



INFORMATION MEMO

Sanitary Sewer Incentive Program: Qualifications and Maintaining Immunity

Learn important elements cities must have in place to be eligible for participation in the League of Minnesota Cities Insurance Trust's (LMCIT's) sanitary sewer incentive program including system maps, and inspection and maintenance programs for sanitary sewer lines and lift stations. Contains the incentive program application questionnaire. Discusses elements of discretionary immunity.

RELEVANT LINKS:

[Sanitary Sewer Incentive Program.](#)

See LMCIT questionnaire, [LMCIT Sanitary Sewer Backup Incentive Questionnaire.](#)

[Minnesota Pollution Control Agency.](#)

I. LMCIT sanitary sewer incentive program

The sanitary sewer incentive program provides cities greater control in the mandatory, out-of-pocket deductibles they pay for claims and lawsuits related to sanitary sewer backups.

Generally, a mandatory deductible of \$2,500 per occurrence applies to all liability claims for sanitary sewer backups unless member cities participate in LMCIT's sanitary sewer incentive program. Member cities that use a higher deductible are not directly affected. Cities that use an aggregate limit are impacted, if the aggregate limit is reached and the maintenance deductible is less than \$2,500.

The program is meant to reduce the overall cost and frequency of sanitary sewer claims faced by members of the LMCIT property/casualty program. These claims cost about \$1.5 million per year, and city liability primarily stems from maintenance and inspection issues that lead to sewer backups from line obstructions. The program also will help reduce the extent to which cities with good sanitary sewer operations and maintenance practices end up helping to pay for losses of cities with practices that aren't so good.

II. Qualifying for the sanitary sewer incentive

To qualify for the incentive, cities must complete a sanitary sewer system questionnaire and return it to LMCIT. If the information provided confirms the city meets the following criteria, it will not be subject to the higher mandatory deductible.

- A comprehensive map of the city's sanitary sewer system.
- A documented program of regular inspection and maintenance.
- A documented program for lift station inspection and maintenance.
- An operator properly certified by the Minnesota Pollution Control Agency (MPCA).

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

LMC information memo,
[Sanitary Sewer Toolkit: A
Guide for Maintenance
Policies and Procedures.](#)

[Minnesota Pollution Control
Agency.](#)

LMC information memo,
[Making and Managing City
Contracts.](#)

A city may certify they meet the criteria either at the time of renewal or midterm. If qualification occurs midterm, LMCIT will issue an endorsement removing the minimum deductible

A. Comprehensive system map

Comprehensive maps that show the number and location of manholes, the number and location of service lines, line locations with the kind and diameter of pipe used, and the location of lift stations is all information the city collects in various ways. To qualify (in part) for the lower deductible, the city could have this information written down on anything from a hand sketched drawing on a piece of paper, to a map of the city with colored lines and locations written in by hand, or a computer-aided design (CAD) drawing that identifies every manhole, service line, etc. individually. Basically, if the city has a written map documenting these specific elements (as opposed to knowledge in an employee's head) it meets the comprehensive map criteria.

B. Inspection and maintenance

To meet this part of the incentive requirement the city must have a written:

- Inspection and maintenance policy.
- Adequate inspection and maintenance records for sewer lines, manholes, problem areas and response to backups.

The city will need to have a documented program of regular inspection and maintenance performed on sanitary sewer lines and lift stations. This must include written policies/procedures, inspection records, and maintenance records. To qualify, the city must also have a record of sanitary sewer backups.

LMCIT has created a model sanitary sewer policy/procedure and model written forms for inspection and maintenance to help cities qualify for this part of the incentive.

C. Certified operators

To meet this part of the incentive requirement, which requires an operator that has been properly certified by the MPCA be available at all times, the city must have either:

- Written documentation of appropriate operator licenses for their employees.
- Written contracts with a service company that documents the appropriate license.
- A written contract with another nearby city documenting a required level operator license is available if needed.

RELEVANT LINKS:

[Minn. Stat. § 466.03, subd. 6.](#)

Joel Muller, Loss Control
Field Services Manager
jmuller@lmc.org
651-215-4079

LMC information memo,
*Sanitary Sewer Toolkit: A
Guide for Maintenance
Policies and Procedures.*

III. Discretionary immunity

Requirements for the sanitary sewer incentive program will help the city create and maintain records to support the city's position when using a discretionary immunity defense in the event of a claim.

A. Definition

Discretionary immunity means that the city and city officials cannot be held liable for the city's discretionary decisions. A good working definition is that a discretionary decision is a planning level decision that involves a balancing of social, political, economic, and safety considerations.

Discretionary immunity helps to assure that these decisions, on how best to use the city's limited resources, can and will be made by the city officials elected for that purpose – not by the courts in a lawsuit.

B. Records of decisions

Discretionary immunity is an extremely important protection for the city. In order to receive that protection from liability, it has to be made clear to the courts that the city was in fact making a discretionary decision.

The city's record, which documents that decision-making process, will serve to help preserve the city's discretionary immunity. An example of preserving discretionary immunity would be keeping a city council's resolution to delay a sanitary sewer replacement program until 20xx because of the current state of the city's finances, staffing and any other unavailable resources at this time.

Make sure to record your city's formal council discussions. In the public record, document the decision for not implementing or the reason for delay in implementing these recommendations. This will strengthen the city's position when using a discretionary immunity defense in the event of a claim.

IV. Further assistance

For assistance in determining compliance or developing the required sewer inspection and maintenance programs, contact the city's loss control field consultant or the loss control field services manager and use LMCIT's sanitary sewer toolkit containing model forms and suggested policies to meet the criteria.