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


• Options for SAVA

• 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*

... Continued

• 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
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