

LEPC INTERFACE WITH IERC, IDHS AND LOCAL EMAS

Introduction

The perils of today's world require governments to be better prepared to deal with emergencies than ever before. Regardless of the nature of the emergency, state and local governments must respond efficiently and effectively on short notice.

At the local level, each county or other jurisdictional unit maintains a Local Emergency Planning Committee ("LEPC"). The LEPC reports directly to, and is a subunit of, the Indiana Emergency Response Commission ("IERC"). The LEPC has specific duties, mandated by law, some of which overlap the broad responsibilities of the local emergency management agency ("EMA"). Although the local EMA delivers reports to the Indiana Department of Homeland Security ("IDHS") (formerly the State Emergency Management Agency), the local EMA is independent of IDHS and rather is a part of local government instead.

The organizational differences greatly affect the interrelationships between the LEPC and the IERC and between the LEPC and the local EMA.

I. IERC and LEPC Interface

Federal law, specifically the Emergency Planning and Right to Know Act ("EPCRA"), establishes the structure of the IERC and LEPCs. EPCRA is part of Title III of the Superfund Amendment and Reauthorization Act of 1986 ("SARA Title III"), found at 42 U.S.C. §§ 11001-11050. The requirements of EPCRA were enacted into Indiana law at I.C. 13-25. The IERC's organization and the specific duties of the IERC and LEPCs are found at I.C. 13-25-1.

Indiana Code 13-25-1-6(a) lists four duties of the IERC. First, the IERC is to encourage and support the development of emergency planning efforts to provide information to the state, local governments, and public about potential chemical hazards in Indiana. Second, the IERC

assists the state in complying with the requirements of SARA Title III. Third, the IERC designs and supervises the operation of emergency planning districts in Indiana. Lastly, the IERC gathers and distributes information needed for effective emergency response planning and preparation.

Indiana Code 13-25-1-6(b) also requires four things of LEPCs. First, the LEPC must satisfy the requirements of SARA Title III. Second, the LEPC must prepare and submit, at least annually, a roster of committee members for the IERC's approval. Third, the LEPC must meet at least twice, on nonconsecutive days, every six months. Finally, the LEPC must submit an annual fiscal report in compliance with Indiana Code 13-25-1-6(b)(4).

The IERC may withhold funds from an LEPC under Indiana Code 13-25-2-10.7 if the LEPC fails to do any of the following seven things annually: 1) submit the fiscal report; 2) provide proof of the published legal notice required under SARA Title III; 3) submit an updated emergency preparedness plan; 4) submit current LEPC bylaws; 5) present evidence of a compliant exercise; 6) provide a current membership committee roster; or 7) submit minutes of the four meetings per year.

The LEPC annual fiscal report summarizes to the IERC funds locally expended in the preceding year that came from the Emergency Planning and Right to Know Fund. Money from the fund may be spent on eight categories of items: (1) preparing and updating a comprehensive emergency response plan required under SARA Title III for the county or emergency planning district; (2) establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under SARA Title III; (3) training for emergency response planning, information management, and hazardous materials incident response; (4) equipping a hazardous materials response team that provides at least a district wide emergency planning response if the equipment purchased is consistent with current training

levels of the response team members; (5) purchasing communication equipment for a local emergency planning committee's administrative use; (6) paying an optional stipend to local emergency planning committee members who attend regularly scheduled meetings at which a quorum is present in an amount determined by a majority of the local emergency planning committee membership and is not more than twenty dollars (\$20) per member per meeting; (7) paying for SARA Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the Indiana emergency response commission; and (8) maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under subdivision (4). An LEPC can receive new funds only if it meets the requirements of Indiana Code 13-25-1-6(b), as set out above. Previously distributed funds, under Indiana Code 13-25-2-10.6, may be spent on categories 3-8 as described in this paragraph only if a current, compliant plan has been submitted and the training program has been approved by the IERC.

While IDHS provides a supportive role for the IERC personnel, it is the IERC, and not IDHS, that supervises the LEPCs.

II. LEPC and Local EMA Interface

In contrast to the LEPC, EMAs are clearly entities that are a distinctive part of local government. The state legislature has found that local EMAs are needed to preserve the lives and property of the state. Indiana Code 10-14-3-17(b)(1) further requires each county to “maintain a county emergency management organization.”

As discussed, the LEPC has specific tasks which are required by law. Some of these legal duties overlap with the broad responsibilities of the county or jurisdictional EMA, creating a potential for conflict. Specifically, both are responsible for the preparedness phase of emergency management, that is, planning, training, and exercising responsibilities. Furthermore,

common membership of both the LEPC and the local EMA Advisory Council also has the potential to create conflicts. A closer look at these overlapping responsibilities within each subtask of the preparedness phase is provided below.

A. Planning Responsibilities

As mentioned, the planning requirement of LEPCs under the EPCRA is specifically limited to SARA Title III discharges. The local EMA, however, is also charged with planning for emergencies, as it must “prepare and keep current a local disaster emergency plan for its area” under Indiana Code 10-14-3-17(h). The overlap between LEPCs and EMAs has occasionally resulted in duplication of effort or disagreements over the proper approaches to the nine planning elements required of LEPCs.

Under the all-hazards approach followed by the county EMAs, potential emergencies involving HAZMAT must be anticipated. The EMA’s emergency operations plan (“EOP”) must include an appendix for response to HAZMAT incidents which is prepared and kept current. Potential HAZMAT emergencies include extremely hazardous materials covered by SARA Title III, including toxic chemicals, as well as a variety of other substances.

Planning compliance requirements for local EMAs include submission of the local EOP, including the emergency response plan specifically identifying potential hazards in an appendix to the EOP. This emergency response plan, although an appendix to the EMA’s EOP, remains the responsibility of the LEPC. As an appendix, the SARA Title III plan uses the remainder of the EOP, referring such matters as community notification, evacuation, training, and exercising to the appropriate portions of the EOP. The updated version of the SARA Title III plan is due on or before October 17th of each year under Indiana Code 13-25-2-5.

B. Training Responsibilities

LEPCs are required to include training and exercising in their emergency management plans under Indiana Codes 13-25-2-5(c)(8) and 13-25-2-5(c)(9), respectively. Indiana Code 13-25-2-10.6(b)(3) states that training and exercising are matters for which LEPCs may legitimately expend funds. Categories of appropriate training may include development and delivery of training to individuals and groups with their emergency management responsibilities as well as earthquake training.

C. Exercising Responsibilities

EPCRA requires that the LEPC's plan must be exercised at least once annually. The IERC has stated that this exercise may be a tabletop, functional, or full-scale exercise. The IERC must receive a thirty-day advance notification and brief description of the exercise to be conducted. In addition, the LEPC must request, and receive, from the IERC approval of each exercise.

An LEPC activity must meet certain requirements before it may qualify for a SARA Title III release of funds. These requirements specify the number and type of responding units and the type and quantity of certain chemicals involved. The IERC has also authorized an actual event to qualify as the LEPC's annual exercise, so long as the LEPC requests such a substitution from the IERC. This request document is available from the IERC.

Working together, local EMAs and LEPCs can unite their requirements in a combined exercise which will satisfy both IERC and IDHS.

D. Common Membership Issues

LEPCs and EMA Advisory Councils frequently have members in common. The local EMA director is almost always an LEPC member, and may even be the chair of the LEPC. Sometimes, this situation may tend to blur the lines of responsibility between the EMA and the

LEPC. And indicated above, LEPCs and EMAs are parts of different governmental entities. These diverging lines of authority create legal requirements for separate control, finances, and meetings.

1. Separate Control

The two groups must be separately controlled due to the legal lines of authority above the LEPC and the local EMA. The twelve (12) membership categories for the LEPC specified at EPCRA Section 301(c) must be included in the roster submitted to the IERC for approval on an annual basis, at least, by March 1. The six (6) membership categories for the county Emergency Management Advisory Council, which oversees local EMA activities, are specified at Indiana Code 10-14-3-17(c).

2. Separate Finances

Finances are also different for the two agencies. The local EMA's budget is part of the local unit of government's budget. The local unit of government retains full control over the EMA's budget as a part of local government.

The LEPC's finances are derived from the Indiana Local Emergency Planning and Right to Know Fund, whose statutory requirements derive from the federal law. The Indiana statute is found at Indiana Code 13-25-2-10. This law requires, at Indiana Code 13-25-2-10.6(7)(d), that the county fiscal body "shall" appropriate the funds requested by the LEPC in a compliant spending plan. Under this law, the county acts as administrator of the funds, but it has no say as to the actual expenditure of those funds.

By state and federal law, the funds derived from the Indiana Local Emergency Planning and Right to Know Fund may only be expended on LEPC activities. Both the Indiana Legislature and the U.S. Congress have limited these funds specifically to LEPC budget items.

The reason for this limitation is that the funds come from SARA Title III fees, and the funds are earmarked for expenditure on preparing for emergency responses.

3. Separate Meetings

Frequently, given the common membership of LEPCs and EMA Advisory Councils, meetings will be scheduled on the same night for both entities. Often at such meetings, several different matters will be discussed. Such matters might be LEPC or EMA issues, or even issues that overlap the two. Legally, the matters must be separated and handled in different meetings. One group's meeting must be held and adjourned before matters of the other entity may be dealt with.

IV. Conclusion

The common goals of saving lives and protecting property unite local EMAs and LEPCs, just as they unite IDHS and the IERC. All involved must, however, work with both mutual respect and a clear understanding of the legal constraints on local EMAs and the respective LEPCs.

Local EMAs and LEPCs can combine resources in appropriate ways to save funds and prevent duplicate activity. These steps must be taken with care, however, since the two agencies are units of different levels of government. Working carefully together, local EMAs and LEPCs can combine forces to help assure that the best possible steps have been taken to plan, train and exercise for potential SARA Title III Extra Hazardous Substances releases.