

Hon. John A. Sandor
Commissioner
Department of Environmental
Conservation

May 29, 1992

663-92-0494

465-3600

Expanded role of Alaska
SERC as an All-Hazards
Commission

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The Alaska State Emergency Response Commission (Alaska SERC) would like to expand its role to that of an "all-hazards" commission. This change in the Alaska SERC's functions will require statutory amendment.

AS 46.13.010 establishes the Alaska SERC in the Department of Environmental Conservation. AS 46.13.040 prescribes its powers and duties, all of which involve coordinating, advisory, or planning tasks related to emergency planning for hazardous substance releases, community-right-to-know reporting, or the management of hazardous substances. Because other hazards, such as earthquakes and floods, can result in the release of hazardous substances, the Alaska SERC's duties to some extent already involve other hazards.

An all-hazards commission, however, would perform coordinating, advisory, and planning tasks related to all hazards, not just those involving hazardous substances. For purposes of this memorandum, we have assumed that the definition of "disaster" contained in the Alaska Disaster Act, AS 26.23, is equivalent to "all hazards."¹ The Alaska SERC's questions relat-

¹ The Alaska Disaster Act defines "disaster" as:

(1) . . . the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including

(A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing;

ing to an all-hazards function are summarized and answered below.

A. Is legal action needed to authorize the expanded role of the Alaska SERC and the Local Emergency Planning Committees (LEPCs)?

Yes. Expanding the roles of the Alaska SERC and the LEPCs to encompass all hazards will require statutory change.

Administrative agencies are "creatures of statute and therefore must find within the statute the authority for the exercise of any power they claim." McDaniel v. Cory, 631 P.2d 82, 88 (Alaska 1981). The Alaska SERC reviews and approves statewide, local, and interjurisdictional plans only to the extent the plans "relate to action required to avert damage from a release of oil or a hazardous substance." AS 26.23.215; AS 46.13.045(a). The duties of the LEPCs likewise encompass only emergency planning and community-right-to-know tasks relating to hazardous substances. AS 46.13.080.

The Alaska SERC and the LEPCs are limited to the powers and duties specifically provided by statute. Presently, neither the Alaska SERC nor the LEPCs have statutory authority under AS 46.13 or AS 26.23 to engage in all-hazards planning. A number of sections throughout AS 46.13 and AS 26.23 will require amendment before the Alaska SERC and the LEPCs may assume all-hazards responsibilities.

B. Can LEPCs be required to perform the same functions for all hazards as they perform under SARA Title III;² that is, prepare an emergency response plan, including a hazards

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(B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation.

AS 26.23.900(1).

² The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. •• 11001--11050 (1992) (Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)).

analysis; retain and make available community right-to-know information; evaluate the need for resources to implement the plan; and assist in the preparation of regional plans?

Yes, provided the role of the LEPCs is statutorily expanded. Until the statutes are amended, LEPCs cannot be required to perform all-hazards functions.

- C. Is the state responsible for all-hazards emergency response planning throughout Alaska? Can the state pay for this new program with the Response Fund or the General Fund? Will funding require legislative concurrence?**

AS 26.23.020(a) provides that "[t]he governor is responsible for meeting the dangers presented by disasters to the state and its people." Therefore, the state is responsible for disaster planning. Under AS 26.23.030 and AS 26.23.040, the Alaska Department of Military and Veterans' Affairs, Division of Emergency Services (ADES), prepares and maintains the state emergency plan.

AS 46.08.040 limits expenditures from the Response Fund to costs related to the release or threatened release of oil or hazardous substances. The Response Fund may not be used to pay for the costs of the all-hazards program, other than those costs related to the release or threatened release of oil or hazardous substances. Funding for the new program must come from the General Fund.

Because a state agency's authority to expend funds derives from legislative appropriation, Alaska Const., art. IX, • 12, funding this new program will require legislative concurrence.

- D. What will be the legal and operational relationship between the LEPCs' all-hazards plan and city and borough plans? Can the Alaska SERC also have the authority to approve an LEPC all-hazards plan?**

Statutory provisions relating to city and borough emergency plans are found in AS 26.23.060.³ Without coordination or

³ AS 26.23.060 states in part:

(a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A municipality also may be served by a local or interjurisdictional agency responsible for

redefinition of responsibilities, LEPC efforts to prepare an all-hazards plan may duplicate local disaster agency efforts to prepare a local emergency plan.

The state exercises a considerable degree of control over local disaster plans. Under AS 26.23.040(b), ADES is to "play an integral part in the development and revision of local and interjurisdictional disaster plans" Among other duties, ADES is required to adopt standards and requirements for local plans, periodically review the plans, and assist political subdivisions in operating training programs. AS 26.23.040(e)(3)-(5).

The Alaska SERC also reviews and approves local plans prepared under the Alaska Disaster Act to the extent the local plans pertain to hazardous substance response. AS 26.23.215; AS 46.13.040(3)-(4); AS 46.13.045(a). If the Alaska SERC were to become an all-hazards commission, statutory amendment will be required to authorize the Alaska SERC to review and approve local all-hazards plans, regardless of whether the plans are prepared by the cities and boroughs or the LEPCs.

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disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as otherwise provided in this chapter, has jurisdiction over and serves the entire borough.

. . . .

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

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If we can be of further assistance with respect to this matter, please do not hesitate to contact us.

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