

LEGAL & LIABILITY CONSIDERATIONS

Responsibility vs. Liability:

Municipalities may be held responsible for damages that arise from *preventable* sewage backups in the public sewer system. A municipality has a duty to exercise “*ordinary and reasonable care*” to keep its sewers free from obstructions. This generally equates to responsible sewer system repair and maintenance. However, although failure to meet repair and maintenance duties may create “ordinary negligence,” it does not necessarily mean the municipality is strictly liable in cases of sewer backups and resulting damage to property.

Some of the city’s legal protection is due to the fact that volumes of rainwater alone can cause a backup. A municipality is not obligated to build a system that is large enough to carry away all water that may result from even normal rainfall. The municipality also has immunity when it comes to the building and initial construction of sewer systems—these are legislative functions. In any litigation regarding sewer backup, a claimant must establish the *negligence* of the municipality.

Nevertheless, in some municipalities, sewer backups have led to costly and time consuming legal action against the municipality by its citizens. The backup of raw sewage into a building, onto municipal streets or into nearby surface water, carries the potential for serious health, safety and environmental problems. Such events are subject to regulations by the United States Environmental Protection Agency (EPA) as well as state and local agencies. In some cases, where flooding problems have been traceable to the city’s negligent operation of the systems, the courts have denied governmental immunity and required the municipality to pay damages. This document cannot address specific prosecutions. The highly technical legal issues associated with some of these suits can best be explained by legal council.

Liability Questions From Property Owners:

All municipal personnel should be instructed *never* to discuss findings or observations about the causes of a sewer backup with a claimant or the claimant’s service provider. This is an important aspect of personnel training. Incident investigation reports should be promptly completed and forwarded to the municipality’s carrier. If a citizen raises questions about legal responsibility, they should be advised that the insurance company will complete an investigation into the legal liability, coverage and damage. Department personnel are not qualified to discuss liability. The carrier’s claims representative will discuss these issues with claimants on behalf of the municipality.

Keys to Avoiding litigation:

The most important thing to remember is, the negligence test is less likely to be found, and litigation against the municipality is less likely to take place if:

- A regular maintenance program is in place;
- Inspections and repairs are thoroughly documented;
- Reports of problems are given quick response;
- Citizens are treated with courtesy, consideration and given requested information;
- Insurance carriers are provided with timely sewer backup reports so that questions from claimants can be promptly answered.