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Risk Management

SERVICE AGENCY

Managing Public Works Liability Risks

A key to a Resilient City

Security
Stability
Service

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Managing Public Works Liability

A Key to a Resilient City

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Goals

- ▶ Increase your awareness of the various sources Public Works Liability.
- ▶ Understand the importance of up to date system mapping.

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Goals

- ▶ Use your asset allocation system to reduce potential losses.
- ▶ Encourage the use of pro-active risk management strategies to reduce your liability.

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Working Infrastructure = Resilience

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A bad day in

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Public Works Liability

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Negligence

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Standard Of Care

- ▶ **CONSIDER . . .**
- ▶ Most cities require connection to water, and sewer systems.
- ▶ Most cities determine how both public and private portions of the system will be constructed.
- ▶ Most cities have design standards for utilities, sidewalks and roads.

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Standard Of Care

- ▶ Retain ownership of the public portions of the system.
- ▶ Thereby controlling upkeep and operation.

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Standard Of Care

- ▶ **THE STANDARD OF CARE IS "NEGLIGENCE"**
- ▶ "A city is not an insurer of the condition of its sewers; to charge it with damage caused by an obstruction in the sewers, **negligence** must be proved."

Kempton v. City of Soap Lake, 132 Wn.App. 155 (2006)

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Public Works Liability

ACTIONS THAT CAUSE LIABILITY

- ▶ Design
- ▶ Contracts
- ▶ Construction
- ▶ **Failure** maintenance and repair
- ▶ **Failure** to respond to changing circumstances

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Design Liability



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Design Liability

- ▶ SYSTEM INADEQUATELY DESIGNED
- ▶ SYSTEM DESIGNED ADEQUATELY BUT WITHOUT CAPACITY TO MEET ACTUAL DEMAND
- ▶ SYSTEM DESIGNED TO MEET TYPICAL BUT NOT FORESEEABLE DEMAND

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Design Liability Pro-Active Risk Management

- ▶ Thoroughly assess the demands that will be placed on the system.
- ▶ Research and select qualified design and construction professionals (due diligence).
- ▶ Permanently retain all specifications, contracts, design documents, as-builts

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Contracts



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Contract Liability

LIABILITY: To the maximum extent permitted by law, the City agrees to limit ABC's for damage to the sum of \$5,000, or ABC's total fee whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

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Contracts Pro-Active Risk Management

- ▶ Agency drafts the contract
- ▶ Be careful with Inter-Local agreements
- ▶ Standard specifications
- ▶ Legal counsel review
 - ▶ Specs
 - ▶ Contract
- ▶ Risk management input on indemnification & Insurance language
- ▶ Certificates of Insurance

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Construction Liability



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Construction Liability



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Construction Liability



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Construction Pro-Active Risk Management

- ▶ Follow your specs.
- ▶ On-site supervision.
- ▶ Document change orders.
- ▶ Accept only quality work.

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Maintenance Liability



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Maintenance Liability



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Maintenance Liability

- ▶ Failure to inspect to discover problems
- ▶ Failure to respond to known problems
- ▶ Failure to document

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Maintenance Liability

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Maintenance Pro-Active Risk Management

Regular inspection and maintenance

- MAINTENANCE SCHEDULE (the “when”)
- MAINTENANCE CHECKLIST (the “what”)
 - Retain maintenance records
 - Don't **limit** maintenance to a schedule
- Document, Document, Document

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Maintenance Pro-Active Risk Management

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Maintenance Pro-Active Risk Management

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Changed Circumstances

1985-2013 Population Growth

103% cities
11% unincorporated
53% state

Year	Cities	Unincorporated	State
1985	49.9%	50.1%	-
1995	53.5%	46.5%	-
2005	61.0%	39.0%	-
2013	64.4%	35.6%	-
2023 (Projected)	-	-	76,000

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Changed Circumstances

“A city is liable for flooding to property required to be connected to its sewers, which though sufficient when constructed, have become insufficient to carry off the sewage and drainage conducted into them.”

Boyer v. Tacoma, 156 Wn. 280 (1930)

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Changed Circumstances Pro-Active Risk Management

- Maintain proper capacity
- Know your capacity
- Know your load
- Limit load (moratoria) or increase capacity (construction)
- Utilize proper growth planning
- Use Asset Management

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Extraordinary Events



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Extraordinary Events

THE RULE: “Whatever the rule may be as to ordinary surface water or rainfalls, it is settled that a municipal corporation is not liable for damages caused by an overflow of its sewers occasioned by extraordinary rains or floods. . . .”

Tombari v. City of Spokane, 197 Wn. 207 (1938)

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Extraordinary Events

THE EXCEPTION:

“However, although the rain doing the damage be of an extraordinary character, yet if the negligence of the city in failing to keep the sewers open concurred and contributed to the damage, then the city has been held liable. And if drains are so inadequate that they cannot take care of the water in case of an ordinary storm, the municipality is not relieved from responsibility because the rainfall was extraordinary.”

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Asset Management Resilience



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Asset Management Resilience



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Asset Management Resilience

1. What is the current state of my assets?
2. What is my required "sustainable" level of service?
3. Which assets are critical to sustained performance?
4. What are my minimum life-cycle costs?
5. What is my best long-term funding strategy?

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Asset Management Resilience

6. Decisions through efficient and focused operations and maintenance.
7. Meeting consumer demands with a focus on system sustainability.
8. Setting rates based on sound operational and financial planning.

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Asset Management Resilience

9. Budgeting focused on activities critical to sustained performance.
10. Meeting service expectations and regulatory requirements.
11. Improving response to emergencies.
12. Improving security and safety of assets.

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Critical Assets Resilience



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Critical Assets Resilience



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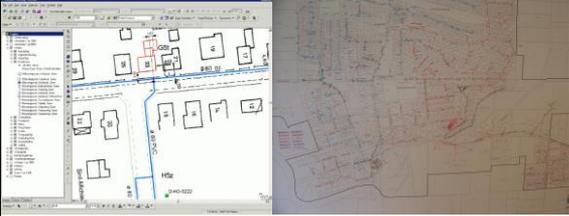
Asset Management Pro-Active Risk Management

1. Prepare an asset inventory and system map.
2. Develop a condition assessment and rating system.
3. Determine remaining useful life by consulting projected-useful-life tables or decay curves.
4. Assess values and replacement costs.

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Asset Management Pro-Active Risk Management



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Asset Management Pro-Active Risk Management

5. How do assets fail?
6. How can assets fail?
7. What are the likelihoods (probabilities) and consequences of asset failure?
8. What does it cost to repair the asset?
9. What are the other costs (social, environmental, etc.) that are associated with asset failure?

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What's the Current State Of My System's Assets?



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Asset Management Pro-Active Risk Management



▶ Power outage map

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Public Works Pro-Active Risk Management



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Asset Management Pro-Active Risk Management

1. **Moving from reactive maintenance to predictive maintenance.**
2. Knowing the costs and benefits of rehabilitation vs. replacement.
3. Looking at lifecycle costs, especially for critical assets.
4. Deploying resources based on asset conditions.
5. Analyzing the causes of failure to develop specific response plans.

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