



Is Salt Your Only Defense?

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Overview

- General Perspective on Risk Management
- Public Sector Operators
- Private Sector Operators
- Minnesota Model Snow and Ice Management Tools
- Legislation

General Perspective on Risk Management

- Risks are to be managed
- Study, develop, follow policies
- Communicate
- Review and monitor
- Learn and improve

Public Sector Operators Liability

- "Sovereign immunity"...
- Every municipality is liable for its torts and those of its officers, employees and agents
- acting within the scope of their employment or duties
- whether arising out of a governmental or proprietary function
- subject to certain limitations

Public Sector Operators Immunity Protection

- **Official immunity:** comes from court decisions
 - Protects officials in exercise of discretionary duties
 - Involves exercise of professional judgment
 - Does not protect exercise of ministerial duties

Public Sector Operators Immunity Protection

- **Discretionary Immunity:** Minnesota Statutes
 - Protects the performance (or failure to perform) a discretionary function or duty, whether or not the discretion is abused
 - Protects policy-making, planning level decisions
 - Balancing of policy considerations
 - Does not protect operational decisions

Public Sector Operators Immunity Protection

○ Snow or Ice Conditions Immunity

- for any claim based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly owned building or publicly owned parking lot
- Except when the condition is affirmatively caused by the negligent acts of the municipality
- Owning or leasing a building or parking lot in another city

Private Sector Operators Managing Liability By Contract

○ Insurance

- Contractor shall provide and maintain property damage insurance of not less than \$1,000,000.00.

○ Liability allocation

- Owner accepts all liability for slip and fall accidents, and any motor vehicle accidents that are a result of refusal of service or caused by negligence of pedestrians or motorists.

Private Sector Operators Managing Liability By Contract

○ Liability allocation, continued

- Customer understands that plowing (or salting) of a particular location may not clear the area to "bare pavement" and that slippery conditions may continue to prevail even after plowing (or application of salt).
- Customer understands that Contractor assumes no liability for this naturally occurring condition.
- Customer agrees to defend and hold harmless the contractor for any and all trespasses or suits that may arise as a result of this naturally occurring condition.

Private Sector Operators Managing Liability By Contract

○ Monitoring responsibilities

- Require specific notice for Contractor to return to premises to perform additional services, e.g. inspection for melt and freeze.
- Require specific notice for service re: potentially dangerous conditions.
- Require acknowledgment that Contractor does not continually monitor potentially dangerous or unsafe conditions which may arise by reason of thawing and refreezing of previously plowed or treated areas.

Model Snow and Ice Policy Advisory Committee

- Representatives from counties, cities, watershed districts, private sector, state agencies
- Working group met three times and drafted Model Policy
- Products:
 - Minnesota Model Snow and Ice Management Policy and Guidance Document
 - Minnesota Model Exhibit for Private Snow & Ice Service Contract

Model Snow and Ice Policy Advisory Committee

Name	Affiliation
Jeff Davies	City of Grand Rapids
Mark Maloney	City of Shoreview
Dan Pilzga	City of Rochester
Steven Lawrence	City of St. Cloud
John Wickenhauser	Carver County
Matt Morreim	City of Saint Paul
Craig Eldred	City of Waconia
Becky Christopher	Minnehaha Creek Watershed District
Erica Sniagowski	Nine Mile Creek Watershed District
Claire Bleser	Riley Purgatory Bluff Creek Watershed District
Doug Snyder	Mississippi River Watershed Management Organization
Cassie Larson	Minnesota Nursery and Landscape Association
Brooke Asleson	Minnesota Pollution Control Agency
Rachel Olmanson	Minnesota Pollution Control Agency
Steve Woods	Freshwater Society
Connie Fortin	Fortin Consulting

Work Plan and Goals

- Foundational tool for City Council and County Board modification and adoption
- Framework to protect balancing of policy considerations and judgment
- Cost, safety, priority areas, environmental impact
- Limit liability risk

Minnesota Model Snow and Ice Management Policy

○ Public Safety

- Maintain roads **“safe for travel in consideration of surrounding conditions and circumstances.”**
- More vehicles during impaired conditions = greater risk

○ Personnel Safety

- Risk to operators managing snow and ice

Minnesota Model Snow and Ice Management Policy

○ Cost

- Taxpayer funds are limited
- Support cost effective snow and ice management
- **“It is not possible to address all snow and ice issues simultaneously and completely. It is not practical to maintain equipment and personnel availability at a level that is sufficient for all circumstances.”**

Minnesota Model Snow and Ice Management Policy

○ Environment

- Sand and chlorides create traction...
...and pollution that harms fish and aquatic life, plants, and soil, and impairs ground and drinking water
- **“Once in the water, chloride becomes a permanent pollutant and continues to accumulate in the environment over time.”**
- Support moderate use

Minnesota Model Snow and Ice Management Policy

○ Operator Judgment

- City and county boards delegate authority to establish policy
- Knowledge, existing conditions inform policies and practices
- **“Operators are to use professional judgment and discretion to determine the best course of action to complete snow and ice management responsibilities under the circumstances, considering public and driver safety.”**

Minnesota Model Snow and Ice Management Policy

○ Public Judgment

- **“The public must practice due care given the continuously changing hazards presented by natural snow and ice concerns.”**

Minnesota Model Snow and Ice Management Policy

- Training for Contractors
 - Counties and cities determine required training
 - Model paragraphs
 - *Trained to same level as City/County personnel*
 - *Smart Salting Level 1 certification*
 - *City approved program*
 - *Contractor determines training level required*

Guidance Document

accompanying the Minnesota Model Snow and Ice Management Policy

- Explains Model Policy structure
- Designed to limit liability risk by demonstrating:
 - ✓ Competing public concerns in play
 - ✓ City or county weighed these concerns
 - ✓ Judgment was used in making both policy and operational decisions

Minnesota Model Exhibit for Private Snow & Ice Service Contract

- Manage private operator liability risk for discretionary application
 - Acknowledges that the contractor uses judgment in snow and ice management
 - Notes environmental impact of sand and chlorides
 - States that contractor trains employees in best practices

These model tools are available online:

- MPCA website
<https://www.pca.state.mn.us/water/training>

Legislation: New Hampshire

Green SnowPro Training and Certification

- Training focused on "efficient and environmentally friendly winter maintenance practices."
- Certification is provided by the New Hampshire Department of Environmental Services
- After attending Green SnowPro Training, individuals are eligible to apply for the NHDES Salt Applicator Certification

Legislation: New Hampshire

Green SnowPro Training and Certification Purposes

- Improve efficiency in salt use, least amount to ensure safe conditions in winter conditions;
- Reduce the amount of salt used by commercial applicators, over time while maintaining safe conditions in winter conditions; and
- Establish a voluntary system to track their salt use and provide information annually to the salt accounting system.

Legislation: New Hampshire

○ Limited liability – New Hampshire Statutes

- Protects certified commercial applicators and owners from damages arising from hazards, caused solely by snow or ice
- and the failure or delay in removing or mitigating such hazard is the result of implementation of best management practices
- absent gross negligence or reckless disregard of the hazard.

Legislation: New Hampshire

Presumption

- All commercial applicators, owners, occupants, or lessees who adopt such best management practices shall be presumed to be acting pursuant to them in the absence of proof to the contrary.

Record keeping requirement

- Must keep a written record describing winter maintenance practices.
- Include the type and rate of application of de-icing materials used, the dates of treatment, and the weather conditions for each event requiring de-icing.
- Such records shall be kept for a period of 3 years.

Legislation Minnesota : HF 2594, S.F. No. 3298

- Follows New Hampshire approach
- Voluntary Salt Applicator Certification Program
- Same liability protection
- Same presumption of following BMPs
- Record keeping requirement

Re-cap

- Risks are to be managed
- Study, develop, follow policies
- Communicate
- Review and monitor
- Learn and improve

Questions?