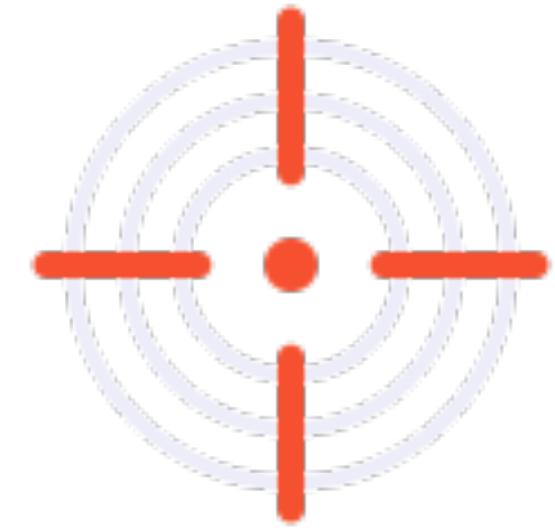


## **Measure Success In Ways You Can Control**



## **LEPCs ARE IMPORTANT**

**EPCRA is right-to-know**



## HOW DOES THIS APPLY TO LOCAL EMERGENCY PLANNING?

Facilities with substantial accident potential are common in areas populated by minorities and people with AFN.

Examples:

- Lake Charles Louisiana area
- Deer Park area near Houston is similar
- Arkansas ?

- This same population is disproportionately impacted by emergencies and disasters.

## LAND USE PLANNING AND ZONING

- *Inclusive Louisiana v. St. James Parish*, 2:23-cv-00987 (E.D. La.).

March 27, 2023

- Civil rights action asks for an injunction preventing the parish council from siting more industrial facilities in districts which are “overwhelmingly majority Black,” and to enjoin “all policies, patterns and practices, and/or customs pertaining to the racially and religiously discriminatory land-use system.”
- Trial court dismissed for “failure to show standing”
- **4th Circuit Court of Appeals reinstated this case on April 9, 2025**
- **US Supreme Court rejected appeal on October 20, 2025**

# DEVELOPING AND SUPPORTING LEPCs

## Enhanced NASTTPO guidance documents

- *Interns, law students and undergraduates*

## Training on Advanced issues

- *In person and webinars*

## Recognition for LEPC members & leaders

- *Certificates, badges, awards, etc.*

## Use 501(c)3 entities for funding

- *NASTTPO Foundation, Inc. – support conferences and ultimately provide scholarships*

# GIVE UP? IS THERE A PATH FORWARD?

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Promote a planning process that involves all stakeholders



Begin with risk and capabilities identification

Fill capability gaps with measurable activities to demonstrate success



Requires active promotion

Active rather than passive education, training and support

## PATH FORWARD - KEY STEPS



**ENGAGE – BE PART OF THE COMMUNITY**



**TELL PEOPLE WHAT YOU DO & WHY**



**EXPLAIN HOW PLANNING AND RESPONSE  
WORK**



**TELL PEOPLE WHAT  
YOU CANNOT DO**

**BE HONEST  
CREATE EXPECTATIONS**

# HOW TO GET SUED

**Fail to be certain  
evacuation, sheltering,  
communication and  
transportation plans  
work.**

**Fail to be certain that  
people have “access”  
to services.**

- Availability isn’t enough.

**Fail to involve non-  
English speaking  
communities.**

**Fail to engage  
people protected by  
the ADA in  
evaluation of  
services.**



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