

The Municipal RISK MANAGER

JULY 2010

A Publication of the Maine Municipal Association

Your Municipality and Fireworks Displays



During the summer months, many municipalities hold festivals, celebrations and other special events. Fireworks are a common part of many of these celebrations, most frequently on the 4th of July. While fireworks displays provide much entertainment, they also pose many dangers. As with all municipal special events, fireworks displays must be carefully planned and managed in order to protect the safety and health of the participants and protect public property.

Here are a few risk management tips to help you identify and minimize your municipality's liability exposures related to your fireworks displays:

1. Any person, municipality or association desiring to discharge fireworks, must apply to the Department of Public Safety, State Fire Marshal's Office for a permit. For further information please refer to <http://www.maine.gov/dps/fmo/inspections/fireworks.html>.

2. Do not allow untrained municipal employees or volunteers to handle fireworks.

3. Hire an experienced fireworks vendor. Ask for references from other municipalities. Check that the fireworks vendor has the proper licenses, training, and certifications for all their employees that will launch the display.

4. Require the vendor to provide an original certificate of insurance that lists your municipality as an additional insured. Make sure the vendor has proper liability insurance with limits of liability not less than \$1,000,000.

5. Consult with your municipal attorney for contract review prior to entering into a contractual agreement or if you have questions about your municipality's legal liability with regard to your special events.

6. Check that the contract you sign with the fireworks vendor includes:

- A "hold harmless" agreement in which the vendor agrees to hold your municipality harmless in the event they cause injury or damage.
- An "indemnification clause" wherein the vendor agrees to protect, defend, and indemnify your municipality for any claims by third parties who are injured as a result of the vendor's actions.
- Assurance that the vendor has complied with and will adhere to all local, state and federal requirements regarding fireworks displays, as well as standards recommended by the National Fire Protection Association.

7. During the fireworks display:

- Provide security to restrict access to the launching area if needed.
- Arrange to have the fire department and emergency medical personnel on standby in case of fire, accident or injury.
- Monitor weather conditions, specifically wind conditions prior to the launch. If necessary, cancel or postpone the event.

At Maine Municipal Association we are here to help you plan and enjoy your fireworks displays whether they happen on the 4th of July or any other day of the year. We will review contracts, hold harmless agreements, certificates of insurance and provide other risk management tools to help make your special event safe and protect your municipality. 🏠

Welcome New Members!

Property & Casualty Pool:

Regional School Unit 78
Waterboro

Workers Compensation Fund:

Regional School Unit 78

How to Manage Contractor Liability

One of the significant liability risks municipalities face is the use of contractors rather than municipal employees to accomplish some types of work. Some of the areas where municipalities typically use contractors are roadwork, new building construction, remodeling of buildings, construction of additions, snowplowing and landscape/lawn mowing services. There are some significant liability exposures in all of these operations performed by contractors on a municipality's behalf. Are municipalities adequately protecting themselves when using contractors?

Municipalities do not want to find themselves in the position of discovering after a loss occurs that the independent contractors they have engaged do not have appropriate and adequate insurance to protect themselves and the municipality for whom they are working. One way to ensuring that the municipality is protected is to transfer the risk contractually. The municipality will require in its contract with a contractor that the independent

contractor take on the municipality's liability exposure resulting from the contractor's operations.

There are some simple steps a municipality can take to protect itself. The process does not need to be complex.

- Municipalities should always hire a contractor using a **written contract** that clearly specifies the terms of the relationship between the two entities. (If possible the municipality's attorney should draft the contract or at the least review the contract prior to it being executed.)
- The contractor should agree to assume the municipality's liability arising from the contractor's operations. This is typically referred to as a "**hold-harmless**" or "**indemnification agreement**".
- The municipality should require the contractor to carry specific insurance coverages and limits to be certain that there are adequate resources for the payment of claims.
- Obtain **Certificates of Insurance from the contractor**.
- Confirm that the Municipality is named as an **Additional Insured** on the contractor's liability policy.

There are some operations performed by contractors that may expose a municipality to unusually hazardous liability risks. Building construction, bus transportation, and bridge repair are among these. A municipality may require increased limits of liability coverage from these contractors where the risk of severe loss is high. There may be specialty operations where the contractor is required to carry additional liability policies or special liability coverage. A municipality should review their use of contracts with MMA's Underwriting Staff

or their own insurance provider to determine what, if any, special coverage or safety provisions may be required.

A municipality should always obtain a current **Certificate of Insurance** from the contractors with whom it does business. The contractor can easily obtain this document from his insurance agent. The certificate, to be acceptable, must list the insurance carriers insuring the contractor, and the coverages, terms, and limits of insurance that are provided. A municipality needs to obtain a certificate for General Liability, Workers Compensation, Automobile Liability, Builder's Risk for value of construction projects and Bid and Performance bonds as appropriate. This is the evidence that the contractor has complied with the contractual requirement for insurance.

A municipality should also require that it be named on the contractor's policy as an **Additional Insured**. This endorsement on the contractor's policy extends the contractor's insurance protection to the municipality for the contractor's operations. This endorsement should be shown specifically on the Certificate of Insurance the municipality receives from the contractor.

When a municipality contracts for professional services from an attorney, accountant, architect, engineer, surveyor or others, a municipality's contract should contain a requirement for **Professional Liability** insurance coverage to provide proper protection to the municipality. Again, the requirements of specified limits should be discussed with MMA's Underwriting Staff or the municipality's insurance provider. It is not likely that an additional insured endorsement will be pro-



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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Do You Need Some Summer Help?

Summer is the season when most municipalities hire seasonal and other part-time employees. Statistically, these employees are more likely to suffer on-the-job injuries or cause injury or property damage to others. The following recommendations are provided to help reduce accidents with summer seasonal employees:



- Train and advise all employees on safety procedures.
- Provide proper supervision of these employees and enforce safety rules and procedures.
- Furnish personal protective equipment (PPE) such as safety glasses, goggles and ear plugs, and train employees on the proper use of the equipment.
- If your municipality is hiring summer employees under the age of 18, remember to abide by state and federal labor laws. Please refer to the Maine Department of Labor website: (http://www.maine.gov/labor/workplace_safety) and the U.S. Department of Labor website: (www.dol.gov) for specific details regarding child labor laws.

We can help you educate your seasonal workers on topics such as personal protective equipment and general safety policies and procedures. Please contact your Loss Control Representative at 1-800-590-5583 or for further assistance refer to our website at www.memun.org.

VOLUNTEER FIREFIGHTER

ACCIDENTAL DEATH & DISABILITY PROGRAM

Now available for \$44.61 PER VOLUNTEER

The Volunteer Firefighter AD&D program (VFF) coverage is underwritten by The Hartford and is designed to provide insurance benefits for Fire Department activities that fall outside the coverage provided by the Maine Workers Compensation Act.

VFF is available for an annual premium of only \$44.61 per volunteer firefighter.

FOR FURTHER INFORMATION PLEASE CONTACT:

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LIABILITY (cont'd)

vided under a professional liability policy. However, it is important to make sure that **Contractual Liability** coverage is included. That will satisfy the indemnification agreement contained within the contract. As always, obtain a current Certificate of Insurance that shows the carriers, coverages, terms, and limits with a statement that coverage for the municipality's indemnification agreement is included.

Currently, standard liability policies usually have little or no coverage for **Pollution Liability**. Therefore, if a municipality hires a contractor to handle, transport, store, treat or analyze any hazardous materials, the contract used must specify that the contractor's liability insurance policy includes pollution liability coverage. The Certificate of Insurance must show that pollution liability coverage is in effect. It is also wise to have the specific policy language reviewed and analyzed to determine the adequacy of the coverage provided.

Taking these actions will help protect the municipality should a claim be presented that involves the contractor's actions during the time that the contractor is working on the municipality's behalf. It is essential that the contractor has adequate insurance available, should there be damage to property or injury to contractor employees or to the public.

This article is intended to provide some basic information about the liability issues involved with managing municipal contracting practices. When the time comes for a municipality to negotiate a contract and specify insurance requirements for a contractor, it is important to consult with an attorney and with MMA's Underwriting Staff or the municipality's insurance provider to be sure that the municipality's unique needs and circumstances are properly protected. ■

\$2 Million Dedicated to Safety

We would like to thank the Membership of the Maine Municipal Association Workers Compensation Fund for their continued dedication to safety through the support of both the Safety Enhancement Grant and Scholarship Grant programs. The Maine Municipal Association has been awarding safety grants to Members of their Workers Compensation Fund since 1999. The Grant program has assisted municipalities by bestowing in excess of **\$2 million** through funding of **1632** Safety Enhancement Grants and **329** Scholarship Grants to date.

The Safety Enhancement Grant and Scholarship Grant Programs are designed to offer financial incentives to members of the Maine Municipal Association Workers Compensation Fund. Grant Recipients have put their funds to use by purchasing such equipment as ergonomic devices, lockout / tagout stations, training aids, material handling equipment, and worksite traffic control signage to assist in reducing the frequency and severity of workplace injuries.

We would like to congratulate the May 2010 Grant recipients

Town of Alna	Town of Fairfield	Town of Monmouth	Town of St. George
City of Augusta	Town of Farmingdale	Town of Mount Vernon	Town of Stacyville
Town of Bar Harbor	Town of Fayette	Town of North Haven	Town of Stockholm
City of Bath	Franklin County Comm.	Northern Oxford Regional Ambulance.	Town of Stockton Springs
City of Belfast	City of Gardiner	Town of North Yarmouth	Town of Stoneham
Belfast Water District	Great Salt Bay Sanitary District	Town of Northport	Stonington Water Company
City of Biddeford	Town of Hampden	Town of Oakland	Town of Sullivan
Town of Bowdoin	Hampden Water District	Town of Orono	Town of Thomaston
Town of Bridgewater	Town of Harmony	Town of Penobscot	Town of Tremont
Town of Bridgton	Town of Harpswell	Penobscot County Comm.	Town of Vassalboro
Town of Brooks	Hermon Vol Rescue Squad	Town of Pittsfield	Vassalboro School Dept
Town of Brunswick	Town of Hudson	Town of Poland	Waldo County Comm.
Town of Bucksport	Town of Islesboro	Portland Water District	Town of Warren
Town of Cape Elizabeth	Town of Jackman	Town of Pownal	Washburn Water & Sewer Dist.
Town of Carmel	Kennebec Water District	Town of Readfield	Town of Washington
Central Penobscot Solid Waste	Town of Knox	Town of Richmond	Town of Waterboro
Town of Charleston	Knox County Comm.	City of Rockland	Town of Weld
Town of Chelsea	Town of Leeds	Town of Rumford	Town of Wellington
Town of Clinton	Town of Levant	Town of Saint Albans	Town of Wells
Town of Columbia Falls	Town of Liberty	Town of Searsmont	Westport Island
Cumberland County Comm.	Lincoln/Sagadahoc	Town of Searsport	Town of Wilton
Town of Denmark	Multicounty Jail	Somerset County Comm.	Town of Winslow
Town of Dixfield	Town of Lovell	Town of Somerville	Winslow School Dept
Town of Dresden	Town of Mattawamkeag	City of South Portland	Town of Winthrop
Town of Durham	Town of Medway	South Portland Housing Authority	Town of Woolwich
Town of East Millinocket	Mexico Water District		Town of Yarmouth
Town of Edgecomb	Monhegan Plantation		York School Dept

Ed MacDonald, Loss Control Manager for Maine Municipal Association, advises the Safety Enhancement Grants and Scholarship Grants are an overwhelming success, and this year MMA Risk Management Services has been able to award grants to a greater number of Members than ever before. The program received 176 applications for the May 2010 grant period, and \$150,274 in grants was awarded. Grants are awarded in May and October each year.

For more information about any of the Maine Municipal Association Risk Management Service programs, including Safety Enhancement Grants eligibility and applications, please visit our website at www.memun.org and click on the Risk Management Services link, or call us at 1-800-590-5583.