

HAZMAT Incident Response & Local Capabilities

Prepared for the
State Administration and Veterans' Affairs Interim Committee

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Presentation Overview



- Current Statutes and DES Organizational Structure
- Legislative Performance Audit – October 2015
 - Recommendations for Dept. of Military Affairs (DMA)
 - Agency response and actions to date
- HB 296 (2017) – Introduced by Rep. Hayman
- Options for SAVVA
- Attachments: Key state statutes, SERC and reporting committees summary and memberships, Audit Report 14P-13 and follow up

Federal Law Requirements (42 U.S.C. 116) – HAZMAT related




- Governor must appoint a State Emergency Response Commission (SERC) – Tribal Equivalent is TERC
- SERC must:
 - designate emergency planning districts (*counties designated*)
 - appoint a Local Emergency Planning Committee (LEPC) for each district (*SERC appoints members selected by counties*)
- Each LEPC:
 - must develop a HAZMAT emergency plan
 - must review/update its plan annually
 - must submit plan to SERC for review
 - may request plan also be reviewed by a federal regional response team (*RRT in Denver*)

State Law – Title 10, chapter 3



- Disaster and Emergency Services Division (DES) is lead agency among state agencies
- Required to coordinate and collaborate with other state agencies and with local, tribal governments
- 23 FTE total
- 3 districts statewide - 6 field staff assist local planning personnel
 - different than emergency planning districts for HAZMAT, which are designated as each county

Montana Response to Hazardous Materials Incidents Act - *Title 10, Chapter 3, Part 12*



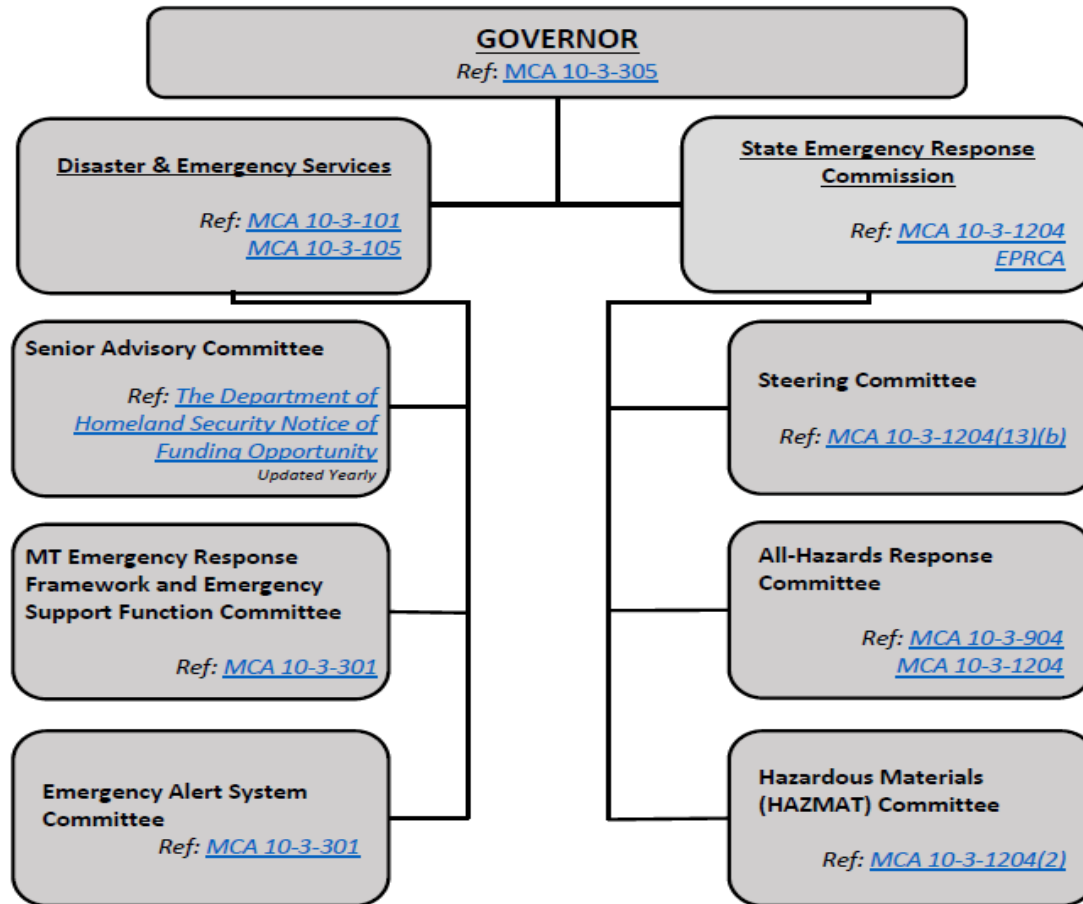
- State Emergency Response Commission (SERC), as required by federal law
 - 29 members, including 2 co-chairs, governor appoints
 - DES administrator and DEQ representative are currently the co-chairs
 - may establish HAZMAT teams
 - may establish subcommittees
 - one subcommittee is HAZMAT committee
 - SERC meets twice a year
 - SERC steering committee scheduled to meet monthly

Montana Response to Hazardous Materials Incidents Act - *Title 10, Chapter 3, Part 12*

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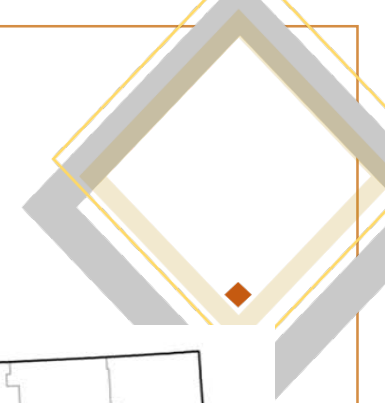
- Each incorporated city and county must designate a Local Emergency Response Authority (LERA)
 - different than the LEPCs for HAZMAT
 - LEPCs not mentioned in state statutes
- Each LERA must have team trained in HAZMAT incident response, training must be in compliance with federal law (*29 CFR 1910.120(q)*)
 - each incorporated city and county
 - SERC and LEPCs not mentioned in applicable statutes

SERC Member Packet Diagram



This chart represents the SERC's best interpretation of Montana Code Annotated.

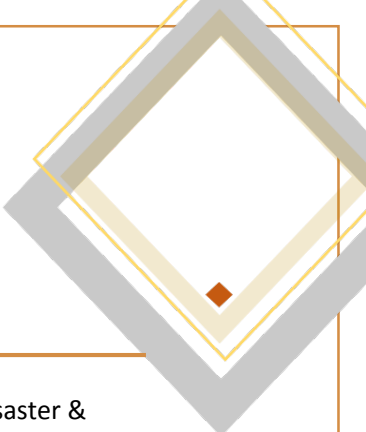
6 Regional HAZMAT Teams



- Established pursuant to SERC statute
- Resourced by DES through federal grants and state funds
- Deployed by local request, in consultation with DES, and with governor approval
- Not the same as a LERA that is every incorporated city and county, which are required by state law to have HAZMAT training
- When HAZMAT incident exceeds city or county capability, local government may call:
 - regional HAZMAT team, MTNG CST team, or railroad/private facility

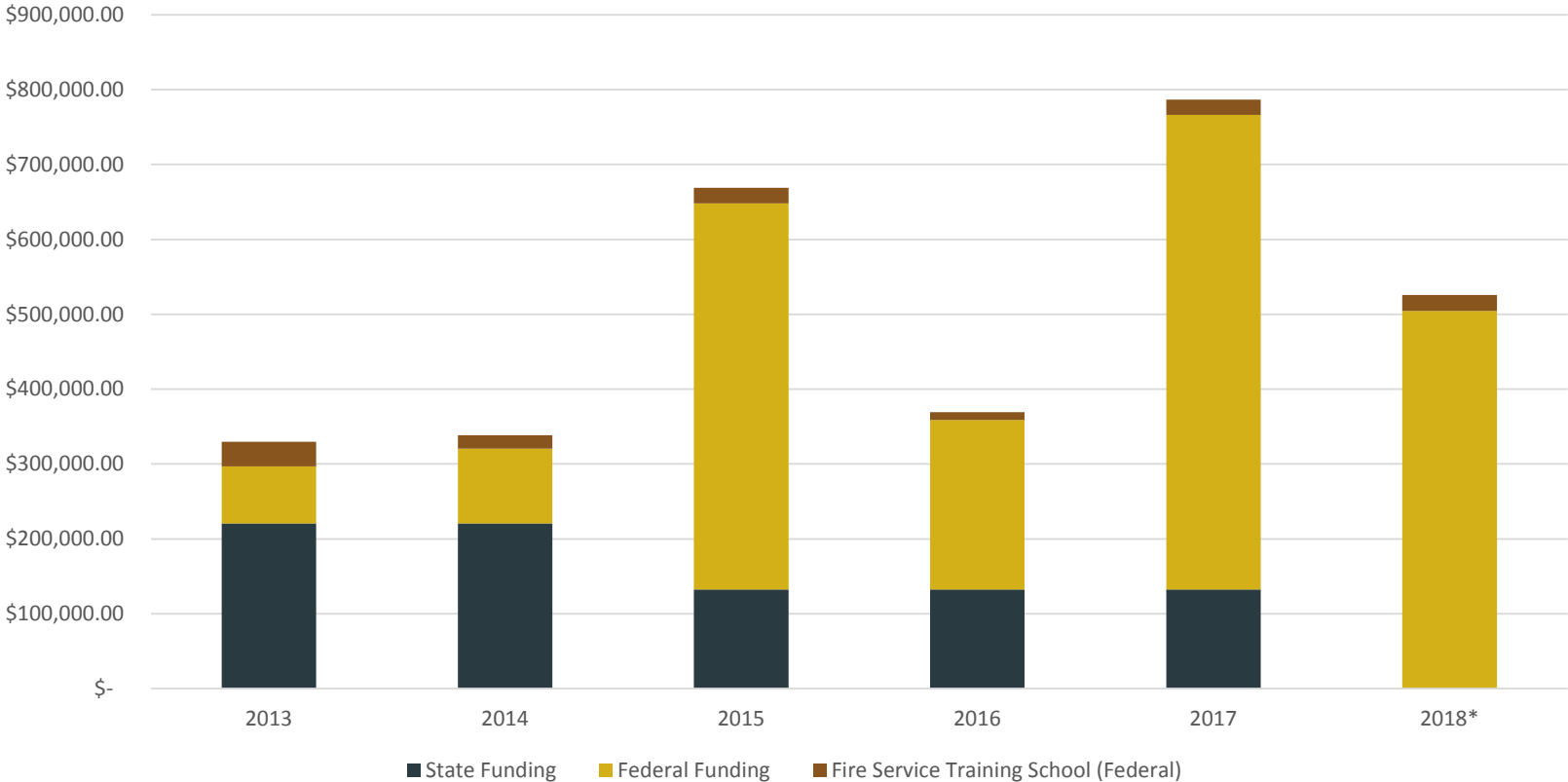


State & Federal Funding For Regional HAZMAT Teams



State and Federal HAZMAT Funding Awarded 2013-2018

Source: Disaster & Emergency Services Division



Legislative Staff Observations


First Glance: Statutes Need Review



- Statutes provide limited guidance on HAZMAT teams
 - Statutory term is “*state* hazardous material response team”, but really local capabilities can grow to become regional/statewide resources through federal and state grant funding
- Statutes unclear about various HAZMAT roles/responsibilities - What is relationship between:
 - DES and SERC? – SERC is not subordinate to DES, but can be interpreted to be
 - SERC and LERAs? – no statutory relationship between them, but parallel to LEPCs
 - Regional HAZMAT teams and LERA’s and LEPCs? – no guidance in statute
- Some confusion because HAZMAT component in “all-hazard” plans submitted by each county to DES, but not to SERC directly
- More statutory review needed

Legislative Audit – 2015

Railroad Safety, Incident Response



- Performance Audit Scope:
 - PSC rail inspection program and statutory responsibilities
 - DMA/DES execution of statutory role in rail and HAZMAT incidents
 - Are there planning, training, and equipping systems in state government that ensure local emergency response agencies can respond to derailment with HAZMAT component?

Audit Findings: DMA/DES



- Improvement needed in DES statewide planning - state plan was incomplete (pg. 27)
- DES does not have system for identifying local HAZMAT response capabilities (pg. 31)
- Local plans need to be improved, coordinated with state plan (pg. 32)
- Local responders lack appropriate training and equipment especially in large rural areas, NE Montana cannot form HAZMAT team (“graying”, no full-time fire department so all volunteers, limited funding) (pp. 35-37)
- Local reluctance to report capabilities or identify weaknesses – insurance rate concern (pg. 39)

Audit Reviewed Other States



- How other states cope with lack of resources in rural areas
 - Idaho (pg. 37)
 - North Dakota (pg. 38)
 - Washington (pg. 38) – extensive and detailed study required by Legislature in 2014, DES/SERCs just a small piece
- How other states address statewide HAZMAT coverage
 - Idaho (pg. 46)
 - North Dakota (pp. 46-47)
 - Oregon (pg. 47)

Audit Recommendations For DMA/DES



#3 - Complete Montana Emergency Response Framework (MERF) and set review/update cycle

- DMA CONCURRED – implemented

#5 - DMA should develop and test HAZMAT response capabilities of National Guard

- DMA CONCURRED – implemented, conducted exercises

Recommendation #4



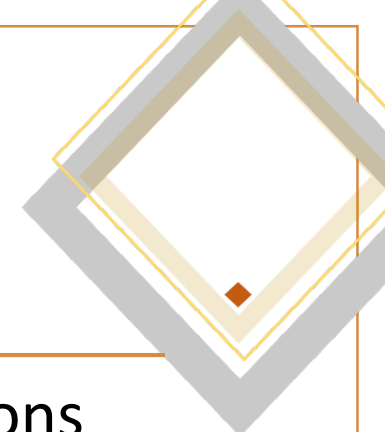
A - Establish system to determine local HAZMAT capabilities

- DMA PARTIALLY CONCURRED – SERC/HAZMAT committee is working on a survey, but agency response to Audit was that requiring reports from local officials exceeds SERC’s statutory authority

B - Seek legislation for authority to get reports from local jurisdictions

- DMA DID NOT CONCUR – said this is a policy decision and not agency’s role to seek this authority
 - DES and SERC see their roles as “coordinating” and “assisting”, not as entity that can task local governments

HB 296 (2017)



- Preamble cited Audit findings & recommendations
- Established task force to:
 - Examine rail inspections to determine if adequate
 - Determine level of reporting from local, state, and regional authorities needed to track response capacity annually
 - Determine resources needed to respond to HAZMAT derailment in rural areas in less than 6 hours
 - Assess any other areas the task force considered necessary regarding HAZMAT derailment incident
- Appropriated \$20,000 from GF to DMA
- Required report to SAVA
- Bill tabled in House State Administration, discussion was that SERC should handle these tasks

Options for SAVA



- 1) Bill that resurrects all or portions of HB 296 – but could direct DES or SERC to undertake the study tasks
- 2) Study resolution for SAVA next interim – review statutes in more depth, get input from all stakeholders (DES/SERC/locals), review other states in depth, develop bill for 2021 Legislature
- 3) Resolution or letter urging local reporting on HAZMAT capabilities
- 4) Bill to require local reporting to SERC on HAZMAT capabilities, perhaps with provision for confidentiality (?)
- 5) Ask SERC/HAZMAT committee to present recommendations at July 16 SAVA meeting on possible revisions to statutes, use as basis for potential committee bill for this coming session

Next on Today's Agenda



- MTNG will report on HAZMAT response exercises
- SERC and Regional HAZMAT teams will report on how teams are set up and operated
- Public comment
- SAVA questions, discussion, and potential action