

THE POOL CUE

Volume XVI, Issue 2 May 2010

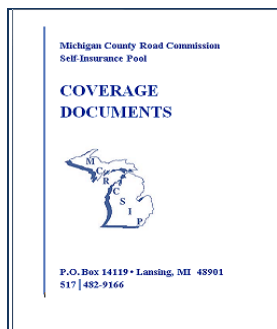
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

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 BOARD APPROVES ENHANCEMENTS & REWRITE FOR THE POOL'S PROPERTY DAMAGE AGREEMENT

Fred L. Haring
MCRCSIP Administrator



In our endeavor to provide MCRCSIP members with the most effective, stable and affordable coverage for your road commissions' property, vehicles and off-road equipment, the MCRCSIP Board has approved an enhanced and rewritten "Property Damage Agreement. The MCRCSIP Policy Committee worked to review and rewrite this coverage document and recommended the revisions to the MCRCSIP Board which approved the changes at their February 2010 meeting.

The Property Damage Program enhancements became effective April 1, 2010 renewals for the 72 members of MCRCSIP who currently participate in the Pool's Property Damage Program. This program provides coverage for your road commission Buildings, Contents, Equipment, Licensed Vehicles and Off-Road Equipment.

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NO SMOKING LAW TAKES EFFECT IN MICHIGAN

Wendy Hardt
Michael R. Kluck & Associates
Fred L. Haring
MCRCSIP Administrator

On May 1, 2010, Michigan's new no-smoking law went into effect. The law bans smoking in almost all indoor public venues.

"Smoking" is defined as "the burning of a lighted cigar, cigarette, pipe or any matter or substance that contains a tobacco product". There is a ban on smoking in "public places". A "public place" includes areas owned and operated by the government; areas not owned or operated by the government, but used by the general public for certain specified purposes; and (unless otherwise exempt) a place of employment. A "place of employment" is an enclosed indoor area that contains a work area for one or more people and covers almost all of the businesses in the State.

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IN THE "CUE"

1. Property Damage Agreement Rewrite
2. No Smoking Law Takes Effect in Michigan
3. MCRCSIP Annual Meeting
4. Social Networking
5. Who Has Legal Access to the Lake?
6. 2010 Safety Awareness
7. The CRASIF Connection

A summary and highlights of the enhancements and revisions of the new MCRCSIP Property Damage Agreement are listed below:

- Added Automatic Coverage for “Newly Acquired” or “Constructed Property, Vehicles and Equipment”, including “Leased or Rented” property and equipment. The Automatic Coverage is only for up to 30 days – You must still add the items to your property schedules as soon as possible.
- Extended “Contents Coverage” to include property “within 1,000 feet of a covered building.” (Previously, “Contents” had to be “within” a covered building)
- Deleted the “Vacant Building” exclusion. (Now covered)
- Deleted the “Rented” or “Leased Equipment” exclusion. (Now 30 days of automatic coverage)
- Deleted the “Property in Transit” exclusion (Now automatic coverage up to a limit of \$50,000)
- Deleted the Buildings or Structures in process of construction exclusion. (Now automatic coverage)
- Deleted the “Neon Signs” and “Automatic or Mechanical Electrical Signs” exclusion. (These signs are covered when scheduled as part of your building or contents.)
- Amended the “Traffic Signals” and “Signs” exclusion to read “Not on the Member’s Premises.” (The signs are covered if scheduled in your inventory and on your premises. They are not covered after installed in the field locations.)
- Clarified the Flood and Earthquake Coverage Extensions with an annual limit of \$1,500,000.

We have also developed a new binder entitled Michigan County Road Commission Self-Insurance Pool – COVERAGE DOCUMENTS. This binder is part of our project to review and reissue *all* of our coverage documents. It contains a tab for each coverage we provide and includes the new Property Damage Agreement and Declaration pages, as well as a copy of all of your current coverage documents for the 2010 policy year.

In the future, you can just place your annual renewal Declaration Pages in their respective section in the binder.

Please call the Pool office if you have any questions, 517-482-9166.

MCRCSIP ANNUAL MEMBERSHIP MEETING

Our 26th Annual Membership Meeting will be held at the Soaring Eagle Resort in Mt. Pleasant on July 21 and 22.

A workshop is scheduled for Wednesday afternoon, July 21. We hope you will join us and listen to our panel of experts discuss Risk Management as it pertains to your Road Commission.

Wednesday evening, we invite you to dinner to be served at 6:00 in the Black River Room of the Soaring Eagle Resort.

The Business meeting will be called to order on Thursday morning at 8:30.

The Candidates for this years’ election to the 2010/2011 Board of Directors are:

Mike Larrabee	Delta County
Chalmers McGreaham(I)	Iron County
Dorothy Pohl(I)	Ionia County
Joseph Valente	Marquette County

(I) Denotes Incumbent

Meeting materials will be arriving soon. You can register for the Annual Meeting and make room reservations at the Soaring Eagle Resort by using the links on our website, www.mcrcsip.org.

There are certain limited exceptions under the Act. Most notably, the smoking ban does not apply to motor vehicles. Therefore, a Road Commission is not obligated to prohibit smoking in its motor vehicles. It is, however, legally entitled to do so if it so chooses. There are many reasons why a Road Commission may choose to do so, including, but not limited to, the comfort and health of other employees who would otherwise be subjected to secondhand smoke, safety, and the cleanliness of Road Commission vehicles. At present, there is no limitation on the Road Commission's ability to ban smoking in its vehicles, so this is completely within the Road Commission's discretion.

A manager or person having control of a public place must do all of the following:

- (a) Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to and in every building or other area where smoking is prohibited under the Act.
- (b) Remove all ashtrays and other smoking paraphernalia from anywhere smoking is prohibited under the Act.
- (c) Inform individuals smoking in violation of the Act that they are in violation of State law and subject to penalties.
- (d) If applicable, refuse to serve an individual smoking in violation of the Act.
- (e) Ask an individual smoking in violation of the Act to refrain from smoking and, if the individual continues to smoke in violation of the Act, ask him or her to leave the public place.

An employer may not take any retaliatory or adverse personnel action against an employee or applicant for employment on the basis of the individual's exercise or attempt to exercise his or her rights under the Act with respect to the place of employment.

Road Commissions may still allow smoking in outdoor areas, even those contained on Road Commission premises. A garage, however, would not constitute an outdoor area. Ashtrays or other receptacles for burnt cigarettes may be located anywhere outdoors. There is no specified minimum distance from building entrances under the Act; however, the Road Commission should give some consideration to those individuals who have to enter the building and may have hypersensitivity to cigarette smoke. A Road Commission may not designate any indoor smoking area at all as was previously allowed under the law.

A local governmental agency that violates the Act is subject to a civil fine of not more than \$100.00 for a first violation and not more than \$500.00 for a second or subsequent violation. There is no obligation that an employer adopt a written "no smoking policy" under the Act; however, it is advisable to do so. Any such policy should generally explain the prohibition against smoking and provide notice that employees who smoke in violation of the law will be subject to discipline, up to and including discharge from employment. Please consult with your legal counsel in drafting such a policy.

People forget how fast you did a job – but they
remember how well you did it.

Howard W. Nelson



SOCIAL NETWORKING

Wendy Hardt
Michael R. Kluck & Associates



Everyone seems to be Twittering or Facebooking these days. As employers, many of you have internet policies in place. However, it may be time to revisit these policies in light of the recent advent and explosion of social networking sites.

First, as a general word of caution, management employees should be wary of “friending” subordinate employees on social networking sites. Online relationships between boss and employee can trigger or exacerbate a host of legal claims, including harassment, discrimination or wrongful termination, as well as touch off cries of favoritism if a supervisor friends only a select few subordinates.

Given that social networking sites are loaded with personal information, a manager is bound to learn some private things about an employee through “friending” him/her. For instance, information about religious affiliation, age, ethnicity, political affiliation, and health problems may all appear on social networking sites. This type of information is not supposed to influence employment decisions. When a manager learns of this personal information through a social networking site, the employee now has the opportunity to argue that any later adverse employment decision was based on this information.

Online friendships between managers and employees can also put the managers in a difficult position. If the employee refers to being drunk at work or makes discriminatory remarks about co-workers, the manager has an obligation to follow-up and investigate such behavior and report it to higher authorities at work. A manager who is unwilling to

do this clearly should think twice about “friending” subordinate employees. When managers and subordinate employees become “friends” on social networking sites, the lines between supervision and friendship become blurred. Perhaps, the better strategy is to adopt an internet policy which bans online employee-management friendships.

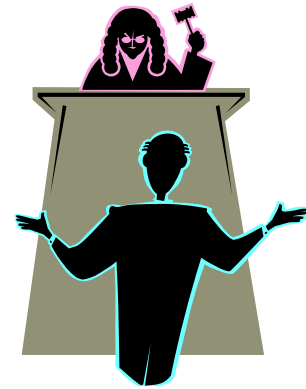
Additionally, there are several other issues you want to be sure your internet policy addresses. Your policy should prohibit employees from engaging in any of the following behavior while at work or while utilizing work equipment:

1. Illegal activity.
2. Disclosing confidential Road Commission information.
3. Engaging in behavior prohibited by the Road Commission’s anti-harassment policy.
4. Wasting their work time or that of others.

If the employer is going to monitor employee use of social networking sites, it is important that every employee in the workplace who has access to the internet through a work computer give express (or at least implied) consent to the employer’s monitoring. Monitoring employee use of social networking sites without clear consent is risky. Courts are more and more apt to recognize privacy rights on behalf of employees in such situations. In 2009, for example, a federal court in New Jersey, found that an employer, Hillstone Restaurant Group, violated an employee’s rights and federal telecommunications laws, by pretending to be a co-worker and using that co-worker’s password to view an employee’s MySpace page. When the employee was terminated for derogatory statements about management which were found there, the employee sued and ultimately received a large jury verdict.

For governmental employers, another concern is present in disciplining employees for comments made on a social networking site, i.e. violation of constitutional rights. If the employee can establish that his/her speech was protected by the First Amendment, any adverse employment action based on that speech would be unlawful. Employers should be especially cautious about disciplining employees for publishing criticisms of the workplace on their own time and equipment.

Employers should carefully review their internet policies to make sure that they are reasonable and work-connected. If they are, and express written consent is given for employer monitoring, an employer will face a much lower risk of liability. Even then, employers should try to monitor only when necessary and in the least intrusive way to seek needed information. An employer's right to monitor extends only to information needed to protect its legitimate business interests.



WHO HAS LEGAL ACCESS TO THE LAKE? *The Effect of Dedications of Roads*

Brian M. Pearson
Smith Haughey Rice & Roegge

While Charlevoix County is widely known for its spectacular lakes and rivers, the debate over the access to these priceless natural resources has been hotly contested. In 2007, a bitter disagreement between property owners in a subdivision bordering Lake Charlevoix resulted in a lawsuit. In 2000 Baum Family Trust v. Babel, the plaintiffs are owners of property fronting Lake Charlevoix but separated from the water by Beach Drive, a road dedicated to public use that runs parallel and immediately adjacent to the lake.

At the center of the dispute is the plaintiffs claim to riparian property rights, certain exclusive rights for the use of the bank and shore of the lake, including the right to erect and maintain docks and permanently anchor boats off-shore. Although plaintiffs contended that they had exclusive access to Lake Charlevoix, various owners of back lot properties in the subdivision installed their own docks and boats in front of the plaintiffs' homes. As a result, plaintiffs filed a lawsuit against the back lot owners, the Charlevoix County Road Commission and Charlevoix Township alleging claims of nuisance and trespass.

SAVE THE DATE!!

MCRCSIP ANNUAL MEMBERSHIP MEETING

July 21-22, 2010
Soaring Eagle Casino & Resort
Mt. Pleasant

Registration is available on MCRCSIP's
website, www.mcrcsip.org

For those of you desiring lodging at the Soaring Eagle, a block of rooms has been reserved. If you wish to make your room reservation on line, you may do so at www.soaringeaglecasino.com.

Our group number is 97M4M1.

Continued on page 6....

The plaintiffs argued that because their lots were separated from Lake Charlevoix by a roadway contiguous to the water, their lots were riparian and the road commission had a right to use the Beach Drive only as a roadway. In contrast, the road commission argued that the plaintiffs did not have riparian rights because the public owned Beach Drive pursuant to a statutory dedication of the road. The court eventually agreed with the road commission's contention.

While this case involves a complex variety of legal issues and interpretations, the crux of the matters involves the effect of the dedication of the beach front road on the property rights of the property owners in the subdivision. In order to determine the character of the owners' property rights, the court was forced to analyze law enacted well-over a century ago.

As the North Charlevoix plat was recorded in 1911, the subdivision is controlled by the law in effect at that time, the Plat Act of 1887. Through interpretation of this act, the court determined that uses and purposes stated in the statutory dedication of a road determined the property rights of the owners. The dedication of the North Charlevoix Plat clearly states that "the streets and alleys as shown on said plat are hereby dedicated to the use of the public." Based on this language, the appellate court affirmed the trial court's decision and held that the plaintiffs' lots were not riparian because statutory dedication of the road for public use destroyed plaintiffs' claim to riparian rights.

Upon closer examination, the court's ruling was that the specific character of the dedication determined the interest received by the public (and the road commission). If the dedication had been one at common law, the dedication would have merely created an easement in Beach Drive and plaintiffs would have retained riparian rights to Lake Charlevoix. However, as the dedication was statutory, the public owned the fee interest for the

unlimited use of Beach Drive under the terms of the statute.

However, the final determination of this matter has yet to be made. On January 27, 2010, the Michigan Supreme Court granted appeal to hear this case. Likely this fall, the Supreme Court will entertain arguments concerning (1) whether the fee title resulting from the dedication of land for public uses in a plat under the 1887 Plat Act in land that runs along the shore of a lake conveys riparian rights to the lake to the County or whether the conveyance is limited to public uses of the road as a road; and (2) whether the deeds of the front tier lot owners must have specific language granting riparian rights; and whether case law that states that front tier lots adjacent to a road running along a water way have riparian rights unless such rights are expressly excluded is still valid.

While there is no way to predict how the Supreme Court will rule, the outcome of this case will likely impact the nature of riparian property rights in Michigan and affect courts' treatment of statutory dedications of land for public use. Accordingly, road commissions and other public entities should keep a keen eye on the Supreme Court's upcoming ruling on this matter.

2000 Baum Family Trust v. Babel, 284 Mich App 544; 773 NW2d 44 (2009).





2010 WORK ZONE SAFETY AWARENESS “Working Safely In The Roadway”

Michael Shultz
MCRCSIP Assistant Administrator
Director of Loss Control/Training

Every construction year, MCRCSIP finds it very important to reinforce work zone safety for its members. A message to be visible and observant to a variety of roadway hazards cannot be overemphasized! In fact, studies indicate that when road workers let their guard down, tragic consequences can and do occur. Inexperience and complacency are the two major causes of such accidents. Both causes include the newer employees and those more experienced that have been doing this type of work season after season!

As a reminder to management and supervision, MCRCSIP can bring a “Safety Awareness” presentation in-house, using several newer videos to reinforce our message. Contact Mike Shultz or Mike Phillips to schedule your safety awareness training in May or anytime during the summer!

Listed are four basic safety reminders to help ensure a safe workplace for your employees, pedestrians and motorists.

1. ADVANCE SIGNS: Taking the time to place appropriate advance warning signs at road projects is essential! Signs are not something additional, but an important part of working in/near the roadway. Ensure the signs (portable or permanent) are in good condition and spaced appropriately in each direction. Remember to display signs so that maximum safety information can be communicated and maintained. If we give bad or no information to approaching motorists, the consequences may be senseless accidents and costly injuries!

2. TRAFFIC REGULATING: Traffic regulating is an important duty that cannot be taken lightly! When the decision is made to use one or more traffic control regulators, ensure that advance signs indicate “Traffic Regulator Ahead” and “Be Prepared To Stop”. Always wear the necessary PPE (particularly hard hats and Class 2 vests). Furthermore, regulators should NEVER stop traffic

while standing in the road! For improved visibility and additional emphasis at the station, traffic cones and mobile arrow boards should be considered.

3. ROAD CLOSURES: Road commissions often find that closing a road might be the best option for minimizing work area congestion and associated risks from mixing traffic with construction equipment and workers! Make sure advance signs are used. “Road Closed Ahead” and properly constructed/displayed Type III barricades can be used. Detour routes should be available as prescribed by the MMUTCD Part 6.

4. POSITIONING OF EQUIPMENT, BACKING and MANEUVERING: Large vehicles and construction equipment are often required in a work zone. It is important to position them in an area that is clear of moving traffic. Always activate the warning flashers and strobe lights, so the equipment can be seen by approaching motorists and co-workers on the ground. Vehicle and equipment back up alarms are essential and should be checked at the beginning of each shift to ensure they are functioning.

When backing and maneuvering in work areas and other congested areas, remember that the operators’ rear and side visibility can be limited or nonexistent. There are educational posters that reference the typical blind spots on a variety of equipment used in the road building industry. *NOTE: By now, members may have received several posters at the CRASIF & MCRCSIP Safety Workshops. Consider ordering additional posters so that all garages have one.* The “**National Work Zone Safety Information Clearinghouse (FHA), American Builders Association-Transportation Development Foundation (ARTBA)**” provides posters free of charge. Their website is www.artba.org or call (202) 289-4434. The “Avoiding Backing and Roll-Over Accidents” video shown at our workshops can also be purchased from this worthwhile organization at a reasonable cost. You may contact MCRCSIP to borrow our copy if it is available.

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

MCRCSIP Board Meeting Schedule

**May 13-14, 2010
MCRCSIP Office – Lansing**

**June 24-25, 2010
St. Ives - Stanwood**

**July 21-22, 2010
Annual Membership Meeting
Soaring Eagle Casino & Resort – Mt. Pleasant**

**Past and present issues of the Pool Cue are available on the
MCRCSIP website www.mcrcsip.org.**

**The Pool Cue is published quarterly by the
Michigan County Road Commission Self-Insurance Pool
417 Seymour Street, Suite #2
P.O. Box 14119
Lansing, Michigan 48901**



THE CRASIF CONNECTION

In an effort to communicate information vital to keeping CRASIF members safe, the "CRASIF CONNECTION" will continue to be published on a quarterly basis. As time goes on, we will grow and improve the content to better serve your safety needs. Therefore, your input is essential. Please contact either the CRASIF staff or one of the ASU Group Loss Control Consultants with your suggestions.

Road Maintenance and Construction Safety

Spring is in the air and it's time to think "Road Maintenance and Construction" safety. Safety preparations to consider include:

Traffic Control

- Review warning sign inventory and stop/slow paddle signs. Make sure they are in good condition and up to standard. Consider upgrading signs to high-intensity or florescent/diamond grade.
- Review Traffic Regulator training. Don't forget to include seasonal employees.
- Review personal protection equipment (PPE) inventory and refresh employees on proper use. Make sure employees have what they need and that it is in good condition. PPE includes, Type 2 or Type 3 reflective vests or similar high visibility clothing visible from all sides, bright colored hard hats, safety glasses, hearing protection, and sturdy boots.

Chainsaw Training

Now is a good time to review the condition of your tree trimming PPE inventory and safety equipment. Tree trimming PPE includes, high visibility vest/clothing hard hats with mesh face shield and ear muffs, ear plugs, safety glasses or goggles, gloves, chaps, and sturdy boots.

Safety training is the most important preparation you can make in preparation for the upcoming construction season. It's not that we plan to fail, but all too often due to hectic schedules, we simply fail to plan. The ASU group, in service to CRASIF, can assist you with training. There are video/DVD and safety presentation resources available through The ASU Group that allow you to conduct your own training. Also, The ASU Group Loss Control Consultants are available to provide safety training to your teams. If you are interested in discussing training options please contact Buz Haltenhoff (231-340-0672) or Bruce Gasaway (231-571-7021).

Insert to the May 2010 Pool Cue

Clever Safety Inventions

Throughout the CRASIF membership, there is no shortage of good ideas and clever gadgets for making work safer and easier. In this and in subsequent newsletters, we will showcase these inventive ideas that our members have come up with. If you have a clever and safe invention you would like to showcase, please submit your photo(s) and description to bhaltenhoff@asugroup.com.

Salt Box Supports

The two photos below are of salt box supports designed and built by the Dickinson County Road Commission crew. The photos were submitted by *Safety Coordinator*, Chuck Anderson. The supports are used to securely elevate and support salt box inserts during repairs. The supports are equipped with wheels to make moving them around safer and easier. As required with any shop-built support equipment, these supports were weight capacity tested to at least twice their expected maximum load and the maximum capacity is clearly noted on them. Also, the capacity test was documented and the information kept on file.



General Services Provided to CRASIF Members by The ASU Group:

- Advice and Consultation
- Claims Analysis
- Compliance Training
- Safety Compliance Training (self taught and consultant led)
- Custom Safety Presentations
- Site Safety Auditing with Follow-up Report
- Industrial Hygiene Testing
- Newsletter
- Safety Manual
- Tailgate Style Safety “Chalk Talks”
- Video Loan Library

Visit our web site at www.CRASIF.org. Please call if we can be of any assistance in managing your risk.

Don

Don Spray, Chairman

Mack

D. Mack Rabourn, Administrator

Dale

Dale Ruttan, Treasurer

CRASIF Meeting Schedule

Board Meeting	June 14, 2010	Copper Harbor
Annual Meeting & Workshop	September 8, 2010	Bellaire
Board Meeting	December 5, 2010	Mt. Pleasant