

The Municipal RISK MANAGER

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RMS Claims Announces Retirement and Promotions

Tom Conger, Workers Compensation (WC) Assistant Claims Manager retired on 3/31/13. Tom joined MMA in November of 2007 bringing with him vast experience and knowledge in the insurance field and extensive claims management experience. All of RMS benefited from his insight, mentoring and strong commitment to our members. We wish him all the best in his retirement.



Tom Conger, Retired Workers Compensation Assistant Claims Manager.

We are pleased to announce that Tracey Gould has been promoted to the WC Assistant Claims Manager position. Tracey is a 2003 gradu-



Tracey Gould, WC Assistant Claims Manager and Matt Pitcher, WC Claims Supervisor.

ate of Thomas College in Waterville, Maine. She completed school with a bachelor's degree in finance and economics. During college, she was very active in field hockey, softball, and other campus organizations. Tracey joined MMA in July of 2003 as a Workers Compensation Claims Representative and was responsible for handling lost time

claims in the central part of Maine. In January of 2011 she was promoted to Workers Compensation Claims Supervisor and oversaw the work of the three medical technicians. In her new position she will oversee the entire WC Claims Department and directly supervise our four WC Claim Representatives, Nurse Case Manager and the WC Claims Supervisor.

Matt Pitcher has been promoted to the WC Claims Supervisor position made vacant by Tracey Gould's promotion. Matt Pitcher graduated from Thomas College in 2001 with a degree in business management. He was hired by the Maine Municipal Association as a Workers Compensation Claims Representative in June

2005. In 2008, Matt was promoted to Senior Claims Representative, and in 2009 he took over the City of Portland account where MMA acts as the third party administrator. Matt will continue to serve in this role along with his new duties as WC Claims Supervisor. He will have oversight of the three WC medical technicians who handle medical only and small lost time claims.

Both Tracey and Matt bring a wealth of experience and a strong service commitment to our members. We are excited about their new roles in the Risk Management Department of MMA. 📌



Important Reminder About Independent Contractors

As a reminder, members of the Workers Compensation Fund who use independent contractors should obtain a certificate of insurance with evidence of Workers Compensation coverage or an approved "Predetermination of Independent Contractor Status" (WCB 266). These forms are available on the Maine Workers' Compensation Board's website. 📌

Potholes and Municipal Responsibility

Within the local highway law there is what is commonly referred to as the “pothole law.” When someone claims their vehicle was damaged because of a pothole or similar road defect, the issue is governed by the pothole law, see 23 MRSA §§3651-3655. The pothole law requires municipalities to keep town ways (and state roads under municipal control) in good repair. The town’s liability arises from the physical condition of the road itself, not the town’s negligent use of vehicles or equipment. Three facts must be established before a municipality will be held liable under the pothole law. First, the defect which caused the injury must be in a town way. Second, the injury or damage must be the result of a highway defect. Third, the town must have had at least 24 hours prior notice of the defect in question and failed to correct it.

The Property & Casualty Pool recommends that each municipality have a written process for recording when notice was received and when the road defect was fixed. The written process should include a well organized work flow documenting the reported defect. It may be advisable to have one person handle the incoming reports. The designated person should keep a log of the time the defect was reported and the location. After the notice is received, trucks need to be dispatched for a reasonable repair of the defect within 24 hours of that report. The time of repair needs to be logged along with the type of repair (gravel, cold patch) and any comments. This log should be retained for at least a 6 month period since that is the amount of time the public has to report the defect to the municipality.

If there is more than one report for the same location and/or there is a recurring pothole from a problem area, the use of a sign and/or cone may help motorists to avoid the defect until a reasonably satisfactory repair

can be completed. The statute does not specify what type of repair must be made. The repair will be judged by a reasonableness standard. The frequency of defects rises usually in March and April as the frost leaves the ground. Potholes can also occur in the late fall. Potholes are usually more frequent during and after heavy rain fall in these same months.

The limit for any damage claim when

the municipality is found liable is \$6,000. There is also a 180 day notice requirement. The claimant is required to specify his/her claim for damages, nature of his/her injuries, and the nature and location of the defect which caused the injury within 180 days of the incident. The damage cap for any one wrongful death arising out of a road defect is \$25,000. 📌

Transfer Stations Can Present Serious Fall Hazards

Municipal, quasi-municipal, and private waste transfer stations are found throughout Maine and play an important role in a community’s waste management system. Their design and operation is dependent on the location serviced, volume, and method of ultimate disposal. Waste transfer stations range from basic to quite complex. In the most basic, the public drives onto the grounds and places the waste into the appropriate bin which is hauled away when full either by transfer station employees or by a contracted company. Other transfer stations have drive-up off-loading, where a metal roll-off container or bin is placed below grade so the public can easily throw or dump their waste into the container. These containers, usually equipped with a mechanical compactor, are 8 feet or more deep and can present serious hazards for falls to the public and to employees of the transfer station. Sorting containers for recyclables such as metal, demolition materials, etc. are often located below grade or are accessed from platforms. These also present hazards for falls and there have been documented fatalities and injuries in Maine, resulting from persons either falling or driving into containers.

OSHA CFR (Code of Federal Regulations) 1910.23 outlines requirements for fall protection at openings where one could fall into a container. A “standard railing” 42 inches in height with a mid-rail at the mid-point between the top rail and ground level and capable of withstanding 200 lbs. of lateral force should be provided. Standard railings must be provided on all sides of loading pits or other locations that are adjacent to walking and working surfaces and on all platforms or working/walking areas with a drop of more than four feet.

Safety Options and Tips:

- a. If the transfer facility as constructed is equipped with railings, traffic stops, barriers and other safety devices, don’t remove or obstruct them. Repair or replace if damaged.
- b. Leave gates in front of compactor hoppers closed. If a gate must be opened, (example-when dumping a truck) it should be opened by attendants and closed immediately after. Post signs stating the policy.
- c. “Stop logs” (curb stops) should be placed at locations that warn drivers and prevent vehicles from backing

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Global Harmonization System (GHS)

If, when you hear of “global harmonization”, you envision an international group of people singing peaceful words in harmony in candle light - forget it! GHS stands for the “Globally Harmonized System of Classification and Labeling of Chemicals.” GHS is a system that defines and classifies the hazards of chemical products and communicates health and safety information on labels and safety data sheets (SDS). The goal is that the same set of rules for classifying hazards and the same format and content of labels and safety data sheets (SDS) will be adopted and used around the world and become “globally harmonized”.

Why do MMA members care? Building on the success of OSHA’s current Hazard Communication Standard (CFR 1910.1200), often referred to as HazCom, which gives employees the “Right to Know” about the dangers of working around hazardous chemicals and methods for protecting themselves from dangers, the new rule will enhance the opportunity to “Right to Understand”. The HazCom standard, enacted in 1983, still requires having a written program, container labeling and data sheets for chemicals and employee training. The new rule changes how communication is made. Two significant changes in the revised standard require the use of new labeling elements and a standardized format for Safety Data Sheets (SDS), formerly known as Material Safety Data Sheets (MSDS). The bottom line is, if you have a written program that was in compliance with the original standard, it must be updated to include the changes required by the new rule.

To help employers comply with the revised standards, OSHA (and the Maine Department of Labor in the public sector) is phasing in the specific requirements over several years (December 1, 2013 to June 1, 2016). By 12/1/13 employers must have trained employees on the new label elements and the SDS format. Among

other things, this training includes a new labeling system with standard language for “product identifiers” and the use of pictograms on labels to alert users of chemical hazards to which they might be exposed.

Other critical dates:

- By 6/1/15 manufacturers, distributors and importers must be in compliance by providing the new SDS with each shipment. Distributors may ship products labeled by manufacturers under the old system until December 1, 2015.
- By 6/1/16, employers must have switched to the new SDS labeling.
- Chemical manufacturers, importers, distributors and employers may comply with either 1910.1200 as revised by the new rule, or the current version of the standard, or both during the transition. Completing employee training early in the transition process and prior to the 12/1/13 deadline is important, since workers are already

beginning to see the new labels and SDS on chemicals in the workplace. To ensure employees have the information they need to better protect themselves from chemical hazards it is critical that employees understand the new label and SDS formats.

Sources of assistance include: OSHA’s Hazard Communication website <http://www.osha.gov/dsg/hazcom/index.html> has QuickCards and OSHA Briefs to assist employers with training.

Maine Department of Labor – Safety-Works! (207) 623-7900 or 1-877-723-SAFE or www.safetyworksmaine.com

MMA, Risk Management Services (RMS), Loss Control Department, (207) 626-5583. Contact your assigned Loss Control Consultant. For participants of RMS self insured programs, online training is available at <http://www.memun.org/RMS/RMS.htm> “Best Practices,” also available on our website, are currently being updated to reflect the new rule. 📌

National Police Week 2013



and protection of others. Please join us as we thank all Police Officers for their dedication, loyalty and service. 📌

In 1962, President John F. Kennedy signed a proclamation which designated May 15th as National Peace Officers Memorial Day and the calendar week in which May 15th falls as National Police Week. Established by a joint resolution of Congress in 1962, National Police Week gives special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety

Transfer Stations *(cont'd)*

too far and striking fencing or backing into a container. These should be painted with a high visibility paint or striping.

d. Use concrete barriers (“Jersey Barriers”) to block vehicle access from pedestrian areas, edges of elevated areas, containers, fuel tanks, structures, etc. If barriers are also serving as a railing for fall protection they should be modified to have 42 inches top height.

e. When roll-off containers (bins) are placed so that the top edge is below grade (ground or floor level) or is above grade but not 42 inches, a “standard hand rail” must be provided.

f. Some facilities are designed to have users drop wastes onto a concrete pad (if inside, called a tipping floor) and the transfer station operator uses a bucket loader to move the waste to the compactor hopper. This provides additional control of the public from exposures. If the drop-off area is more than four feet above the slab, a standard rail should be provided. Stop logs or barriers should also be

provided to prevent vehicles from falling to the tipping floor and to prevent the loader from falling into the hopper.

g. Signage should be provided to restrict public drop off areas from more hazardous areas with entrance limited to employees. Example – **Restricted Area-Authorized Employees Only**

h. To prevent falls and other injuries to the public, no scavenging or salvage should be allowed.

i. To eliminate fall injuries, employees should be trained to the OSHA standards for Walking and Working on Surfaces, Floor and Wall Openings and General Housekeeping, including spill cleanup.

This list is intended to raise awareness of waste transfer station fall hazards and is not all inclusive. Each facility should conduct a hazard assessment to identify additional controls that might reduce risk. Please contact the Risk Management Services, Loss Control Department for assistance or more information. 🏠

Welcome New Members

Property & Casualty Pool

Town of Warren
Hampden Water District
Town of Owls Head
New Gloucester Water District

Workers Compensation Fund

Town of Paris
Town of Plymouth
Town of Owls Head
Freeport Economic Development Corp.
New Gloucester Water District

Unemployment Fund

North Berwick Rescue Inc.



National Public Works Week May 19th-25, 2013

National Public Works Week (NPWW) acknowledges the extraordinary efforts put forth by the men and women who provide for and maintain our communities. NPWW brings to light the importance of the work performed daily by our Public Works Departments. NPWW is observed each year during the third full week of May and seeks to raise the public’s attention to and awareness of the accomplishments achieved by Public Works Departments.

Join MMA Risk Management Services at the annual “Highway Congress” where the professionalism and expertise of Public Works Departments are put on display annually. The Highway

Congress is an annual trade show event sponsored by the Maine Chapter - American Public Works Association. The Highway Congress will be held June 6, 2013 at the Skowhegan Fairgrounds located on Madison Avenue (Route 201) in Skowhegan, Maine. The Highway Congress began in 1991 and it has continued to thrive and expand and is now known as the premiere opportunity for public officials in Maine to gather and see the latest in equipment, supplies and services for the municipal sector. For additional details please visit www.mcapwa.org.

Please join us by celebrating and thanking the hard working and dedi-

cated Public Works Departments throughout the State of Maine. 🏠



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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