

## 19<sup>th</sup> ANNUAL EPAZ Conference

# ENVIRONMENTAL JUSTICE

**WHAT DOES IT MEAN?**

**HOW DOES IT IMPACT EMERGENCY PLANNING?**

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# Environmental Justice is a Civil Right

Civil rights are personal rights guaranteed and protected by the U.S. Constitution and federal laws enacted by Congress, such as the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990.

Civil rights involve protection from unlawful discrimination because of race, income, language, employment, age, disability and sex. (and others)

**WHY THIS IS IMPORTANT TO  
EMERGENCY PLANERS, SERCS & LEPCS**

**Civil Rights Liability in Emergency Planning is Real**

**Civil Right to an adequate emergency planning process**

**Community Right-to-Know concepts make  
Environmental Justice part of this Civil Right**

**EPCRA is one part**

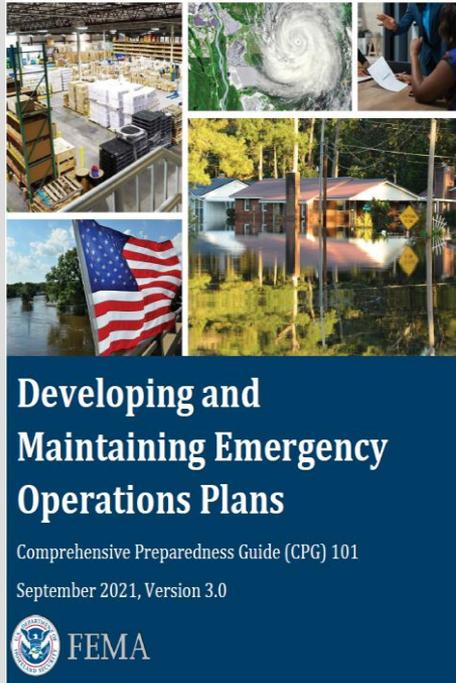
# CPG 101 VER. 3.0

## CIVIL RIGHTS COMPLIANCE:

“State and local governments must comply with Title II of the Americans with Disabilities Act (ADA) in emergency- and disaster-related programs, ...”<sup>1</sup>

“In addition to the ADA, planners must comply with ... the Civil Rights Act of 1964, ....”

“In the nation’s system of emergency management, the local government acts first to address the public’s emergency needs. ... At a minimum, ... warning, emergency public information, evacuation, shelter, security, emergency medical care ...”



<sup>1</sup>Look at [ada.gov](http://ada.gov) to understand the magnitude of the mandate.

# ADEQUATE EMERGENCY PLANNING PROCESS

The **fair treatment** and **meaningful involvement** of all people

Everyone enjoys:

- the **same degree of protection** from ... hazards, and **equal access to the decision-making AND planning process ...**

Environmental Justice is the subset of activities related to:

- the development, implementation and enforcement of environmental laws, regulations and policies that expose people to risk of harm.

- includes all aspects of emergency planning

## FAIR TREATMENT

- Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

# 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 regulatory agency's decision;
  - Community concerns will be considered in the decision making process; and
  - Decision makers will seek out and facilitate the involvement of those potentially affected.

## WHAT DOES THIS LOOK LIKE?

- **Who is protected?**
  - Minorities
  - Low-income
  - Non-English speakers
  - Social vulnerability
    - Access to communications – internet, cell, phone
    - Access to social services & social networks
    - Access to emergency services
  - Every AFN condition you can think of
- Adequacy of emergency planning is just the start.

## WHAT DOES THIS LOOK LIKE? CONTINUED

- **Classic examples:**
  - Are facilities with accident **potential** being located near minority neighborhoods?
  - Are zoning and land use regulations forcing low-income people into less desirable neighborhoods?
    - There is a link to climate change issues because of extreme weather and flood zones.
  - Are regulatory agencies not applying protective permit limits?
  - Are permit violations or accidents being minimized or ignored?

# 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.

[S]enior officials have the responsibility to develop 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 ....

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;

# LOCAL MITIGATION PLANNING POLICY GUIDE

## 1.3 Planning for Climate Change and Equitable Outcomes

“Local jurisdictions have a **responsibility** to ensure that the plan ... **ensure[s]** **nondiscrimination**. ... [A]chieve equitable outcomes ... for all communities, including **underserved communities** and socially **vulnerable populations.**”

A3-a. The plan must **document** how the public had an opportunity to be involved....



### Local Mitigation Planning Policy Guide

FP 206-21-0002

Released April 19, 2022, Effective April 19, 2023

OMB Collection #1660-0062



# INDUSTRY GUIDANCE

- “Ultimately it is the responsibility of each company and its employees to act on their principles and available information to secure their site and **protect** their employees, **the community**, and the environment **from harm.**”
- Written in the aftermath of Arkema
- Center for Chemical Process Safety (CCPS) is part of The American Institute of Chemical Engineers (AIChE).
  - Worldwide professional organization for chemical engineers.



CCPS Monograph:  
Assessment of and planning for  
natural hazards



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This monograph addresses the assessment of and planning for natural hazards. It is based on lessons learned by various CCPS member companies.

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**PRESIDENTIAL EXECUTIVE ORDER 14096**  
**APRIL 21, 2023**

- “We must advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment.”
- “[C]an successfully occur only through meaningful engagement and collaboration with underserved and overburdened communities...”

# PRESIDENTIAL EXECUTIVE ORDER 14096

## CONTINUED

- “Each agency shall, ...
  - provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns ...
  - ensure that all programs or activities receiving Federal financial assistance ... do not ... use criteria, policies, practices, or methods ... that discriminate on the basis of race, color, or national origin ...”
- Environmental programs requiring permits are delegated to the States. These standards apply to granting permits.

# PRESIDENTIAL EXECUTIVE ORDER 14096

## CONTINUED

- **Community Notification on Toxic Chemical Releases.**
- Each **agency shall report** in accordance with **sections 301 through 313** of EPCRA
- No later than 6 weeks following a release ... the notifying agency **shall hold a public meeting**
- The agency shall provide notice of a public meeting no later than 72 hours after a release.
- EPA shall evaluate ... legal authorities and ... additional steps [to] require non-Federal facilities that report releases under EPCRA to ... [inform the public.]

## IS LAND-USE PLANNING AN ENVIRONMENTAL JUSTICE ISSUE?B

- Not by itself typically – multiple factors lead to the civil rights violation.
- Studies of land use planning in the wake of West Texas:
  - In the aftermath many blamed Texas's lax zoning regulations.
  - Zoning is a useful tool - but in many places housing and schools simply grew up around the local factory.
  - The West Fertilizer Plant was not inspected. Public awareness was non-existent. No preparedness planning existed.
  - A *New York Times* editorial observed: “If Texas insists on more libertarian land use law, the least they could do is inspect their environmentally sensitive plants a little more than once in a blue moon.”

## LAND USE PLANNING AND ZONING

- No federal agency has authority to broadly regulate land use and zoning decisions.
- Federal statutes ban land-use that discriminates against religious groups and institutions housing persons with disabilities.
- Exclusionary zoning – limiting low-income housing or explicitly racial provisions – are violations of the Fair Housing Act.
- Potential accidental release consequences to nearby public and environmental receptors would be evaluated under the proposed RMP program regulation.

## LAND USE PLANNING AND ZONING

- No great precedent on the intersection of emergency planning and land use or zoning – yet.
- *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.”

## HOW DOES THIS APPLY TO LOCAL EMERGENCY PLANNING?

Studies show that facilities with substantial accident potential - RMP worst case scenarios - are common in areas populated by racial minorities.

- Significant accident potential Lake Charles Louisiana area
- The Deer Park area near Houston is similar

Litigation for civil rights violations in emergency planning has resulted in approvals for development or environmental permits being blocked by courts.

## DEFENDING YOUR PLANNING PROCESS

- The process must 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** communities
  - Non-English speaking, AFN, Low income
- Fail to engage people protected by the ADA in evaluation of services.

## PATH FORWARD

- Identify and reach out to all stakeholders
- Discuss the realistic HazMat and all-hazards risks in your community
- Discuss the community's capabilities for those risks
  - Entire community, not only responders.
- **THEN TELL PEOPLE WHAT YOU CANNOT DO**
  - Honest appraisal of capability gaps.
- Outcome is defensible identification of gaps in current preparedness
- And then measure success of your process by filling gaps.

## PATH FORWARD - 2

Avoid the trap of 20/20 hindsight

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.

# QUESTIONS?

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**(contact me to be on the EPCRA/LEPC email list)**