

Pennsylvania Develops Strategies for Decreasing Tort Liability

Tort liability is a growing concern to local municipalities and transportation agencies. Pennsylvania lost sovereign immunity in 1978 and to date has experienced a considerable number of claims for damages due to alleged negligence.

The Pennsylvania Department of Transportation (PennDOT) conducted research on its tort liability claims to learn how to better protect itself. After analysis revealed that approximately 75 percent of claims were related to maintenance operations, researchers discussed specific cases with attorneys and interviewed the maintenance managers of five counties to gain insight on setting priorities and conducting maintenance operations. Recommended strategies for reducing exposure to tort liability suits are summarized here:

Emergencies

Basic types of emergencies are knocked-down stop signs and icy spots. Less frequent emergencies include major potholes, slides, and significant pooling of water on the road. Some key steps that can be taken to protect against claims are:

- Establish a communication system that will enable police agencies to immediately contact responsible individuals who have authority to react to the emergency.
- Establish a process that will enable crews or individuals to quickly assemble and respond to emergency situations during nonworking hours.
- Ensure that the individuals responsible for accepting notification during nonworking hours have enough authority to determine if the condition constitutes an emergency or if it can be corrected during normal working hours.
- When an emergency exists, request police to control traffic at the site until the work crew arrives. Document the name of the police officer spoken with and the time of the request.

Hazards

All complaints and notification of hazards, whether written or by telephone, should be documented.

- Document all complaints on a standard form. The form should identify the person making the complaint by name, address, and phone number; the time the complaint was received; the person who received the complaint; and the time and type of corrective action taken.
- If a complaint cannot be resolved for an unusually long period of time because of other higher priority work, document what higher priority work had to be done before correction of the complaint.
- Document complaints or notifications of hazards for which other agencies (municipalities, contractors, etc.) are responsible for correcting by recording the time the responsible agency was notified and the name of the individual who received the notification.

Low Shoulders

Low shoulders at isolated locations, such as the bottom of a steep grade or on the inside of a sharp curve, sometimes pose serious reoccurring problems. A solution is to pave the shoulder with an all-weather surface capable of withstanding occasional loads.

- When a major shoulder drop-off exists and cannot be corrected within a reasonable amount of time, install flashing barricades or low shoulder warning signs.
- Low shoulders pose a higher potential for accidents in winter months and are also more difficult to repair then. Emphasize shoulder maintenance work in the Fall to minimize low shoulder problems during the Winter.

Icy Spots and Snow Removal

Specific locations on the roadway ice up frequently during winter months. Excess water on the road may be caused by poor or blocked drainage, springs, broken water mains, runoff from driveways, or proximity to a large body of water.

- Identify sites where ice frequently occurs, the cause, and the proper method to correct the problem. Do the corrective maintenance before Winter sets in.
- For sites that ice up due to illegal driveway runoff from adjacent land parcels, write to the property owners about the problem. If the property owner fails to correct the problem within a reasonable amount of time, contact the agency's legal counsel to pursue appropriate legal action.

Sign Deficiencies

Establish a process to routinely identify and correct sign deficiencies, including knocked-down, missing, and nonreflective signs, and also signs that do not comply with regulations. A recent ruling by FHWA will require all municipalities to have a sign management system by 2012.

- Treat knocked-down signs as emergencies and replace them immediately. In some cases, a temporary stop sign can be used until a sign crew can install a permanent sign. When notified of a knocked-down stop sign, request police to remain at the site and control the intersection until the agency's crew arrives and replaces the sign.
- Establish a process that will enable crews to identify signs that may be covered by foliage during Spring and Summer months and to take preventive action as needed.

Work Zones (Construction)

A contractor should not be permitted to modify a traffic control plan without the written approval of the agency.

- Prior to using a given route or combination of routes as a detour, the route should be thoroughly inspected to ensure that all traffic control devices conform to established regulation and that other deficiencies such as low shoulders and potentially hazardous potholes are corrected.
- The construction contract should contain a legal clause that indemnifies the agency in the event of an accident.
- Utility companies, municipalities, and other public bodies, which perform work with agency rights-of-way, should agree by contract to indemnify the agency from any claims associated with the work performed.

Guide Rail Repair

Establish a process to repair accident-damaged guide rails within a reasonable amount of time. Immediate repairs are advisable if there is substantial potential for a serious accident.

- Replace existing accident-damaged blunt ends of guide rails with a standard buried-end treatment.
- Managers should keep informed of the standards and criteria for each type of guide rail used.

Potholes

In the Spring, when most potholes occur, the major repair emphasis is usually on higher traffic roads. However, maintenance plans should be flexible to allow pothole repairs on lower-volume roads, if those potholes are potentially hazardous.

- Treat major potholes judged to have substantial accident potential as emergency conditions. Consider flashing barricades or repair during nonworking hours as possible solutions.

General

Teach maintenance personnel about reducing potential for claims against the agency. Supply them with case summaries (with specific names and places deleted) and court verdicts so that they can see the relationship between maintenance operations and tort laws.

- A claim may not be made until months or years after an accident. Record highway data, such as pavement, shoulder, and sign conditions, shortly after the accident occurs. Photographs are recommended and most reliable.
- Re-evaluate manuals and regulations periodically to determine if the document criteria and requirements reflect the actual capabilities and priorities of the agency, in addition to the latest acceptable standards and techniques.

Sources:

Risk Management Analysis: Highway Maintenance Operations, By Thomas E. Bryer, P.E., Director for the Center for Highway Safety, PennDOT, from TRB Transportation Research Record 929, pp. 20-24.