

SANITARY SEWER MAINTENANCE POLICY CONSIDERATIONS

Policies for maintenance activities help plan for use of the Utility's resources, establish priorities for this type of work, and provide an explanation as to how the Utility performed the maintenance. This is particularly true for sanitary sewer system maintenance. Having and following a written policy is very helpful in defending claims.

Take action

Generally, courts have held that in order to be responsible for the damages from a sanitary sewer backup, the Utility must be found negligent. To prove negligence, it must be shown that there was a defect that caused or contributed to a backup in the Utility's sanitary sewer system, the Utility had notice of the defect, and the Utility failed to correct it within a reasonable time. Notice may be actual (i.e., a resident calling the Utility to report a problem) or constructive. Constructive notice is when the Utility should have known of the existing problem.

On occasion, a utility uses the practice of "no sanitary sewer system maintenance whatsoever" as a defense. The rationale behind this behavior is explained as follows: *"If the Utility doesn't know about the problem, the Utility doesn't have to take any action to correct it. Therefore, if a sewer backup occurs my Utility won't be found negligent because we didn't know about the issue in the first place."*

It is not safe to assume that complete lack of action will put the Utility in a defensible position if issues crop up with the sanitary sewer system. The Utility will be liable if it was negligent and it will be considered negligent if the Utility's actions weren't reasonable. Unfortunately, no "standard of reasonableness" exists in state law, federal law or case law.

One method of establishing the "standard of reasonableness" in a Utility is to periodically survey neighboring or similar utilities and find the timeline on which they maintain sanitary sewer mains. If your Utility has a maintenance schedule similar to those of utilities in your area, you would likely be considered reasonable for purposes of sanitary sewer maintenance.

Develop a policy (not an ordinance)

Ordinances have the purpose of regulating people or property. They have the force and effect of law and provide a penalty if violated. Not following an ordinance is in essence breaking the law.

When considering the utility's sanitary sewer system, an ordinance should be used to establish requirements related to the public's use of that system. It would likely address the use of sump pumps, connections from private property to the public system, wastes that property owners are prohibited from putting into the system, etc.

A policy is a document typically used by a utility to establish directives and guidelines for employees. Policies may be effectively used to guide many activities at the utility, such as personnel management, street sweeping or snow plowing. Because policies are easier to update and can be more flexible and less arbitrary as to how and when things get accomplished, policies are preferred over ordinances for managing utility programs and procedures.

When considering a municipal sanitary sewer system, a policy should be used to define how the utility intends to use employees and equipment to maintain its municipal sanitary sewer system. This might include annual cleaning of sewer mains, inspection of problem areas in the system, etc.

A policy can help the Utility explain what it does and why it does it. It can also be used to support a finding that the Utility exercised reasonable care. As explained earlier, courts have generally held that in order to be responsible for the damages from a sanitary sewer backup, the Utility must be found negligent. To prove negligence, it must be shown that there was a defect that caused or contributed to a backup in the Utility's sanitary sewer system, the Utility had notice of the defect, and the Utility failed to correct it within a reasonable time.

Write the policy down

A written policy is important because it provides the Utility with a consistent and documented method of performing system maintenance. It provides guidance on how to carry out maintenance activities, identifies equipment needed for the level of maintenance established by the policy, and assists in long-term planning for employees and equipment.

When developing policy language, the Utility should involve those employees who actually do the work. Be sure the timelines and expectations established in the policy are reasonable from both a budget and workload perspective. A policy is not going to be of value to the Utility if it cannot generally be followed as written.

Request Council action

A utility council may review the sewer maintenance policy and make a motion to adopt it; or the council may make a motion delegating authority for development of such a policy to an employee. The council may or may not wish to review the final policy for comment and adoption. The practice differs from city to city and from entity to entity. The important thing to note is that documented action on the part of the council related to the sanitary sewer maintenance policy will help support that the policy was a discretionary decision.

Review the policy

Like any policy, this should be considered a "living document" and should be reviewed periodically to determine if it needs to be changed. If the goals established in the policy go unmet on a repeated basis, the Utility should consider reevaluating and perhaps adjusting those goals. The employees who perform sanitary sewer maintenance should be consulted when reviewing the policy to ensure that the policy is workable as written.

Share the policy

The provisions of the policy should be communicated to all stakeholders at the Utility. Public works employees and others responsible for carrying out or answering calls about the terms of the policy need to know what it says.

The Utility may benefit by making citizens aware of the policy through newsletters, newspapers, utility bill stuffers, web site, etc. By publicizing the policy, the Utility is making a good faith effort to educate citizens so they know what to expect in terms of level of service for sanitary sewer maintenance.

Follow the policy

It's not enough to have a well written policy. Policy makers and supervisors need to ensure that established policies are followed. Proper documentation of activities described in your policy (inspection dates and times, response to backups, etc.) helps the Utility prove that established policy is being followed.