

Minimizing Liability & Demonstrating Success In LEPC & Emergency Preparedness Programs

Timothy R Gablehouse

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

WHAT YOU ARE GOING TO HEAR

- *Liability In Emergency Planning Is Real*
- *There Are Ways To Avoid Liability*
- *We Need A Better Way To Measure Success*
- **LEPCs ARE IMPORTANT TO BOTH**

The Problems that Create Liability

- **Evaluated in 20/20 hindsight**
- **Focusing on response instead of preparedness & planning**
- **No community sense of responsibility for preparedness**
 - *Public and small business get a “pass”*
 - *Creating “victims”*
- **Regulatory compliance is meaningless**
 - *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*
 - *Planning must incorporate the risks*

POTENTIAL FOR LIABILITY IS CLEAR

CPG 101

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

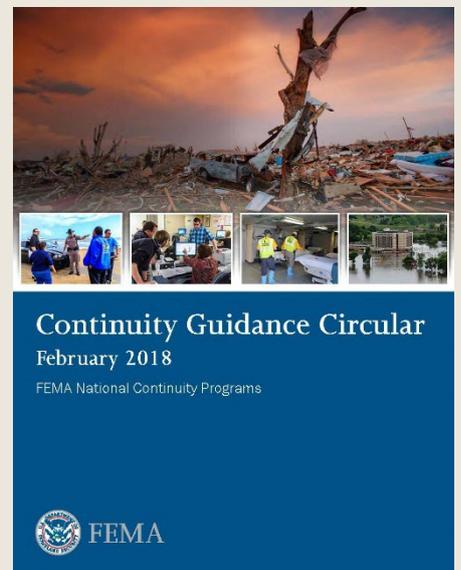
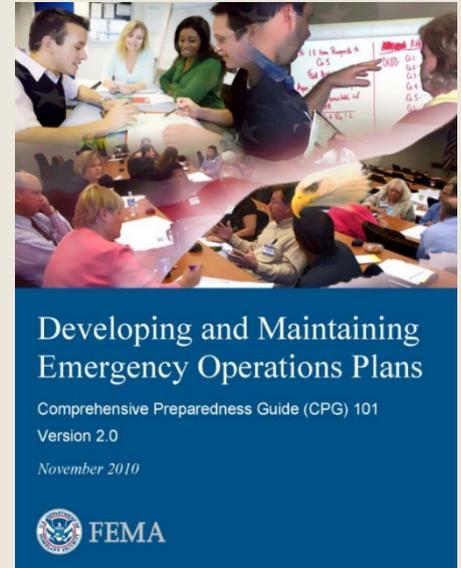
The elected leaders in each jurisdiction are legally responsible for ensuring that ... actions are taken to protect people ...”

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 ...”



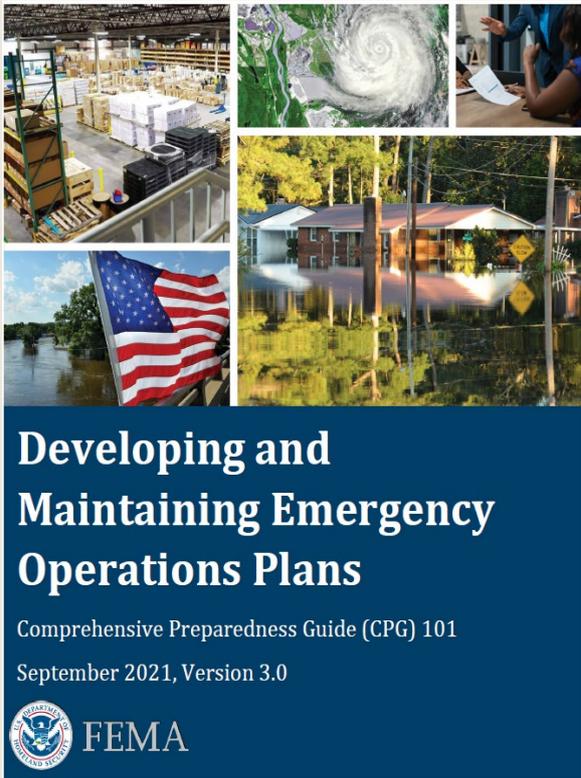
CPG 101 Ver. 3.0

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.”¹

“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.”



¹Look at ada.gov to understand the magnitude of the mandate.

Local Officials Guide



Local Elected and Appointed Officials Guide:

Roles and Resources in Emergency Management

September 2022



Key Message:

Support equitable and comprehensive disaster preparedness, response and recovery.

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

[S]enior officials [must]... :

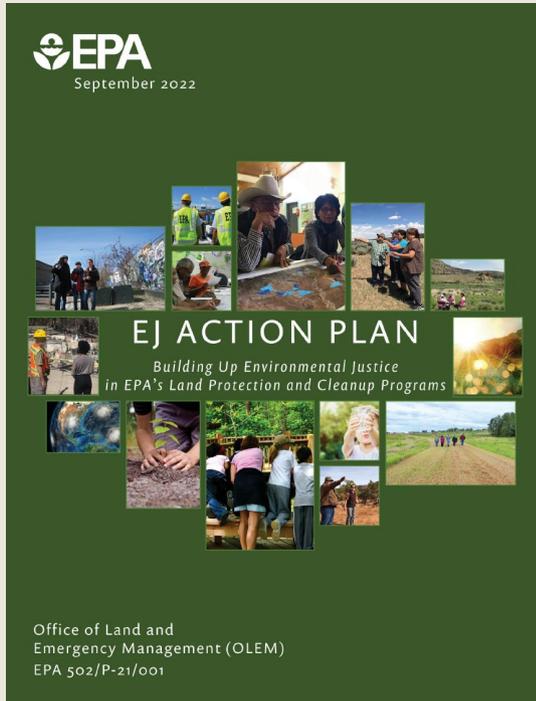
- ... *[S]trengthening existing engagement strategies and ... create new relationships, ... in racially, ethnically, economically and religiously diverse communities;*
- *Act on this information with integrity;*

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:

- *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;*

EPA EJ ACTION PLAN



... [I]ncorporate an EJ function and staffing support within the Incident Management Team and Emergency Operations Center structures

... [E]nsure that EJ issues are addressed in a timely manner and briefed to the Incident Command/Unified Command

... [P]rovide a cadre of EJ Response Facilitators to be identified from throughout EPA's Regional and Headquarters program offices to serve within EPA's Incident Command System (ICS) structure

... [D]evelop public participation guidelines for disaster response situations and promote their adoption and use by relevant emergency response organizations in the public and private sectors.

Key Message:

EPA ... ensuring [compliance]
... with ... civil rights laws ...
including Title VI of the Civil
Rights Act

This may mean that EJ is to be a key aspect of any regulatory compliance program involving emergency preparedness.

- Begins with the RMP rule.

HAZMAT ROUNDTABLE REPORT

- Extensive 2021 meetings sponsored by PHMSA and IAFC with broad participation by other agencies.
- Key findings/recommendations:
 - Local-based strategic planning is needed to identify, prioritize and fill capability gaps.
 - There is a growing emphasis on the need to better address community hazard awareness, and to directly involve the public in community preparedness planning.
 - The role of Local Emergency Planning Commissions (LEPCs) and Tribal Emergency Response Councils (TERCs) is a critical and foundational element in providing the hazard, risk, and capability assessments needed by the response community.
 - These assessments should be followed by strategic planning at the community level to prioritize and fill capability gaps.

SOURCES OF LIABILITY IN THE PLANNING PROCESS

- **CIVIL RIGHTS CLAIMS**

- **KATRINA CASES & AMERICAN'S WITH DISABILITIES ACT**

- **PLANNING CAN'T BE DONE IN A VACUUM**

- **EVALUATE HAZARDS AND CAPABILITIES IN THE COMMUNITY**
- **STRATEGICALLY PLAN TO FILL CAPABILITY GAPS**

- **MUST INCLUDE THOSE IMPACTED BY THE PLAN**

- **VULNERABLE POPULATIONS – mobility, language, access**

- **LEPCs ARE VERY USEFUL**

- **COLLECT HAZARD DATA ALREADY AND CAN COLLECT MORE**
- **NON-REGULATORY PUBLIC FORUM**



WHAT IS THE LEPC ROLE?

WHY YOU SHOULD USE AN LEPC

- **What Is Unique About LEPCs?**
- **What Are The Legal Authorities?**
- **Community-based Assessment Of Risks And Capabilities**
- **Forum For Discussion And Communication**
- **Do Not Have To Lead But Must Participate**
- **Opportunity To Limit Liability**

GOLDEN RULES

- **Know the risks/capabilities in your community.**
 - What are risks? (Manmade and natural)
 - What are the response capabilities?
 - What are the public capabilities?
 - Strategically plan to fill gaps
 - Have a vision of success and measure progress

- **Educate public and business**
 - What can happen to you?
 - What are their obligations?

- **Create participation and cooperation**
 - Public, authorities & industry
 - Have high expectations

PATH FORWARD

Measure success of the planning process

That process is:

- What are the risks?
 - *Different than hazards*
- What are the current community capabilities
 - *Response is not the point – broad view of preparedness*
 - Match risks with capabilities – (public and private).
- Outcome is identification of gaps in current preparedness
- And then -

COMMUNITY-BASED STRATEGIC PLAN

- “Vision of Success” is the community’s ideal level of preparedness
- Create strategic plan to prioritize & close capability gaps
 - *Step-wise approach to reach vision of success*
- Prioritization is necessary, but must be community-based
- Requires broad involvement across the entire community
- High expectations of public and business preparedness
- Measure progress

This process is your defense to civil rights claims for failure to plan.

MEASURE SUCCESS

- Progress & success are demonstrated by measurable results
- Pick projects from the strategic plan designed to close gaps
 - *Meaningful & relevant*
 - *Why commodity flow studies? Why train and what for?*
- Actually measure and evaluate
 - *Exercises*

QUESTIONS

- **TIM GABLEHOUSE**
- **tgablehouse@att.net**
- **(303) 572-0050**