



## Legislative Fiscal Bureau

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July 18, 2013

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Military Affairs: Section 13.10 Request to Approve the Proposed Hazardous Materials Response System Task Force Contracts -- Agenda Item III

### REQUEST

On May 16, 2013, the Department of Military Affairs (DMA) submitted four hazardous materials response system task force contracts for review by the Joint Committee on Finance pursuant to s. 323.70(6) of the statutes. An objection was subsequently raised to the request. As a result, the review of these contracts is before the Committee under s. 13.10 of the statutes.

### BACKGROUND

In 1984 there was an accidental release of methyl isocyanate from a pesticide plant in Bhopal, India, in which more than 2,000 people suffered death or serious injury. In response, in 1986 the federal government passed the Emergency Planning and Community Right-to-Know Act (EPCRA). Federal law requires local communities to develop emergency plans for possible hazardous chemical releases.

In implementing federal law, state statute provides for the creation of local emergency planning committees by county boards of supervisors. These committees include locally elected officials, emergency response personnel, the public, and operators of affected chemical facilities. The emergency planning of these committees addresses chemical hazards at facilities and various transportation routes across the state.

Under EPCRA and state statute, all facilities in the state at which a hazardous chemical is present at or above an applicable threshold quantity must comply with federal reporting requirements and is a "reporting facility." A "reporting facility" is required by the federal Occupational Safety and Health Administration (OSHA) to maintain Material Safety Data Sheets

on all hazardous chemicals. Such a "reporting facility" must also file with DMA an inventory list of all hazardous chemicals that meet or exceed the applicable reporting threshold for each chemical during the reporting year. There are currently 6,236 reporting facilities across Wisconsin.

Under EPCRA and state statute, a "planning facility" is a facility with extremely hazardous chemicals that meet or exceed the threshold planning quantity for each applicable extremely hazardous chemical. Most "planning facilities" are also "reporting facilities." However, some "planning facilities" claim applicable exemptions and are not required to report. A "planning facility" must work with the applicable local emergency planning committee at the county to develop an off-site plan. The Department requires that individual facility off-site plans include: facility name and location, name of facility emergency planning coordinator with 24-hour-a-day contact phone number, list of primary emergency responders, list of resources available from/at facility, list of outside resources available, hazard analysis of the facility with a vulnerability zone for release of extremely hazardous chemicals stored at the facility, identification of special facilities (such as schools, hospitals, nursing homes, and day care centers) within the zone, and population protection procedures (sheltering and evacuation). There are currently 2,643 planning facilities across Wisconsin.

State statute provides that a level A release "means a release of a hazardous substance that necessitates the highest level of protective equipment for the skin and respiratory systems of emergency response personnel." Hazardous substances may include industrial chemicals, fertilizers, pesticides, petroleum products, explosives, and radioactive substances.

Current law provides that DMA must contract with no more than nine regional emergency response teams, one of which must be located in La Crosse County, to respond to level A releases of hazardous substances. Further, in providing regional emergency response teams to respond to level A releases, DMA must contract with at least one regional emergency response team in each emergency management region established by the Adjutant General under s. 323.13(2)(a) of the statutes. For the period from July 1, 2012, through June 30, 2013, the state has eight contracts with the following regional emergency response teams: Eau Claire/Chippewa Falls, La Crosse, Madison, Milwaukee, Oshkosh/Appleton, Racine, Superior, and Wausau.

Under state statute, each regional emergency response team is required to respond to level A releases in the region of the state in which the team is located. Appendix I identifies the region of the state for which each regional emergency response team is responsible under the 2012-13 contracts. A member of a regional emergency response team must meet the highest standards for a hazardous materials responder under federal administrative rules and must satisfy specified National Fire Protection Association standards. Military Affairs may only contract with local agencies to serve as regional emergency response teams. Under 2013 Act 20, the Legislature appropriated \$1,247,400 GPR annually to DMA's regional emergency response teams to make payments to regional emergency response teams responding to level A releases. The approval of the regional emergency response team contracts to respond to level A releases, and the allocation of \$1,247,400 GPR annually to these level A teams, are the subjects of this s. 13.10 request.

State statute provides that a level B release "means a release of a hazardous substance that

necessitates the highest level of protective equipment for the respiratory systems of emergency response personnel, but less skin protection than a level A release, because operations at the site of the release do not involve a high potential for exposure to liquids or particulates that are harmful to the skin or capable of being absorbed through intact skin."

Local emergency planning committees are eligible for emergency planning grant funding not to exceed \$10,000, for up to 80% of the costs of computers and emergency response equipment, if the committee submits to DMA a strategic plan for emergency response to hazardous substance releases that includes: (a) an analysis of the risks of hazardous substance releases in the county; (b) identification of the existing capability for emergency response to hazardous substance releases in the county; (c) an assessment of needs, including equipment and training needs, related to emergency response to hazardous substance releases in the county; (d) a process to maintain or increase the capability for emergency response to hazardous substance releases in the county; (e) procedures for local emergency response team actions that are consistent with state law for local emergency response plans and the state contingency plan; and (f) identification of a local emergency response team that is capable of responding to a level B release that occurs at any place in the county and whose members meet the standards for hazardous materials technicians under federal administrative rules and National Fire Protection Association standards.

While county level B teams are an important part of the state's capability to respond to hazardous substance releases, the contracts before the Committee address the state system for responding to level A hazardous substance releases.

## **ANALYSIS**

Under the proposed contracts the state would now be divided into four regions to be serviced by the northwest, northeast, southwest, and southeast task forces. Under these contracts, the state would make use the National Incident Management System (NIMS) and categorize or type the resources and capabilities of the agencies participating in the four task forces. Under NIMS, these agencies would be classified as Type I, II, or III teams. Appendix II identifies: (a) the division of the state between the northwest, northeast, southwest, and southeast task forces under the proposed 2013-15 contracts; and (b) the location of the Type I, II, and III teams under the proposed 2013-15 contracts.

A Type III team would be a team that is appropriately equipped and trained to handle and respond to a chemical release when it is known which chemical was released, in liquid, aerosol, powder or solid forms. A Type III team would not be expected to be fully equipped to intervene and handle: (a) vapor/gas emergencies; or (b) incidents involving weapons of mass destruction (WMD) chemical and biological substances.

A Type II team would be qualified to handle and respond to all situations to which a Type III team could respond. In addition, a Type II team would be a team that is appropriately equipped and trained to handle and respond to a chemical release when it is unknown what chemical was released, in liquid, aerosol, powder, solids, or vapor/gas forms. A Type II team would not be expected to intervene and handle incidents involving WMD chemical and biological substances.

Finally, a Type I team would be qualified to handle and respond to all situations to which a Type III or II team could respond. In addition, a Type I team would be appropriately equipped and trained to handle and respond to all identified and unidentified WMD chemical and biological substances. The location of the teams across the state would be designed to permit the participating agencies to respond to a Type III release within 60 minutes, a Type II release within 90 minutes, and a Type I release within three hours.

Table 1 identifies the annual grants to the eight regional emergency response teams under the 2012-13 contracts. The staff of DMA indicates that the amounts paid to the regional emergency response teams under the 2012-13 contracts are substantially the product of historic negotiations. The regional teams continued to receive these amounts in subsequent contracts (including the 2012-13 contracts) although in recent biennia the amount of funding available for allocation has been reduced due to budget reductions. The regional emergency response teams may utilize funding allocations for specialized training expenses, team member physicals, response vehicles and equipment purchases, as well as maintenance of vehicles, administrative time and overhead.

**TABLE 1**

**2012-13 Regional Emergency Response Team Funding**

<u>Regional Team</u>	<u>Annual Award 2012-13</u>
Eau Claire/Chippewa Falls	\$158,030
La Crosse	105,071
Madison	190,129
Milwaukee	268,686
Oshkosh/Appleton	173,957
Racine	107,504
Superior	131,935
Wausau	<u>112,088</u>
Total	\$1,247,400

Table 2 identifies the teams that would make up each of the four task forces, including: (a) their designation as Type I, II and III teams; (b) whether the teams are existing regional teams under the current contracts, or would be newly participating teams under the proposed contracts; and (c) the amount of the annual allocation to the team under the proposed contracts.

**TABLE 2****Teams Under the Proposed Regional Task Forces**

<u>Task Force</u>	<u>Team Type</u>	<u>Team</u>	<u>New or Existing Team</u>	<u>Annual Award</u>
Northeast	Type II	Cities of Appleton, Oshkosh & Green Bay	Existing/New	\$135,227
		City of Wausau & Oneida County	Existing/New	104,348
	Type III	Cities of Marshfield & Wisconsin Rapids	New	16,625
		City of Marinette	New	16,625
		Waupaca County	New	<u>16,625</u>
			\$289,450	
Northwest	Type I	Cities of Eau Claire and Chippewa Falls	Existing	\$113,949
	Type II	Cities of Superior & Ashland	Existing/New	92,883
	Type III	Barron County	New	15,549
		Dunn County	New	<u>15,549</u>
			\$237,930	
Southeast	Type I	City of Milwaukee	Existing	\$250,212
	Type II	City of Racine	Existing	98,191
	Type III	Dodge County	New	16,514
		Ozaukee & Washington Counties	New	16,514
		Sheboygan County	New	<u>16,514</u>
			\$397,945	
Southwest	Type II	City of Madison	Existing	\$160,086
		City of La Crosse	Existing	94,550
	Type III	Grant County*	New	20,000
		Columbia County	New	15,813
		Vernon County	New	15,813
		Rock County**	New	<u>15,813</u>
			\$322,075	
		Total		\$1,247,400

\*In 2013-14, the Grant County award would be \$15,813 higher (for a total of \$35,813) to provide one-time equipment funding.

\*\*In 2013-14, Rock County would not be funded on a one-time basis. In 2014-15, Rock County would receive \$15,813.

Under the proposed contracts, the amounts distributed to the existing and new teams would be allocated based on a newly developed formula. First, all teams would receive an allocation based on annual stipend amounts provided to participating firefighters (\$1,200 per firefighter for Type I teams, \$1,000 per firefighter for Type II teams, and \$325 per firefighter for Type III teams). In addition, all teams (Type I, II, and III teams) would receive \$425 per firefighter for the cost of annual physicals. These amounts would represent the base allocations to the teams.

In addition to the base firefighter allocation described in the preceding paragraph, under the newly developed formula, all teams would receive supplemental allocations based on their responsibility within each task force to provide coverage based on reporting facilities within the

region, coverage area (square miles), and population. These supplemental allocations would be intended to distribute additional resources to teams based on an analysis of risk.

Table 3 identifies the annualized firefighter base allocations, supplemental allocations, and certain adjustment amounts that would be received by four teams in two of the four task forces. In addition, Table 3 identifies the assignment of each team to Type I, II, or III, and the coverage responsibility assigned to each team within each task force.

**TABLE 3**

**Proposed Wisconsin Hazardous Materials Response Network Allocation**

<u>Team</u>	<u>Type</u>	<u>Percent Responsible</u>	<u>Base</u>	<u>Reporting Facilities Amount</u>	<u>Coverage Area Amount</u>	<u>Population Amount</u>	<u>Adjustment</u>	<u>Total Allocation</u>
<b>Northwest Task Force</b>								
Eau Claire-Chip Falls	I	49.0%	\$71,500.00	\$1,348.35	\$1,964.72	\$39,135.81		\$113,948.88
Superior-Ashland	II	48.0	51,300.00	1,320.83	1,924.63	38,337.12		92,882.58
Barron	III	1.5	14,250.00	41.28	60.14	1,198.04		15,549.46
Dunn	III	1.5	14,250.00	41.28	60.14	1,198.04		15,549.46
<b>Northeast Task Force</b>								
Oshkosh-Appleton-GB	II	53.0%	\$51,300.00	\$2,568.82	\$1,892.06	\$79,465.39		\$135,226.27
Wausau-Oneida	II	33.5	51,300.00	1,623.69	1,195.92	50,228.12		104,347.74
Marinette	III	1.5	14,250.00	72.70	53.55	2,249.02		16,625.27
Waupaca	III	1.5	14,250.00	72.70	53.55	2,249.02		16,625.27
Marshfield-WI Rapids	III	1.5	14,250.00	72.70	53.55	2,249.02		16,625.27
<b>Southwest Task Force</b>								
Madison	II	66.25%	\$37,050.00	\$2,325.75	\$1,568.97	\$78,940.98	\$40,200.00	\$160,085.71
LaCrosse	II	30.00	37,050.00	1,053.17	710.48	35,746.86	19,989.39	94,549.90
Columbia	III	1.25	14,250.00	43.88	29.60	1,489.45		15,812.94
Grant*	III	1.25	14,250.00	43.88	29.60	1,489.45	20,000.00	35,812.94
Rock**	III	1.25						
Vernon	III	1.25	14,250.00	43.88	29.60	1,489.45		15,812.94
<b>Southeast Task Force</b>								
Milwaukee	I	70.0%	\$71,500.00	\$3,426.77	\$640.43	\$154,444.57	\$20,200.00	\$250,211.77
Racine	II	27.0	37,050.00	1,321.75	247.02	59,571.48		98,190.25
Dodge	III	1.0	14,250.00	48.95	9.15	2,206.35		16,514.45
Ozaukee-Washington	III	1.0	14,250.00	48.95	9.15	2,206.35		16,514.45
Sheboygan	III	1.0	14,250.00	48.95	9.15	2,206.35		16,514.45
							<b>Total</b>	<b>\$1,247,400.00</b>

\*In 2013-14, the Grant County award would be \$15,813 higher (for a total of \$35,813) to provide one-time equipment funding. In 2014-15, Grant County would receive \$20,000.

\*\*In 2013-14 only, Rock County would not be funded. In 2014-15, Rock County would receive \$15,813.

Military Affairs staff indicate that adjustments were made to the awards for La Crosse, Madison, and Milwaukee under the proposed formula as these teams, "bring the highest number of

hazardous materials technicians to the system and each has sustainment costs that the formula did not address adequately." In addition, an adjustment was made for Grant County to provide one-time equipment funding.

As the above discussion indicates, the allocation of level A team funding under the proposed contracts to Type I, II, and III teams, included both quantitative and qualitative elements. These proposed allocation levels reflect negotiations between DMA and the local teams.

It should be noted that under the formula as submitted by DMA to the Committee, Northeast Task Force team members were inadvertently not assigned 100% coverage of their region, but rather 91%. Nonetheless, DMA indicates that these Northeast Task Force team members would receive the amounts agreed to in negotiations and that the level A team funding is fully allocated under the proposed contracts before the Committee.

As the Legislative Audit Bureau noted in its 2002 evaluation of the regional hazardous materials response teams, "While most accidental releases of hazardous materials pose limited danger, the potential for significant harmful effects is always present, as demonstrated by the 1992 train derailment that released chemicals into the Nemadji River in Superior and the 1996 train derailment in Weyauwega that led to the evacuation of 1,700 people from the city." If the Committee concurs with the revisions that DMA is proposing for how the state would organize and fund local teams to respond to chemical releases, the Committee could approve the contracts. [Alternative 1]

Table 4 identifies the funding received by current level A teams under the 2012-13 contracts, and the proposed allocation for these existing or expanded teams under the submitted 2013-15 contracts. Existing level A teams would experience reductions ranging from -6.88% annually for the Milwaukee Regional Emergency Response Team [-\$18,474 annually] to -29.6% annually for the Superior Regional Emergency Response Team [-\$39,052 annually]. Cumulatively, the eight existing level A regional emergency response teams would experience an annual funding reduction of -15.87%, totaling -\$197,954 annually.

**TABLE 4****Funding of Existing Regional Emergency Response Teams under the 2012-13 and Proposed 2013-15 Contracts**

<u>2012-13</u> <u>Regional Team</u>	<u>Annual</u> <u>Award</u>	<u>2013-15</u> <u>Regional Team</u>	<u>Annual</u> <u>Award</u>	<u>Funding</u> <u>Change</u>	<u>%</u> <u>Change</u>
Eau Claire/ Chippewa Falls	\$158,030	Eau Claire/Chippewa Falls	\$113,949	-\$44,081	-27.89%
La Crosse	105,071	La Crosse	94,550	-10,521	-10.01
Madison	190,129	Madison	160,086	-30,043	-15.8
Milwaukee	268,686	Milwaukee	250,212	-18,474	-6.88
Oshkosh/Appleton	173,957	Oshkosh/Appleton/Green Bay	135,227	-38,730	-22.26
Racine	107,504	Racine	98,191	-9,313	-8.66
Superior	131,935	Superior/Ashland	92,883	-39,052	-29.6
Wausau	<u>112,088</u>	Wausau/Oneida	<u>104,348</u>	<u>-7,740</u>	-6.91
Total	\$1,247,400		\$1,049,446	-\$197,954	-15.87%

While the current approach to responding to chemical releases with level A and level B teams is specified in statute, DMA proposes modifying this system through the adoption of the proposed contracts currently before the Committee. If the Committee feels that modification of this system would be more appropriately made through separate legislation, or if the Committee has concerns regarding the level of funding provided to existing level A teams under the proposed contracts, the Committee could deny the Department's request to enter into the four proposed hazardous materials response network task force contracts.

If the Committee wishes to maintain the current funding and system for the eight existing regional teams, the Committee could consider: (a) denying the DMA request to enter into the four hazardous materials response system task force contracts submitted to the Joint Committee on Finance for its review on May 16, 2013; and (b) authorizing DMA to extend the 2012-13 contracts (under the same financial terms) with the eight existing regional teams for 2013-15. [Alternative 2]

Finally, the Committee could consider denying DMA's request to approve the proposed contracts. [Alternative 3] Under this alternative, however, DMA, the regional teams, and the Committee would still need to subsequently develop and approve new contracts for 2013-15, to replace the 2012-13 contracts.

**ALTERNATIVES**

1. Authorize the Department of Military Affairs (DMA) to enter into the four hazardous materials response network taskforce contracts submitted to the Joint Committee on Finance for its review on May 16, 2013.

2. Deny the DMA request to enter into the four hazardous materials response network



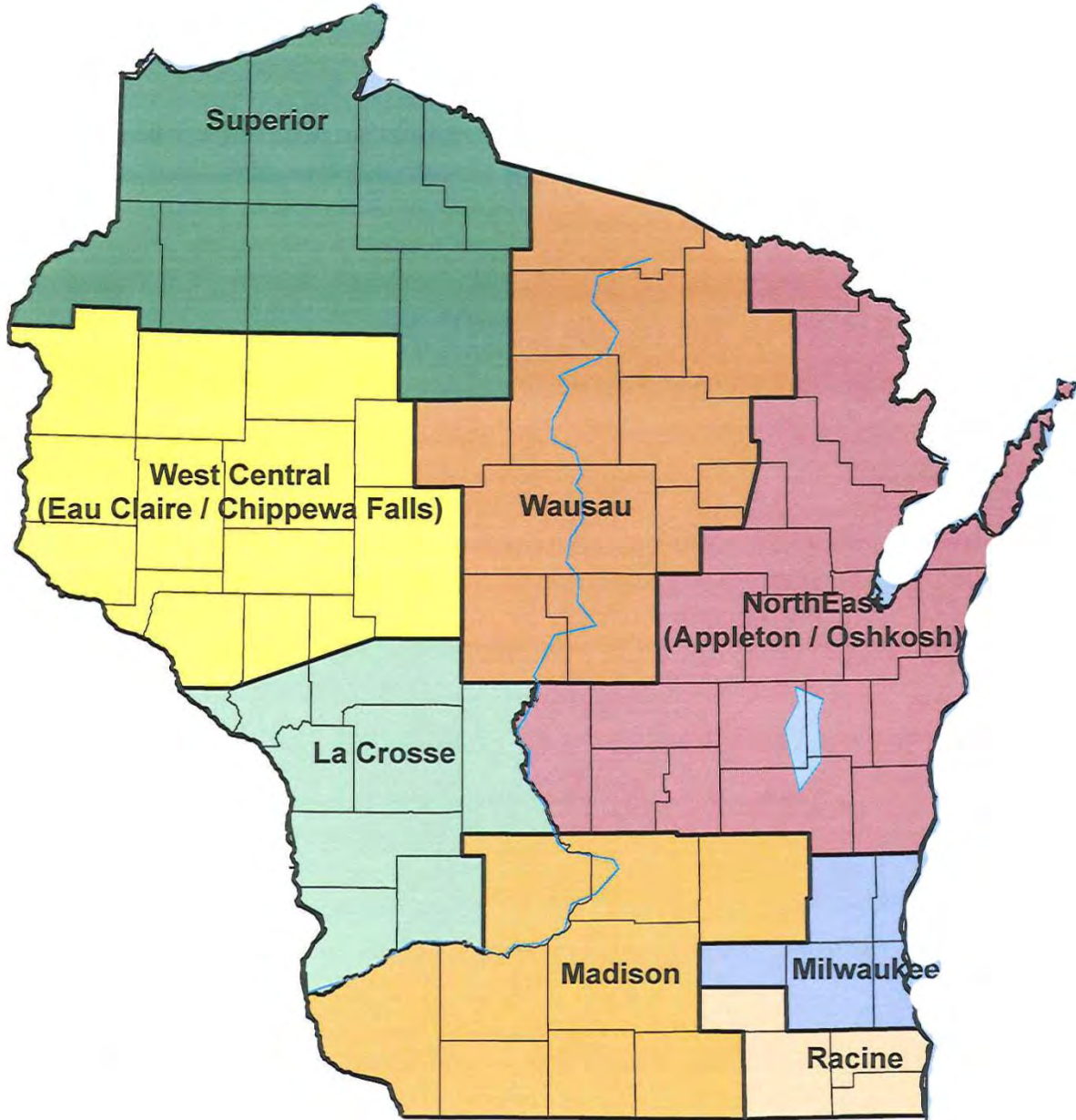
task force contracts submitted to the Joint Committee on Finance for its review on May 16, 2013. Instead, authorize DMA to extend the 2012-13 contracts (under the same financial terms) with the eight existing regional teams through June 30, 2015. If DMA and the current regional teams agree to extend the 2012-13 contracts through June 30, 2015, the 24-month contract extensions would not need to be submitted to the Committee for its approval under s. 323.70(6) of the statutes.

3. Deny the request. [Under this alternative, DMA would need to re-submit hazardous materials response network taskforce contracts for 2013-15 to the Committee under s. 323.70(6) of the statutes.]

Prepared by: Paul Onsager

**APPENDIX I**

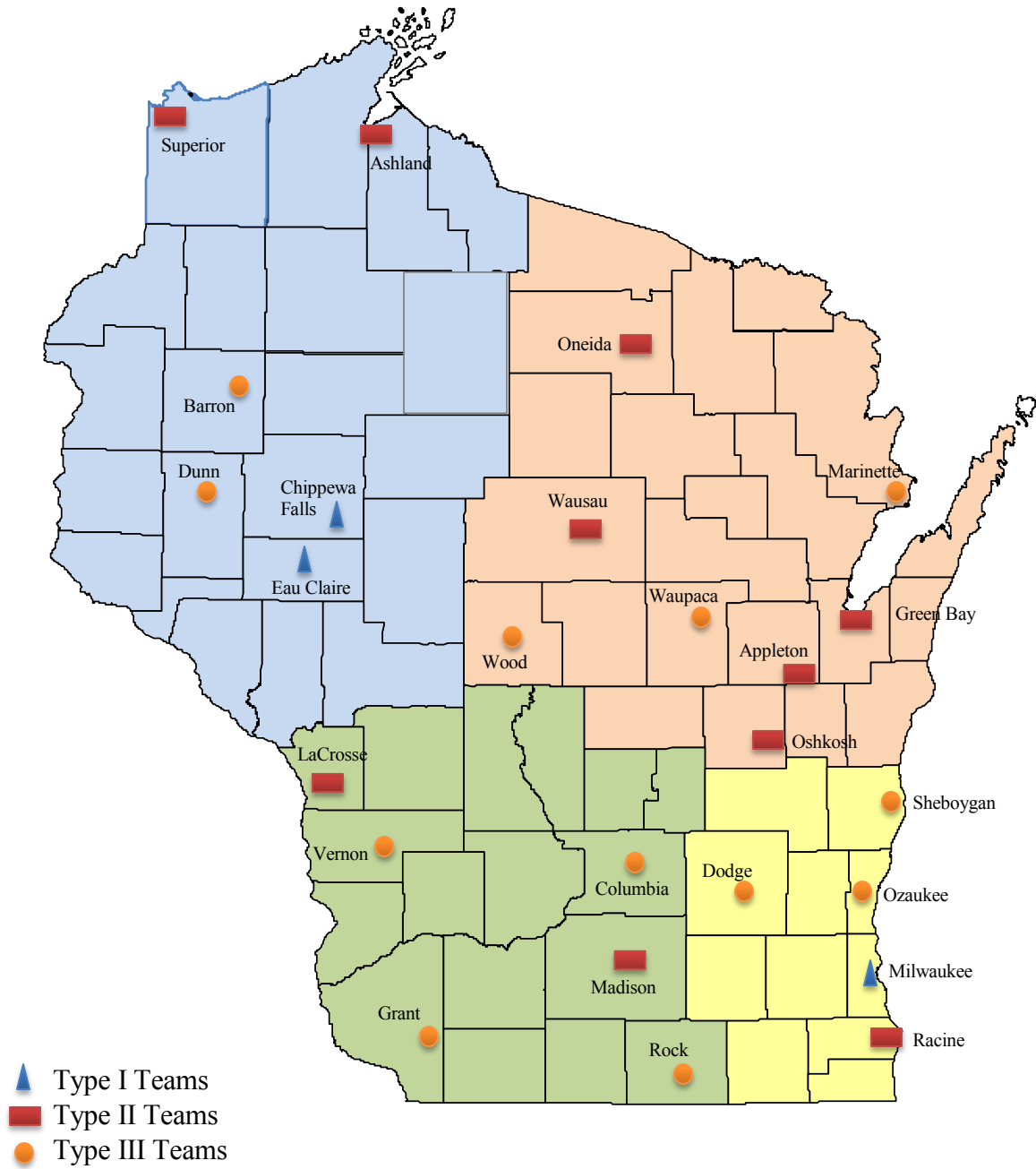
**Division of the State Between the Eight Current Regional Hazmat Teams**



Source: Department of Military Affairs

## APPENDIX II

### Division of the State Among the Four Proposed Regional Taskforces



Source: Department of Military Affairs