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## LEGAL ISSUES AND RISK MANAGEMENT ASSOCIATED WITH MUNICIPAL SNOW AND ICE CONTROL OPERATIONS

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**M**ost states and provinces have bodies of law similar in title to those below. The essential content of those laws is remarkably similar from state to state. **Snow and ice control personnel should be aware of individual provisions of those laws in their state or province**, and how they impact their operations. These topics should be part of an agency's written plan and policy document for snow and ice control operations and employee training programs.

### VEHICLE AND TRAFFIC LAW

Snow and ice control operations are exempt from the provisions of vehicle and traffic (V&T) laws in many jurisdictions. However, any violations by maintenance forces, must be **operationally necessary** and be done **absolutely safely**. There may be civil liability (where monetary compensation is the only remedy) in the event of an incident or accident.

The most common violation of a V&T law during snow plowing operations is causing the plow to go slightly past the center line and into the oncoming traffic lane of a 2-lane, 2-way highway in order to completely remove snow from the roadway. Another common violation is backing the plow truck against traffic, in order to clear intersections or other features. In both of these situations the operator must yield to opposing traffic. In the later situation, complete intersection clearing should wait until lower traffic volume time periods.

Another common situation is backing the truck/spreader up a hill in



order to provide enough traction. This procedure must be well thought out in advance and executed safely.

Most states and provinces have weight limits for commercial vehicles that may be exceeded by fully loaded snowplows. In many states, these weight limits are modified or exempted for snow and ice control operations.

The weight of fully loaded snowplow/spreader rigs may exceed the truck manufacturer's weight rating (GVWR) for the truck. It is

remotely possible that overloading could be a contributing factor in an accident. This presents an operational dilemma for the risk management side of the house.

### Federal CDL Law

The provision of this law that is highly-debated is the requirement for significant rest after 11 hours of operation following 10 hours off duty. Many states do not believe that the provisions of this law are

*continued on page 2*

applicable to municipal operations because their intra-state operations do not constitute “interstate commerce.” However, it makes good sense to have a reasonable hours-of-operation policy. There are some models out there. As an example, New York State Department of Transportation requires 8 hours off duty after 16 hours of duty. There are some nuances relating to driving and non-driving tasks. That policy is available on the Salt Institute website at <http://www.saltinstitute.org/snowfighting/winop-resources/NYDOT-16%20and%208.doc>.

### Public Officers Law

Provisions of this law protect municipal employees from legal actions against them (personally) as a result of performing required duties as a municipal employee. In order to receive this protection, the employee must have been acting within the scope of his or her official duties and not otherwise broken a law. The municipality will usually provide legal counsel (staff attorneys or hired attorneys) at no cost to the employee.

### Insurance Law

There are provisions in this body of law to protect municipal and commercial drivers from having their personal automobile insurance rates impacted by accidents that may have occurred while using municipal or commercial vehicles in the course of their employment.

### Highway Law

Areas of interest in this law relating to snow and ice control operations are mailboxes and debris on the highway. The placement of **ANY** material (including snow and ice) on a highway is in violation of this law.

This can be used to deal with people who place snow and ice from their driveways back on to the highway. Mailboxes are placed in the right of way at the municipality’s discretion. Municipalities have the authority to institute standards for placement in terms of location and structure. It is important not to create obstacles for snowplows and the traveling public.

### TORT LIABILITY

A tort is a civil wrong for which a court or judge will award **monetary compensation** for damage (property, personal injury or death). **Liability** is legal responsibility for a tort. Municipalities are often sued for damage resulting from accidents involving snow and ice conditions on highways and other facilities. There are a number of things a municipality should do to minimize snow and ice tort liability:

- Have a written plan and policy document that is reasonable, has achievable goals and is based on available resources (describe your agency’s level of service goals).
  1. Define what is to be done, where, when and under what conditions
  2. Define exceptions in terms of extraordinary weather and road conditions, lack of resources, etc.
- Adhere to the policy to the extent possible.
- Do not routinely exceed your level of service goals. This will result in higher public expectation and potential liability in the event of an accident that occurs during a time period when the stated goals are being met.
- Document in writing any deviation (shortfall) from level of service policy, the reason(s), and what actions were taken to deal with the problem(s).
- Document all snow and ice control operations in writing – what was done, where, when, etc. this includes patrolling activities (operator reports, supervisor reports, etc.).
- Document weather conditions throughout operations.
- Have a notification system for complaint and dangerous conditions which includes an action procedure, documentation and customer follow-up.
- Be aware of recurring problem areas. Specify how and when they are to be treated in your written plan.
- Have a formal program to identify and remediate high accident locations.
- In addition to training on their individual job skills, all agency people should be provided with training on snow and ice control policy, operational procedures, operational safety and record keeping requirements that are applicable to their job titles.
- Record and document all accidents that occur on your highway system. This applies throughout the whole calendar year. This should be a programmatic effort that is typically handled by a “safety specialist” or similar title.
- Cooperate fully with the authorities that investigate accidents.
- If a dangerous condition becomes apparent, provide the necessary warnings and take other appropriate action such as road/lane closure, site protection, etc.
- Have a post-storm safety restoration program that addresses: sight distance problems, potential re-freeze areas (cold spots and drainage induced), blowing and drifting areas, safety appurtenances, and any other known problem situations.



### RISK MANAGEMENT

Highway agencies manage risks in three ways. The first was described above in the Tort Liability section. The second is operational safety and the third is environmental risk management.

#### Operational Safety

The old cliché, “Safety is no accident” is absolutely true. Investment of time and effort in safety training programs returns handsomely in terms of minimized lost time and overall higher levels of job performance. The topics for safety training can be almost endless. However, they should include:

- *Safe Snow Plowing* includes considerations of: plow transport, plowing speed, obstacles of all types, managing windrows of snow, snow cast considerations, plowing intersections, plowing drift and blow-over areas, low visibility situations, spatial orientation, safe backing procedures, etc.
- *Safe Materials Spreading* typically includes considerations of: spreading speed, appropriate material choices and application rates, material placement, reading the frictional qualities of the road and making sure the product is being dispensed on to the road.

- *Physical and Mental Condition* involves considerations of: family readiness, fitness for duty (proper rest, drug and alcohol related requirements), proper attitude, agency length of continuous duty policy, etc.
- *In-cab Safety* includes: control locations and functions, proper stowage, required emergency equipment, proper clothing and footwear, cab climate control to maximize visibility and mental alertness, and control of distractions.
- *Communications* relates to the available communications options, their safe and proper use, periodic check-ins, and back-up & emergency communications plans. Operators, supervisors and dispatchers should receive this training.
- *Equipment Safety* includes required pre and post operational inspections, criteria for “downing” or determining a vehicle non-road-worthy, emergency repairs, etc.

### ENVIRONMENTAL RISK MANAGEMENT

It is crucial to include a comprehensive materials management plan, within the framework of the agency snow and ice control plan. This will clearly demonstrate that the agency is doing a credible job of planning

and executing operations in a way that will have the least possible environmental impact. One of the best sources of information on this topic is found on the Transportation Association of Canada’s web page: <http://www.tac-atc.ca/english/information/services/readingroom.cfm#syntheses>

#### Policy Statement

The first order of business is to clearly state, in a policy statement, the agency’s policy, objectives and commitment to minimizing environmental impacts and taking reasonable actions to actually reduce environmental loadings. The statement should emphasize that highway safety is the first priority in the agency’s snow and ice control operations.

#### Situational Analysis

Here, the agency identifies the potential sources of negative environmental impact associated with snow and ice control operations and defines the locations that are known to be or may be environmentally sensitive to aspects of winter maintenance operations.

#### Material

- Sand
- Solid ice control chemicals
- Liquid ice control chemicals

#### Material storage and work locations

- Stockpiles
- Drainage
- Housekeeping
- Loading
- Wash water
- Equipment fluids

continued on page 4

**Potentially sensitive areas associated with on-road usage**

- Groundwater recharge areas
- Vulnerable water tables
- Drinking water supplies
- Sensitive vegetation
- Sensitive water bodies
- Sensitive agriculture areas
- Sensitive non-plant species
- Other – locally-defined

**Disposal sites**

- Snow
- Abrasives

**Planned Approach**

In this section, the proposed control measures for dealing with each of the items in the Situational Analysis

should be described. Some not-so-obvious measures may include:

- Equipment calibration
- Prewetting to make solid chemicals more effective
- Ground speed control of all materials dispensed
- Designing individual material treatments in response to weather and road conditions of the moment and near future
- Spread pattern control

**Training Activities and Reports, etc.**

The various training requirements/activities in support of the agency materials management program, for agency and hired forces, should be described here.

**Monitoring, Record keeping, Reporting, Analysis and Agency Action**

Here, the systematic process for assuring the materials management program is working as intended, should be described in detail.

**Conclusion**

The above is a brief review of the many considerations that are involved in the legal portion of snow and ice control operations. There is sufficient detail for an agency to at least get started in programming legal awareness activities into snow and ice control training programs.

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