

THE POOL CUE

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

Volume XVIII Issue 3 August 2012

MCRCSIP MISSION STATEMENT

"The Mission of the Michigan County Road Commission Self-Insurance Pool is to administer a self-insurance program and to assist members with risk management efforts."

MCRCSIP ANNUAL MEMBERSHIP MEETING

Our 28th Annual Membership Meeting was held at the Soaring Eagle Resort in Mt. Pleasant on Wednesday and Thursday, July 18th and 19th.

Our Wednesday workshop was designed to share risk management information. Our presenters used various formats and presentation styles to enlighten our audience as to: 1) Establishing an Effective Safety Program 2) Facilities Protection and Management, 3) Documenting for Defense 4) Low Cost Traffic Safety Ideas, and 5) Connecting with the Community.

We wish to thank the following people for their time and participation in the workshop: Al Roden, Jackson CRC; Don Chubb, Ionia CRC; Tim O'Rourke Roscommon CRC; Alan Cooper, Wexford CRC; Kevin Meske, Iosco CRC; Mark Timmer, Muskegon CRC, Tim Haagsma, Kent CRC; Dorothy Pohl, Ionia CRC; and Mike Shultz and Mike Phillips, MCRCSIP Loss Control. We also wish to thank Nick Wells, MCRCSIP Information Systems Manager, for all of his work "behind the scenes".

One hundred and fifty-two attended the meeting, representing 62 of our Members.

Our professional services team gave reports to summarize the progress of your Pool, and were happy to report the completion of another successful year.

Chairman, Tim Haagsma, announced that a liability refund in the amount of \$5,000,000 will be given back to the Members.



Front row – Carl Sholander, Joe Valente, Dorothy Pohl, Brian Gutowski, Mike Power. Back row – Alan Cooper, Darrel Spragg, Tim Haagsma, Lonny Lutke

Alan Cooper, Wexford CRC; Tim Haagsma, Kent CRC; Mike Power, Huron CRC; and Darrel Spragg, Alpena CRC, were re-elected to their seats on the Board of Directors. At a Board meeting following the annual membership meeting, Darrel Spragg was elected Chairman and Brian Gutowski, Emmet CRC, was elected Vice Chairman.

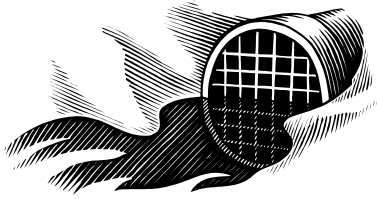
Amendments "A" and "B" both failed to pass.

We thank our Membership for 28 successful years and look forward to our 29th year.

IN THE CUE

1. MCRCSIP Annual Membership Meeting
2. The Notice Provisions of the Sewer System Discharge Exception to Immunity
3. Truck Tire Zipper Ruptures
5. In My Backyard?
6. Health Care Reform Deemed Constitutional
7. MCRCSIP Meeting Schedule Word Search

THE NOTICE PROVISIONS OF THE SEWER SYSTEM DISCHARGE EXCEPTION TO IMMUNITY



William L. Henn, Attorney
Smith Haughey Rice & Roegge

In early 2002, the sewer system discharge exception to governmental immunity became law. The purpose of this exception was to create limited statutory liability for governmental agencies that own or operate, or directly or indirectly discharge into, a sewage disposal system. Prior to the creation of the statutory liability scheme, aggrieved parties would file suit against governmental agencies under a variety of common law theories, most typically trespass-nuisance. However, after the Supreme Court's decision in *Pohutski v City of Allen Park*, no common law exceptions to governmental immunity remained viable. This means that under present law, any claim arising from a sewer system discharge event must be litigated under the statutory framework. As a consequence, the limitations on the statutory cause of action are of great importance to governmental agencies faced with such claims. Because current case law defines certain roadside ditches as "sewer systems" under the statute, County Road Commissions may confront these issues in connection with the overflow of a roadside ditch.

The liability created under the sewer system discharge exception is far from absolute. A plaintiff must comply with notice provisions, and must overcome a series of substantive legal hurdles before he or she is entitled to any recovery. The intent of this article is to identify and explain the notice provisions.

With only a few limited exceptions, no plaintiff is entitled to compensation under the sewer system discharge exception unless that plaintiff provides **written notice** of a claim **within forty-five (45) days** after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice is a fairly formal document. **It must contain the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.** The notice must be sent to the individual within the governmental agency that has been designated, pursuant to the statute, as the appropriate person to receive such notices. A governmental agency has an affirmative duty to make information about these notice requirements publicly available.

The statute also addresses what happens when a claimant provides some form of notice to the governmental agency, but does not strictly comply with the statute. If a person who intends to make a claim notifies a governmental agency orally or in writing about an event before providing a formal notice that complies with the requirements of the statute, the governmental agency has an affirmative obligation to supply the person with all of the following information, in writing:

- (1) A sufficiently detailed explanation of the notice requirements of the statute to allow the claimant to comply with the requirements;
- (2) The name and address of the appropriate individual within the governmental agency to receive the notice; and
- (3) The required content of the written notice.

If a plaintiff fails to comply with the notice requirements of the statutory exception, the claim is barred unless the plaintiff can show both of the following:

- (1) That the claimant notified the appropriate governmental agency during the period for giving notice; and
- (2) That the claimant's failure to comply with the notice requirements of the statute resulted from the governmental agency's failure to comply with its affirmative obligation to provide the plaintiff with the information required by the statute.

In short, failure to provide the required notice is a strong defense to a claim. However, that defense is eliminated if the governmental agency fails to fulfill its reciprocal obligation to assist a claimant whose initial attempt at notice does not comply with the statute.

If a governmental agency receives notice of a claim, but believes that a different or additional governmental agency may be responsible for the claimed damages, **the governmental agency must notify in writing each of the additional agencies that it believes may be responsible, within fifteen (15) business days after the date the governmental agency receives the plaintiff's notice.**

Lastly, once a governmental agency has been notified of a claim, the plaintiff is prevented from filing suit for forty-five (45) days. This moratorium is intended to provide the governmental agency and the plaintiff with time to reach an agreement on the amount of compensation. Governmental agencies should take the position that any suit commenced before the expiration of the 45-day moratorium is invalid and must be dismissed.

In summary, the sewer system discharge exception provides a plaintiff with a statutory cause of action against an appropriate governmental agency for damages arising from a sewer system discharge event. To benefit under the statute, a plaintiff must comply with a strict set of notice requirements. There are a few affirmative obligations imposed upon a governmental agency if it receives an imperfect oral or written notice of an

event. If the governmental agency does not discharge these affirmative obligations, then the plaintiff's failure to provide the required notice will not bar the claim. Because of the short time periods involved, and because defenses can be forfeited, it is very important that a governmental agency understand its rights and obligations under the statute, and act quickly to preserve those rights and fulfill those obligations anytime that it receives oral or written notice of a sewer system discharge event.

TRUCK TIRE ZIPPER RUPTURES

"Cause and Prevention"

Michael E. Shultz
MCRCSIP Director of Loss Control/Training



The warning poster, "Zipper Rupture" (pictured below), from the Rubber Manufacturers Association, explains a number of important tire safety issues, including zipper rupture causes, inspections and prevention.



Continued on page 4.....

According to the association, a tire sidewall zipper rupture is a spontaneous, explosive burst of compressed tire air that escapes thru the sidewall of a radial truck tire. This energy, when released, will cause the tire sidewall to “zipper rupture” as shown in the photograph. It is estimated that the force of air equates too many tons of energy, having the potential of causing great harm and damage. The subsequent tearing of the tire sidewall rubber may be just a few inches in length or several feet. Therefore, anyone standing nearby could obtain serious or fatal injuries. Additionally, damage to the truck may occur, caused from tire pressure or rubber and truck components flying in many directions.



(Vehicle Tire Zipper Rupture)



(Truck Fender Damage from a Tire Blow Out)

The primary cause of a tire zipper rupture is due to stressed or fatigued steel cords in the tire sidewalls. This condition may be brought on by under inflated or overloaded tires. It is always recommended that members follow the manufacturer’s information as it pertains to tire maintenance, inspections and use.

When inflating any tire, follow safe work practices and procedures recommended by industry standards, MIOSHA (Part 72) and your in-house safety manual. For a dismounted tire, always use a tire cage, if available. The air compressor inflation tool with a lengthy air line and locking chuck is highly recommended. This will allow the employee to be located a safe distance away from the cage at a predetermined location. When inflating a truck mounted tire, use a similar tire inflation technique, which includes standing to one side, away from the tire.



(Tire Inflation Gun with a Six Foot Air Line)

When inspecting any truck tire, be alert to visual signs for potential sidewall failure. NOTE: The “Zipper Rupture” poster provides visual indications (i.e. bumps, waves, protruding wires) and indicates a noise may occur when steel wires are breaking in the sidewall. If you notice a problem during an inspection, notify a supervisor immediately. Until determined safe, stay away from that area and alert others! Keep in mind that tire zipper rupture may also occur while driving, resulting in some vehicle damage (i.e. fender area) or total vehicle loss of control. That is why it is important for drivers to understand this safety message, remain alert, and keep both hands on the steering wheel!

If you would like to receive a poster or have additional information or assistance, please contact Mike Shultz at mshultz@mcrcsip.org.



IN MY BACKYARD?

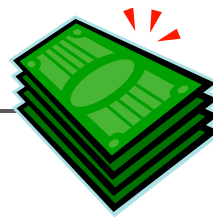
Mark D. Jahnke
Specialty Claims Services, Inc.

It recently came to our attention that several member road commissions have been permitting Household Hazardous Waste Collection events to take place on road commission property. As more road commissions have been asked to use their property for this purpose, we have received inquiries from members as to whether there are any coverage “problems” associated with hosting hazardous waste collection events.

Indeed, coverage “problems” do exist, arising specifically from the potential for pollution-related claims associated with these events. Both the Pool’s Liability Coverage Agreement and Property Damage Agreement *exclude* coverage for claims arising from the release, discharge, dispersal or escape of contaminants or pollutants. As a result, there would be no coverage available to a member road commission through the Pool for pollution-related Bodily Injury or Property Damage claims presented by 3rd parties, nor would coverage be available to a member road commission if its grounds or facilities sustained loss or damage from pollution. The Pool’s coverage would extend to non-pollution-related claims that may arise from hosting a hazardous waste collection event (e.g., a trip and fall incident involving a citizen, theft of scheduled road commission equipment or accidental damage to scheduled road commission equipment and/or buildings) but coverage for pollution-related claims would be excluded under the Pool’s Insuring Agreements.

Any member road commission that hosts or plans to host a Household Hazardous Waste Collection event should insist that the sponsor of the event protect the road commission and its Board with an Indemnification/Hold Harmless Agreement and have the road commission, its Board, employees, etc., named as *additional insureds* under the sponsor’s Liability Coverage. We also recommend securing a copy of the sponsor’s Liability Policy for review. Does the sponsor’s Liability Policy contain a pollution exclusion? If so, your road commission will derive no benefit for pollution-related claims by being an additional insured under the sponsor’s policy.

Partnering to recycle hazardous waste in your respective counties is a beneficial and worthwhile endeavor. However, hosting these events brings with it an additional exposure not covered by the Pool’s Insuring Agreements. Given this uncovered exposure, we strongly recommend that you take the steps necessary to ensure the protection of your road commission via the sponsor(s) of the recycling event.



LIABILITY REFUND

During our July 19th Annual Membership Meeting, Chairman, Tim Haagsma, announced that there would be a \$5,000,000 liability refund back to our Members. This brings the total amount refunded over the past 28 years to **\$124,000,000.**



HEALTH CARE REFORM DEEMED CONSTITUTIONAL

Wendy S. Hardt, Attorney
Michael R. Kluck & Associates

Earlier this month, the United States Supreme Court upheld the Patient Protection and Affordable Care Act (PPACA), finding that Congress had the constitutional authority under its taxing power to require most Americans to obtain health insurance in 2014 or pay a penalty. Therefore, the changes made by the PPACA to employer plans will remain in place. Those changes are as follows:

-Plans must provide dependent coverage for children up to age 26 (effective in 2011; until 2014, grandfathered plans need not provide coverage to dependents who are eligible for other employer-provided coverage).

--Plans must provide for preventive care without cost-sharing (effective in 2011; non-grandfathered plans only).

--Plans must provide an enhanced internal appeals process and an external independent review stage (effective in 2011; non-grandfathered plans only).

--Plans must not rescind coverage retroactively, except in situations involving fraud (effective in 2011).

--Plans must not impose pre-existing condition exclusions for participants under the age of 19 (effective in 2011) and for all participants (effective in 2014).

-Insured plans must not discriminate in favor of highly compensated participants, under rules similar to the nondiscrimination rules already applicable to self-insured plans (effective in 2011, but enforcement delayed until regulations are issued; non-grandfathered plans only).

--Plans must not place lifetime limits on essential health benefits (effective in 2011) and may only place annual dollar limits that are at or above specified levels (with no annual limit permitted from and after 2014).

--Plans must provide an eight-page Summary of Benefits and Coverage upon application, enrollment, and re-enrollment in the plan. Also, a notice of material modifications describing plan changes must be provided 60 days before modifications are effective (both effective in 2013).

--Flexible spending account contributions by an employee must be limited to \$2,500 per year (effective in 2013).

-Plans must not have waiting periods for entry into a plan in excess of 90 days (effective in 2014).

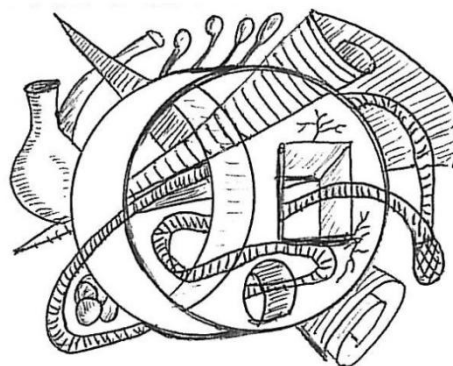
--Employers with more than 200 employees must automatically enroll full-time employees (delayed until regulations are issued - will not be effective by the original 2014 effective date).

--The level of penalties/incentives for wellness plans may be as much as 30% of the cost of coverage - an increase from the current 20%; may rise up to 50% by regulation (effective in 2014).

Also, beginning in 2014, the “pay or play” rules will apply to employers with 50 or more “full-time equivalent” employees. Under this mandate, an employer will either elect to “play,” by providing “minimum essential” health benefit coverage to their employees, or to “pay” a penalty. Employers who fail to offer the required coverage will pay a penalty equal to \$2,000 for each full-time employee in excess of 30 employees. Those who offer coverage, but who fail to provide at least 60% of the actuarial value or who have any full-time employees for whom the coverage costs more than 9.5% of their compensation, will pay the lesser of the first penalty or \$3,000 for each full-time employee receiving a premium tax credit to purchase coverage through an exchange.

Targeting high-value employer-sponsored health plans, the PPACA will impose a 40% excise tax on the annual value of employer-provided health coverage that exceeds \$10,200 for single coverage or \$27,500 for family coverage beginning in 2018. The value of coverage includes both employer and employee contributions.

Coupled with the statutory provisions enacted thus far in Michigan, i.e. PA 54 and PA 152 of 2011, employers have to plan carefully when it comes to compliance with these laws and negotiating affordable health care with their employees. More changes are likely to come in the near future, as the Michigan legislature continues to consider adoption of “best practices” standards for county road commissions.



“Doodling” by Joe Valente,
Marquette County Road Commissioner

WORD SEARCH

S	D	E	R	U	S	N	I	N	H	Q	Q	Z	L	S
R	U	K	P	W	H	G	D	P	A	M	O	E	H	I
T	Z	P	A	O	E	U	O	R	Z	X	G	O	N	D
Y	C	S	E	G	S	L	C	K	A	A	H	N	Q	E
T	T	E	X	R	L	T	R	Y	R	Y	E	J	F	W
E	N	X	T	U	V	W	E	E	D	S	K	S	B	A
T	J	E	T	O	G	I	V	R	O	S	Y	C	N	L
I	R	I	V	J	R	O	S	I	U	E	R	D	A	L
L	O	D	Y	E	C	P	N	O	S	L	A	A	S	B
N	O	I	T	A	L	F	N	I	R	M	M	M	U	P
V	I	S	U	A	L	E	E	T	S	R	I	A	L	V
A	T	Z	U	A	V	N	N	Y	F	A	R	G	V	B
R	U	P	T	U	R	E	S	X	L	H	P	E	R	O
Z	C	E	I	D	R	B	W	C	W	C	G	C	B	B
Z	D	J	U	F	R	Y	O	W	E	K	M	L	P	U

Board of Directors Meeting Schedule

August 23-24, 2012
Island Resort – Harris

November 8-9, 2012
Perry Hotel - Petoskey

BACKYARD
CLAIMS
COVERAGE
DAMAGE
EVENT
HARMLESS
HAZARDOUS
INFLATED
INFLATION
INSUREDS

POLLUTION
POSTER
PRIMARY
PROTECT
RUPTURES
SIDEWALL
STEEL
SUPERVISOR
VISUAL
WASTE



Michigan County Road Commission Self-Insurance Pool
417 Seymour Avenue, Suite #2
Lansing, Michigan 48933

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Past and current issues of the Pool Cue are available on the MCRCSIP website – www.mcrsip.org.