



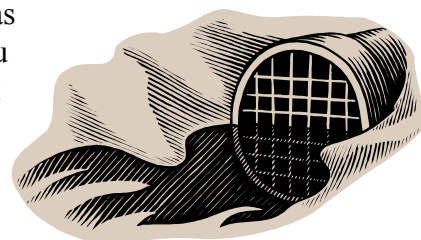
SEWER BACKUP – A MESSY SITUATION

When a sewer backup occurs, homeowners often look to the municipality or sewer district providing their service for help with cleaning up the mess. For many folks it seems almost impossible to imagine that a backup might not be the fault of their service provider. It may be tempting for a municipal sewer department or a sewer district to pay small losses as a gesture of good will even when they know the loss is not the result of their negligence. However, it is never a good idea to pay losses for which you are not liable. Doing so only encourages an expectation by the public you serve that all sewer backups they may suffer will be paid by your entity. When the large loss occurs for which you are not negligent and you decide it is too expensive a good will gesture to pay the loss, you can imagine how your reputation will be damaged. You may well find yourself the target of a lawsuit by an angry customer.

The governing state statute mandates that public drains must be maintained and kept in repair but does not require a specific schedule of maintenance. A municipal sewer department or sewer district with a regular, annual sewer line maintenance program in effect (that is actually being carried out and documented) may be found not negligent when a sewer backup claim is presented. One must remember that Pool coverage or commercial insurance coverage is not intended to replace the necessary expenditures for regular maintenance.

An entity that fails to properly maintain its sewer lines and public connections will find that frequent losses result in an unfavorable loss record. Poor loss records over time inevitably result in increased costs for coverage. Your entity may find that a deductible for sewer backup coverage will be imposed if losses become very frequent and there is an inadequate effort to prevent losses. Contribution or premium amounts may be increased due to the increase in losses, and eventually it is possible that your entity's coverage may be in jeopardy if an effort toward improvement is not evident.

Whether a municipal sewer department or sewer district is provided coverage by the Maine Municipal Association Property & Casualty Pool or a commercial insurance company, the only amounts that should be paid for sewer backup claims are those for which the entity is legally liable. Sewer backups can be the result of many different events and causes. It is important to report all claims to MMA or your commercial insurance company and allow them to investigate the circumstances of the loss, determine whether or not there was negligence on the part of your entity, and either decline or pay the loss. You need not be the “bad guy” who declines losses, but you can always take credit for being the “good guy” when a legitimate loss is paid by MMA or your commercial insurance carrier.



Suit Against School Department is Likely to Also Name the Municipality

School Departments are legally part of the municipal structure, therefore, if a school department is sued, it is likely that the Town or City will be named as a defendant. If your School Department carries its own commercial liability coverage, the municipality should request that the School Department provide the municipality with a Certificate of Insurance naming the Town or City as an ADDITIONAL INSURED. Even better, request that the School Department's carrier provide the Town with a copy of the **endorsement** that names the municipality as an ADDITIONAL INSURED!

Additional Insured Status Can Eliminate Unwarranted Defense Costs

Why is it important for a town to obtain a Certificate of Insurance naming the Town as an "ADDITIONAL INSURED" from groups and individuals utilizing the municipal facilities, vehicles or equipment (i.e. rental of meeting rooms, use of gymnasiums, etc.)? Since the Town owns the property, the municipality may be named as a defendant in the lawsuit arising out of a third party's

act or omissions on the Town's property. Additional Insured status may mean the third party's insurance will defend the Town and cover the expense of getting the Town released from the suit. The extent of the coverage offered depends upon the exact language used in the Additional Insured endorsement. Without the Additional Insured status, the Town will have to rely on its own insurance carrier and the cost of defending the suit will become part of the Town's loss history and may impact the cost of future coverage.

MONITORING Independent Contractor Certificates of Insurance

Collecting Certificates of Insurance from independent contractors is a prudent risk management practice. To maximize the benefit of the certificates, RMS suggests that one person in your organization be designated to accomplish the following:

1. Review each certificate to verify that your entity is specifically named as an "ADDITIONAL INSURED" (such designation is generally found in the lower left hand box or the remarks section of the certificate). To be sure of the precise coverage offered, request a copy of the Additional Insured Endorsement attached to the policy.
2. Review each certificate to verify that the certificate expressly describes the project or time frame for which the independent contractor's coverage is required.
3. Review each certificate to verify that the insurance coverage limits for each category of insurance are acceptable. RMS suggests you require limits at least equal to the levels carried by your entity.
4. Require updated certificates for new projects or when certificates expire.
5. Maintain a binder or folder of all certificates for easy monitoring.

The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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Contracts and Rental Agreements may have Negative Impact on Liability Coverage

Not sure how a contract, lease agreement or other written document will impact your insurance? Does the proposed language create exposures not covered by your property and casualty coverage? Do the terms of the agreement inadvertently waive the protections your entity would otherwise be entitled to under the Maine Tort Claims Act? Members of the Risk Management Services Property and Casualty Pool are invited to forward such papers to the Underwriting Department for review before the execution of the documents.

Liquor Liability Lawsuits are on the Increase

Do you allow alcohol to be consumed on premises owned by your entity? Liquor liability is one of the most rapidly growing exposures nationwide. Requiring a constable's presence during an event where alcohol will be served does not necessarily shield the property owner from exposure. Claims and lawsuits against the property owner can arise from accidents or incidents that occur after an attendee has departed your premises. If alcohol is allowed, it is strongly recommended that you require any third party hosting such functions to provide you with a copy of their liquor license and a Certificate of Insurance for both general and liquor liability specifically naming your entity as an "ADDITIONAL INSURED". Requiring third parties to employ the services of a licensed caterer is an excellent way to reduce the Town's exposure. Remember to require the aforementioned documentation and Additional Insured status from the caterer as well.

Special Events-Involve Your Insurance Carrier Early in the Planning Process

Planning an Old Home Days, a Bicentennial, Community Festival or other special event? Does your town sponsor any activities that involve dunk tanks, trampolines, horse rides, bounce house, bungee pulls, Velcro jumping, motorized racing or any other non-passive activities? Contact your carrier early in the planning stages. These activities might not be included in your current coverage and you may need to alter your schedule of events or apply for special events insurance. Incorporate a risk management focus into the earliest stages of planning by informing participants that they will be required to provide a Certificate of Insurance naming the town as an Additional Insured. Insert such requirements into contracts for services and vendor applications. Pool members are encouraged to contact their Underwriter at 1-800-590-5583 to discuss all special events activities.

Loss or Destruction of Cash or Securities at a Municipal Official's Home

Some towns and plantations do not have the resources to maintain a centralized town office and they rely on municipal officials who work out of their private residences. If an employee or official handles funds at home, Risk Management Services encourages those individuals to make deposits at the municipality's bank as frequently as possible. If municipal funds are lost or destroyed at the employee's or official's residence, the Town may face major obstacles getting the homeowner's coverage or municipality's coverage to cover the loss.

Workers Compensation for Volunteer Firefighters



The State of Maine Workers Compensation laws apply only to individuals who are monetarily compensated for their services, except for special legislation that makes Volunteer Firefighters eligible for Workers Compensation. State law requires that Firefighters be covered for workplace injury through workers compensation when Firefighters are engaged in firefighting, emergency response, training for those events, or maintaining facilities and equipment necessary for emergency response. Volunteer firefighters should be reminded that injuries occurring while engaged in activities such as chimney cleaning, pool filling, parades, firemen's balls, social events and benefit barbeques/fundraisers may not meet the statutory requirements for workers compensation coverage. These non-firefighting activities also increase the Fire Department's exposure to liability claims, which may or may not be covered through the Town's property and casualty coverage.

WELCOME NEW MEMBERS!!!

Property & Casualty Pool

Warren Sanitary District

Workers' Compensation Fund

Sanford-Springvale Dev. Corp.

Coplin Plantation



Annual Motor Vehicle Checks are Crucial to Effective Risk Management

You wouldn't allow a friend to borrow your car if he or she had a terrible driving record. Likewise, municipalities and districts should not allow any individual with an unsatisfactory driving record to drive their vehicles. Prudent risk management practice dictates that all governmental entities annually request and review the driving records of all employees and volunteers who might be required to drive a government vehicle. Such records may be obtained at no cost to municipalities by subscribing to on-line services through Information Resource of Maine (Informe) at <http://www.informe.org/subscribe/subscribe.html>. Informe waives the annual \$75 subscription fee for municipalities, Informe can be reached at (207) 621-2600. (Note: Police Departments have access to driving records for law enforcement purposes only and are not permitted to perform administrative driver license checks.) A brief written policy, establishing actions to be taken in the event of repeated speeding, DUI or other infractions, will help your organization to apply sanctions uniformly.



On Line Safety Training



Join the hundreds of municipal employees who are benefiting from the Risk Management Services On-Line Safety Training Program! Property and Casualty Pool and/or Workers Compensation Fund participants' employees are eligible to use this user-friendly training at no cost. Access may be gained from any internet-capable computer by logging onto www.memun.org and clicking on the words in the left hand column "On Line Safety Training." The training modules range from 20 minutes to 2 hours in length and may be paused and restarted – even months later. Municipalities wishing to designate a training coordinator may call the 800-telephone number listed on the site. For more information, call Ed MacDonald, Loss Control Manager, 1-800-590-5583, ext. 238.