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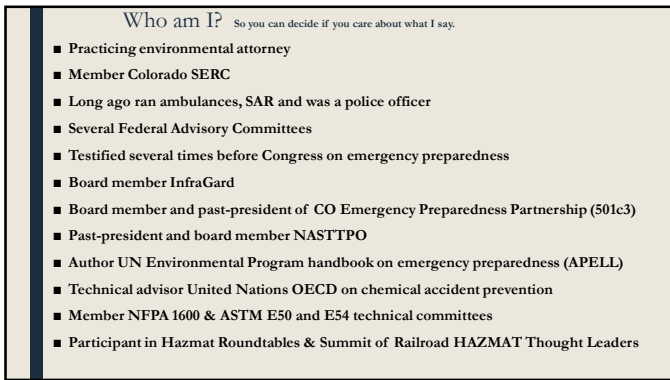
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**Let's get some PERSPECTIVE**

- "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.

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**REGULATORY ACTIONS ??**

- WHAT EPA JUST SAID
- RMP AND CWA RULES BEING CHANGED
  - NASTTPO has/will file comments
- TECHNICAL AMENDMENTS TO EPCRA HAZARDOUS CHEMICAL INVENTORY REPORTING
  - REVISION OF 40 CFR Part 370 to harmonize with OSHA
  - NASTTPO did file comments in support

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**BUDGET ACTIONS**

	<b>TRUMP TRIED TO DEFUND CSB BEFORE</b>	<ul style="list-style-type: none"> <li>• HE WILL AGAIN AND AGAIN</li> <li>• ADVOCACY IS APPROPRIATE</li> </ul>
	<b>THE FUTURE FEMA ? EPA ?</b>	<ul style="list-style-type: none"> <li>• ADVISORY GROUP NAMED - BUT?</li> <li>• STAFF &amp; FUNCTIONS REDUCED</li> <li>• EQUITY &amp; CLIMATE RESILIENCE CUT</li> <li>• MITIGATION FUNDING CUTS</li> <li>• LEGAL AID FOR DISASTER VICTIMS DEFUNDED</li> <li>• EPA REGULATORY CHANGES</li> </ul>
	<b>GRANTS ?</b>	<ul style="list-style-type: none"> <li>• DELAYS ARE CERTAIN</li> <li>• REDUCTIONS WILL OCCUR</li> <li>• TERMS AND CONDITIONS PROBLEMATIC</li> <li>• STATES HAVE SUED</li> </ul>

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### RECENT UNUSUAL 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.

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### LITIGATION

 Failing to establish ICS, if a violation of policy, 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 facilities 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 off-site where injuries could be 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. Mullistar Industries*, (E.D. Wash. August 1, 2023)

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

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### STERLING v CITY OF JACKSON MS

5<sup>TH</sup> CIRCUIT Nov. 2025

▶ VIOLATION OF 14<sup>TH</sup> AMENDMENT DUE PROCESS RIGHTS

▶ "physical freedom and self-determination" & "Government created danger"

▶ THE COURT DESCRIBED THE VIOLATIONS AS:

▶ city introduced lead into drinking water and lied about it

▶ SIMILAR TO FLINT CASE

▶ But worse as officials knowingly increased risk by hiding facts, deliberating refusing to repair and directing citizens to boil water knowing that would increase lead levels

▶ WHEN THE THE GOVERNMENT PROVIDES A SERVICE THE CONSTITUTION APPLIES

▶ SAME PRINCIPLE APPLIES TO EMERGENCY SERVICES

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**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**

- Local governments are the targets
- Civil Rights Claims regarding failures of emergency planning

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**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)

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**POLICY RESPONSE OPTIONS**



 <p>EMs AND LEPCs MUST PRACTICE SELF-DEFENSE</p>	<p>GOAL IS TO IMPROVE PUBLIC AWARENESS &amp; INVOLVEMENT IN PREPAREDNESS PLANNING</p> <ul style="list-style-type: none"> <li>• POLICIES AND EXPECTATIONS</li> <li>• FIND NEW MONEY - 501(c)(3) OPTION</li> </ul>
 <p>INCREASE DIRECT OUTREACH TO LOCAL LEADERS AND PUBLIC</p>	<p>IN-PERSON AND CREATE EXPECTATIONS</p>

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**LOCAL GOVERNMENTS IN THE CROSS-HAIRS**

- 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

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**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
- YOUR STATE ?

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

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**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

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**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

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**GIVE UP? IS THERE A PATH FORWARD?**

- 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

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**PATH FORWARD - KEY STEPS**

- ENGAGE – BE PART OF THE COMMUNITY**
- TELL PEOPLE WHAT YOU DO & WHY**
- EXPLAIN HOW PLANNING AND RESPONSE WORK IN YOUR COMMUNITY**
- TELL PEOPLE WHAT YOU CANNOT DO**      **BE HONEST**  
**CREATE EXPECTATIONS**

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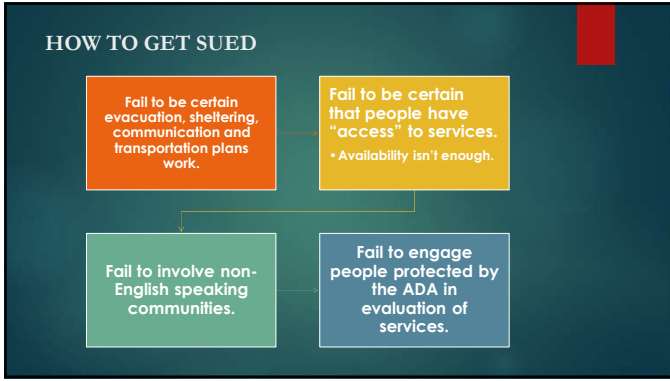
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