



# **Program Update: Requirements of LEPCs and EPCRA**



**If You Don't Build It,  
They Will Come!**





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# What is CERCLA?

- **Comprehensive Environmental Response, Compensation and Liability Act**
- Public Law 99-499, 42 USC, Dec.11,1980
- Authorizes EPA to respond to releases, or threatened releases, of hazardous substances that may endanger public health, welfare, or the environment



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# What is EPCRA?

- **Emergency Planning and Community Right-to-Know Act**
- Amended Public Law 99-499, 42 USC, Oct.17, 1986
- Passed as Title III of Superfund Amendments and Reauthorization Act (SARA)



# Incident Scenario

At 5:00 a.m. this morning, at a major intersection in your community, a drunk driver failed to stop at a Stop sign, striking a tanker truck and causing it to roll over and crash





# Incident Scenario

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Near the intersection is a nursing home, housing approximately 150 elderly residents



# Incident Scenario

As first responders arrive on the scene, it is reported that the tanker contains close to 9,000 gallons of liquid anhydrous ammonia, which is leaking from the breached tanker





# Incident Scenario



Incident commander is now reporting that there are a large amount of casualties at the nursing home including residents, staff and initial first responders due to exposure to anhydrous ammonia vapor



# Incident Scenario

However, public safety officials performed flawlessly during the incident (even though there was an initial loss of life); a local hazmat response plan existed, was followed to the letter and the leak was eventually contained





# Incident Scenario

As the incident is resolved, and the initial investigation has begun, it has become known that there are a total of 30 deceased victims (including nursing home residents and staff as well as 2 initial first responders); there are an additional 45 that were injured and currently receiving care





# Incident Scenario

The incident After Action Report (AAR) indicates that all public safety response operations went perfectly; the only issue was due to initial first responder casualties due to their individual bravery in trying to save lives; the initial loss of civilian lives was unpreventable due to the speed of the developing incident, the time of day and the highly toxic chemical involved

**After Action Report Form**

**Executive Summary**

Note: The "Executive Summary" section should be used to briefly describe a summary of the information contained in an After Action Report (AAR) to highlight the areas in which the report will assist agencies in preparing for subsequent exercises and should include the following:

- Brief overview of the exercise
- Major strengths demonstrated during the exercise
- Areas that require improvement

**Chapter 1: Exercise Overview**

Note: The "Exercise Overview" section should be used to briefly describe the following:

- Describe the specific details of the exercise
- Identify the agencies and organizations that participated in the exercise
- Describe how the exercise was structured
- Describe how the exercise was implemented and carried out

Listed below are the exercise specifications that are required in the AAR "Exercise Overview" section. The information contained in this section will be gathered as a deliverable on the National Exercise Program and will be available for planning, scheduling, and evaluation purposes.

**Exercise Name:** List formal name of exercise(s).  
**Duration:** List the total length of the exercise(s).  
**Exercise Date:** List the Month, Day, and Year of the exercise(s).  
**Sponsor:** List the Federal sponsoring agency of the exercise(s).



# Incident Scenario

After intense investigation it was discovered that the drunk driver has no assets, the truck driver has a stellar driving record and the trucking company had followed all Federal and state regulations regarding the transport of hazardous materials

New York State Department of Motor Vehicles  
**APPLICATION FOR A HAZARDOUS MATERIALS ENDORSEMENT**  
This form is also available on DMV's web site at: [www.nysdmv.com](http://www.nysdmv.com)

PLEASE PRINT CLEARLY

The federal Transportation Security Administration requires all drivers who are applying for a hazardous materials endorsement to complete and sign this form. You must submit this form at the time you apply for the endorsement in a Motor Vehicles office. Be sure to provide all information requested on page 1 and page 2.

OFFICE USE ONLY  
Approved By: \_\_\_\_\_  
Office: \_\_\_\_\_  
Date: \_\_\_\_\_

License ID No: \_\_\_\_\_  
I am applying for a :  HazMat  Combination HazMat & Tanker

LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
RACE WEIGHT (LBS) EYE COLOR HAIR COLOR HEIGHT SEX SOCIAL SECURITY NUMBER (SSN)  
COUNTRY OF BIRTH CITY OF BIRTH STATE OF BIRTH DATE OF BIRTH  
ADDRESS WHERE YOU GET YOUR MAIL - Include Street Number and Name, Rural Delivery and/or box number, or PO box number DAYTIME PHONE  
ADDRESS WHERE YOU LIVE - IF DIFFERENT FROM MAILING ADDRESS (DO NOT GIVE P.O. BOX NUMBER)  
PREVIOUS NAME USED (if any): LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
PREVIOUS ADDRESS WHERE YOU LIVED (DO NOT GIVE P.O. BOX NUMBER)  
RESIDENCY STATUS  
An applicant for a hazardous materials endorsement must be one of the following:  
• a citizen of the U.S. who has not renounced his/her U.S. citizenship  
• a lawful permanent resident of the U.S. as defined in section 1101(a)(20) of the Immigration and Nationality Act  
I COMPLY WITH THE REQUIREMENTS DESCRIBED ABOVE:  TRUE  FALSE  
COUNTRY OF CITIZENSHIP NATURALIZATION DATE (if applicable) ALIEN REGISTRATION NO. (if you are a legal alien or a naturalized citizen)  
MILITARY SERVICE  
I have served in the United States military:  Yes  No  
BRANCH DATE OF DISCHARGE TYPE OF DISCHARGE  
1. NAME OF YOUR CURRENT EMPLOYER EMPLOYER'S PHONE NO.  
ADDRESS OF YOUR CURRENT EMPLOYER  
2. NAME OF YOUR CURRENT EMPLOYER EMPLOYER'S PHONE NO.  
ADDRESS OF YOUR CURRENT EMPLOYER

READ THE INFORMATION AND ANSWER THE QUESTIONS ON PAGE 2 BEFORE SIGNING BELOW.

**CERTIFICATION:** I have disclosed any and all information with this application related to disqualifying crimes committed, as required by federal regulation 49 CFR 1572.5(b). I understand my continuing obligation to disclose to TSA within 24 hours if I am convicted or found not guilty by reason of insanity of any disqualifying crime, or if I am adjudicated as a mental defective or committed to a mental institution, while I have a hazardous materials endorsement for a CDL. The information I have provided on this application is true, complete and correct to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

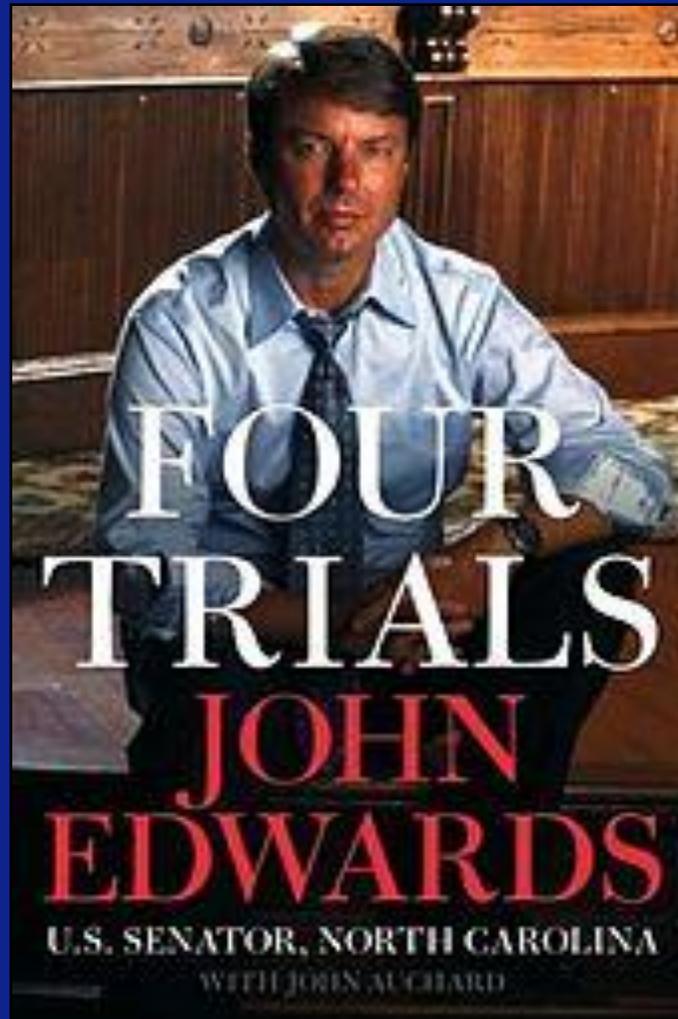
SIGN HERE: \_\_\_\_\_ DATE: \_\_\_\_\_

H&Z-44 (12/07) PAGE 1 OF 2  
American LegalNet, Inc.  
[www.legalnet.com](http://www.legalnet.com)

# WHAT COULD HAPPEN NOW??



**THIS GUY!!! THAT'S WHAT  
COULD HAPPEN NOW!**





# Who May Be Responsible?

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- ✓ Drunk Driver – No assets
- ✓ Truck Driver – Stellar driving record; found not to be at fault in the accident
- ✓ Trucking Company – Followed all of the rules; exercised extra caution
- ✓ First Responders – Followed the local plan
- ✓ State Officials – Provided resources when requested; emergency was a local one
- ✓ Locality – Developed local plan; **Deep Pockets??**



# Has the locality followed State law?

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- √ Emergency Management Agency
- √ Director/Coordinator of Emergency Management
- √ Local Emergency Operations Plan (EOP)
- √ Local EOP reviewed every 4 years
- √ Conduct annual emergency management assessment (LCAR)
- √ Localities over 50,000 in population have an alert and warning system (EAS)
- √ Appointed hazardous materials coordinator
- ? LEPC members appointed by the VERC in order to obtain immunity from civil liability for decisions made by the LEPC



# Has the locality followed Federal law?

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- Establishment of a Local Emergency Planning Committee (LEPC)?
- LEPC contains (at a minimum):
  - Elected State and Local Officials?
  - Law Enforcement?
  - Civil Defense (Emergency Management)?
  - Firefighting?
  - First Aid?
  - Health?
  - Local Environmental?
  - Hospital?
  - Transportation?
  - Broadcast and Print Media?
  - Community Groups?
  - Owners and Operators of Facilities?



# Has the locality followed Federal law?

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- LEPC has established:
  - Rules for the Committee to function?
  - Procedures for receiving and processing requests from the public for information?
  - An official to serve as coordinator of information?
  
- LEPC has completed:
  - Emergency Plan (Hazmat Response Plan)?
  - Annual review of Emergency Plan?
  - Evaluation of “the need for resources necessary to develop, implement, and exercise the emergency plan.....”?
  - Annually published notice that emergency response plan, MSDS/Tier 2 reports, and toxic chemical release reports have been submitted ?



## MINIMUM EPCRA REQUIREMENTS FOR LOCAL HAZMAT PLANS

3 October 2012

Locality: Name

PLAN REQUIREMENT	YES	NO
Identifies facilities within the EPD that are subject to EPCRA	<input type="checkbox"/>	<input type="checkbox"/>
Identifies routes likely to be used for transportation of hazmat	<input type="checkbox"/>	<input type="checkbox"/>
Identifies additional facilities contributing or subjected to additional risk due to proximity to facilities (i.e. hospitals, natural gas facilities, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to hazmat releases	<input type="checkbox"/>	<input type="checkbox"/>
Designation of a community emergency coordinator and facility emergency coordinators who will implement the plan	<input type="checkbox"/>	<input type="checkbox"/>
Procedures providing reliable, effective and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the plan and to the public, that a hazmat release has occurred	<input type="checkbox"/>	<input type="checkbox"/>
Methods for determining the occurrence of a hazmat release and the area or population likely to be affected by the release	<input type="checkbox"/>	<input type="checkbox"/>
Description of emergency equipment and facilities in the community and at each facility	<input type="checkbox"/>	<input type="checkbox"/>
Identification of persons responsible for emergency equipment and facilities	<input type="checkbox"/>	<input type="checkbox"/>
Evacuation plans, including provisions for precautionary evacuation and alternative traffic routes	<input type="checkbox"/>	<input type="checkbox"/>
Training programs, including schedules for training of local emergency response and medical personnel	<input type="checkbox"/>	<input type="checkbox"/>
Methods and schedules for exercising the emergency plan	<input type="checkbox"/>	<input type="checkbox"/>

X

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Randy Francis  
Program Manager, Hazardous Materials & Cou...



# The Final Destination: U.S. District Court





# U.S. Tort Law Principles

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## Negligence

**Violation of statute:** This is also known as negligence per se. Breach can be shown in most jurisdictions if a defendant violates a statute that pertains to safety and the purpose of which is to prevent the result of the case.

**Duty to warn:** A concept that arises in the law of torts in a number of circumstances, indicating that a party will be held liable for injuries caused to another, where the party had the opportunity to warn the other of a hazard and failed to do so.



# U.S. Tort Law Principles

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**Duty of care:** A legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others.

*Martin v. Herzog*, Ct. of App. of N.Y., 228 N.Y. 164, 126 N.E. 814 (1920), was a [New York Court of Appeals](#) case.

**Breach of duty:** The defendant who knowingly exposes the plaintiff to a substantial risk of loss, breaches that duty. The defendant who fails to realize the substantial risk of loss to the plaintiff, which any reasonable person in the same situation would clearly have realized, also breaches that duty. All members of society have a duty to exercise reasonable care toward others and their property.



# U.S. Tort Law Principles

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**Mass tort:** A civil action involving numerous plaintiffs against one or a few defendants in state or federal court. Law firms sometimes use mass media to reach possible plaintiffs.

The three main categories of mass torts include:

- Mass disaster torts
- Mass toxic torts
- Product liability torts

**Due Diligence:** A term used for an act with a certain standard of care.



# This is Little Susie

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## She Misses her Grammy

- Her family doesn't blame the brave first responders who tried to save her Grammy – they are heroes to Susie
- But her family wants to know why the locality didn't comply with a Federal law that has been in place since 1986 that deals specifically with the type of incident that cost Grammy and 27 of her friends their lives
- They want to know why the locality didn't honor its **due diligence** requirements and its **duty to care**
- They want to know why the locality didn't identify "routes likely to be used for transportation of hazmat" in their local planning efforts – had they known the nursing home was located near a likely route they would have put Grammy in a different home and she'd still be alive
- They want to know why no "evacuation plans including alternative traffic routes" were documented in the local plan
- They want to know why there was a **breach of duty** and a **violation of statute** thereby causing negligence



# Other “Interested Parties”





# Additional "Interested Parties"

Richmond  
Times-Dispatch



*The New York Times*



The Washington Post

THE ROANOKE TIMES

Virginian-Pilot



# Now for the really bad news:

Today's agenda, presentation and sign-in sheets are accessible via the Freedom of Information Act.....and by subpoena.



# Questions or Requests for Assistance:

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