

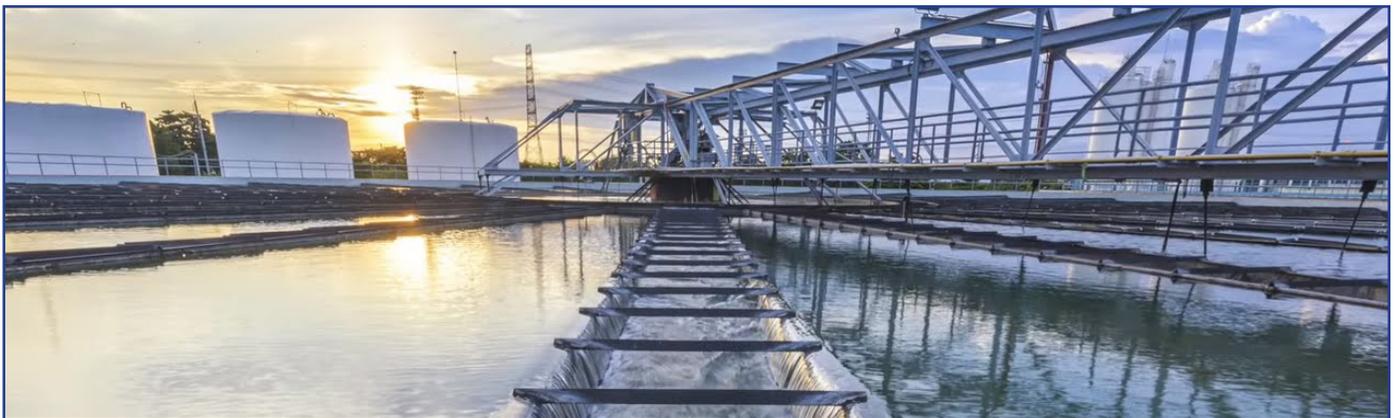


The American Water Infrastructure Act of 2018

The passage of the American Water Infrastructure Act of 2018 significantly modified the provisions of the Safe Water Drinking Act of 1974 regarding the safety and resilience of community water systems. The provisions of the act relating to “Community Water System Risk and Resilience” are contained in section 2013 which modifies section 1433 of the Safe Drinking Water Act. The provisions of the act apply to any “community water system serving a population of greater than 3,300.” The act requires each eligible water system to “conduct an assessment of the risks to, and resilience of its system.” The elements of this assessment include:

- ◆ System monitoring practices
- ◆ Financial infrastructure of the system
- ◆ Operation and maintenance of the system, and
- ◆ May include an evaluation of the capital and operational needs for risk and resilience

The assessment is a broad and deep look at the risks and mitigation measures of a water system for the purpose of maintaining its ability to resist acts of terrorism, natural disasters or to recover as quickly as possible from such events. Although the assessment is comprehensive and detailed



- ◆ The risk to the system of malevolent acts and natural hazards (the Administrator will provide “baseline information on malevolent acts or relevance to community water systems”)
- ◆ The resilience of :
 - Pipes and constructed conveyances,
 - Physical barriers,
 - Source water,
 - Water collection and intake,
 - Pretreatment, treatment, storage and distribution systems,
 - Electronic, computer or other automated system (including the security of such systems)

the water district’s certification to the EPA involves only identifying the water system, the date of the certification and a statement the system “has conducted, reviewed or revised the assessment.” Interestingly the section does not require the system to provide the certification to “any State, regional or local governmental entity solely by reason” of the requirement to submit the certification to the Administrator.

The timeline for compliance with the assessment and certification is:

- ◆ March 31, 2020 for systems serving over 100,000 people,
- ◆ December 31, 2020 for systems serving over 50,000, and
- ◆ June 30, 2021 for systems serving over 3,300

- The assessment and certification must be reviewed every five years to determine if the assessment must be revised. The Administrator has until August 2019 to prepare guidance materials for community water systems, a deadline they may not meet.
- Another important provision of the section is the Emergency Response Plan that must be completed “not later than 6 months after the completion of the assessment” described above. The Emergency Response Plan requires four major elements:
 - “Strategies and resources to improve the resilience of the system, including the physical and cybersecurity of the system;”
 - “plans and procedures that can be implemented” and “equipment that can be utilized” after a malevolent act or natural hazard threatening safe drinking water
 - “actions, procedures and equipment” that can reduce the impact of malevolent acts or natural hazards on the safety and supply of drinking water
 - Strategies for the detection of malevolent acts or natural hazard that threaten “the security or resilience of the system.”

The EPA’s guidance, due by August 2019 will include specifics on satisfying the requirements of the act. The AWIA states:

“(1) SATISFACTION OF REQUIREMENT.—A community water system that is required to comply with the requirements of subsections (a) and (b) may satisfy such requirements by—

“(A) using and complying with technical standards that the EPA Administrator has recognized under paragraph (2); and

“(B) submitting to the Administrator a certification that the community water system is complying with subparagraph (A).”

The EPA Administrator is given the authority to recognize standards for compliance that are described as

“(2) AUTHORITY TO RECOGNIZE.—Consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995, the Administrator shall recognize technical standards that are developed or adopted by third-party organizations or voluntary consensus standards bodies that carry out the objectives or activities required by this section as a means of satisfying the requirements under subsection (a) or (b).”

The standards referred to in the National Technology Transfer and Advancement Act of 1995 include the same language quoted above, referring to **“technical standards that are developed or adopted by voluntary consensus standards bodies.”** Organizations such as the American



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Water Works Association provide such standards to their members related to risk evaluation.

Another way to comply with the requirement for a risk assessment is to update an existing assessment so that it qualifies with the additional requirements in the law. Water districts may have assessments done in compliance to other standards such as the Bioterrorism Act of 2002 that required “drinking water utilities serving more than 3,300 people to conduct vulnerability assessments and develop emergency response plans.” (*EPA website, March 13, 2019, “Water System Security and Resilience in Homeland Security Research”*) It may be possible to bring these plans up to date, enhanced with analysis related to any additional requirements and re-certified to EPA to comply with the requirements of the American Water Infrastructure Act of 2018.

As larger water districts that serve over 100,000 people begin to work on complying with the AWIA by the May 30, 2020 deadline, organizations such as the AWWA, EPA, Water ISAC, National Rural Water Association and others will offer resources and training. The TWCARMF also has loss control and risk management consultants who can also provide assistance in evaluating risk and helping with emergency response plans. In late 2018 the Fund published the “Emergency Management Resources Guide” a compendium of resources for planning for emergencies, interacting with state and local emergency response organizations and a directory of state and county agencies dedicated to emergency response. Risk assessments performed by the Risk Management Consultant may consider many of the elements mentioned in the Act such as

- ◆ Risks to the system from “malevolent acts and natural hazards”
- ◆ Risks to water infrastructure such as:
 - Pipes and constructed conveyances,
 - Physical barriers,
 - Source water,
 - Water collection and intake,
 - Pretreatment, treatment, storage and distribution systems,
 - Electronic, computer or other automated system(including the security of such systems)
- ◆ Risk to System monitoring practices and SCADA systems
- ◆ Control of risk to the Financial infrastructure of the system
- ◆ Operation and maintenance of the system, and
- ◆ Risk mitigation measures for identified hazards and recovery processes

Other provisions of the act include technical assistance to water systems that serve fewer than 3,300 people and a technical assistance grant program that will help systems detect and respond to threats from “malevolent acts and natural hazards.” Up to \$25,000,000 are authorized for grants in both 2020 and 2021.

The Fund’s risk control and risk assessment consulting services are offered without charge to any member including those who serve fewer than 3,300 people as well as those who serve well over 100,000 to help districts respond to the requirements of the American Water Infrastructure Act of 2018 as additional guidance is provided by the EPA Administrator.

Sources: *Important Update from US EPA: New Requirement under the America’s Water Infrastructure Act of 2018, American Water Works Association National News, November 2018; Text: S.3021 – 115th Congress – America’s Water Infrastructure Act of 2018, Congress.Gov, American Water Works Association website, March 2019, “Complying with Risk Assessment and ERP Requirements under America’s Water Infrastructure Act,” power point, February 13, 2019 by Water ISAC, EPA and AWWA; PUBLIC LAW 104-113 NATIONAL TECHNOLOGY TRANSFER AND ADVANCEMENT ACT OF 1995 at NIST.gov; (EPA website, March 13, 2019, “Water System Security and Resilience in Homeland Security Research.”)*



Avoiding Claim Pitfalls

The Fund's claims adjusters try to make the process of filing a claim and recovering damages as fair, easy and simple as possible. But, like many things in life there can be complications and complexities that thwart the desire for simple solutions. Recent claims activity has brought to light some complications that can be prevented with thorough claims management by both the Fund and the member.

Old Storm Damage

One set of complications arises when hail season rolls around (of course, in Texas that could be any time of the year). Occasionally, new hail damage on a roof reveals that old hail damage was never repaired. The unrepaired damage makes it very difficult for the independent adjuster who is

a complicated situation for the adjuster and the member. The most common response is to adjust the claim without consideration of the prior payment but to tie the payment to the actual repair of the damage. This insures that the damage is repaired properly and there is no future conflict about unrepaired prior damage. The repair also prevents subsequent damage from rain or other moisture infiltration into the building. This is the fair result to the member and to the other members whose contributions go to pay for all claims.

Another common approach is to deduct the previous claim payment from the current estimate as part of the settlement. Most claim settlements track the progress of the repairs performed by contractors or body shops. The first payment



climbing up on the roof to determine the extent of “new” damage from the recent event. Further complication arises when payments for the “old” hail damage was not used to make repairs. When the original damage was considered just cosmetic and did not result in immediate leaks it was tempting to deposit the check and not make repairs.

The same situation can occur with hail damaged vehicles. Cosmetic damage does not affect the operability of a vehicle but sending numerous vehicles for repairs can pose real issues with the member's ability to maintain equipment and facilities and deliver water. Adjusters have the same problem with old hail damage on vehicles when the latest more serious hail storm has done enough damage to make a vehicle dangerous to drive (windshield breakage).

How does a fund adjuster fairly treat the member in the repair of recent hail damage when there is old damage? The combination of old damage, an old claim payment and new damage to a previously unrepaired roof or pick-up creates

is based on an “actual cash value” estimate that is based on the depreciated value of a property or vehicle. When the work or repair is completed the rest of the “replacement value” is paid as final settlement of the claim.

What if the unrepaired roof leaks and causes more damage? Another issue adjusters have seen with “old” damage claims is the member's attempts to repair the original damage when leaks develop and recur over time. Sometimes the damage from a leak also becomes a claim that could have been prevented if the original damage was repaired properly to begin with. And that is the answer to this problem. Repair the original damage with a competent, qualified contractor or body shop that guarantees their work.

The Fund's Property Coverage document also contains a provision related to old damage that has not been repaired in a timely way. In the definitions section “replacement cost” there is a final provision stating:

If however, the property damaged or destroyed is useless to the member or is not repaired, rebuilt, or replaced on the same or another site within two years after the loss or damage, the Trust (Fund) shall not be liable for more than the actual cash value of such property.

Property Not Reported to the Fund

Covered property is defined as property that is listed on the schedule. What if a damaged location is not listed on the member's property schedule? Technically, the claim should not be covered because the property was not listed and contributions were never collected. In cases of accidental oversight, rather than deny coverage the Fund will pay the claim then collect past contributions that would have been charged to the member if the property had been listed. The solution to this oversight is for the member to confirm the list of properties reported to the Fund at each renewal against their own asset schedule. Another result

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity...

(e) In this section:

(1) "Building or construction" includes:



of discrepancies is that the Fund will charge for properties that have been sold sometime in the past but the Fund was never told about the sale of the property. Then the member is due a refund of contributions. Both of these issues can be prevented by thoroughly reviewing the property schedule and communicating with the Fund customer services representative.

Problems with Contractors

Does the member's contractor carry workers' compensation coverage? If not, does the member want to pay for the contractor's coverage? Texas state law requires that contractors doing construction work for public entities must carry workers' compensation insurance. The following section of Title 5, Chapter 406 of the Labor Code states the requirement:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

Settlement of a recent large claim revealed that the general contractor did not carry workers' compensation insurance during the period of re-construction of a building damaged by fire. The member was charged for the contractor's workers' compensation coverage because there was no evidence of coverage in file at audit. Since the Fund could have had to pay for the contractor's employee injury, the Fund member paid the added contribution for the unexpected

coverage. This incident could have been prevented with the requirement of a certificate of insurance from the contractor and the sub-contractors before the work began.

After widespread hail storms or other catastrophes, impacted areas are swarmed with roofing contractors, body shop and “paintless dent repair” sales people and public adjusters. The Fund always recommends that a district use reputable auto hail damage repair firms and roofers that have been in business in your area for many years. Beware of public adjusters who claim to represent the claimant in negotiations with the insurance company. They charge a percentage of the claim settlement thereby reducing the amount a claimant may receive. The Fund’s adjusters work very hard to fairly settle all the claims they handle and thoroughly understand water districts and their need to get back in business as soon as possible. If there is a serious dispute about a claim, the member may appeal directly to the Fund’s board of trustees for a decision. It is very unlikely that a public adjuster would bring any value to a claim handled by the Fund.

Dueling Estimates

Beware the lowest bidder. When contractors really want your business they may present a bid that significantly undercuts other bids you may have received. A large difference in bids is a bright red flag that says examine the bid very carefully to make sure all aspects of the repair have been considered. The Fund’s property coverage promises to return the member to essentially the same condition they were in before a claim causing event. The adjuster and the field adjuster who is looking at the damage are good sources of advice about the adequacy of a contractor’s bid. Sometimes a low bid indicates the inexperience of a contractor who may not be able to finish a project at the quoted price or in a timely fashion.

The Fund’s adjusters will do everything they can to reach a fair and thorough settlement with members. Members can help by getting the documentation they need and being responsive to their attempts to communicate with you and contractors and body shops that are doing the repairs.

Obsolete Equipment

How does an adjuster determine the value or replacement cost of very old pumps, valves, gates, SCADA installations and other district equipment that has been working for years before it was damaged? Large water pumps that have lasted for forty of fifty years are no longer being manufactured, nor are replacement parts available. SCADA equipment which is a fairly new development in water system control is also prone to the same rapid obsolescence that affects other

computer systems. The rest of the definition of “replacement cost” has the answer to this dilemma. Replacement cost includes:

1. *the cost to repair; or*
2. *the cost to rebuild or replace, all as of the time, when with due diligence and dispatch the rebuilding or replacement could be effected, on the same site, with new materials of equivalent size, kind, and quality; or*
3. *on buildings or structures, machinery, fixtures, and equipment: the actual expenditure incurred in rebuilding, repairing, or replacing the damaged or destroyed property on the same or another site, but not to exceed the size and operating capacity that existed at the time of loss; or*
4. *on all other property: the amount actually expended to replace.*

The definition gives the adjuster plenty of latitude to arrange a fair settlement for replacing obsolete equipment with something new that duplicates the original “operating capacity.” An example of this occurred as a result of Hurricane Dolly. A member’s electrical service for their pump station was destroyed by the storm but the system which had been in place for over forty years could not be repaired or replaced with a similar system. The new system works but it was impossible to duplicate what was damaged.

There is an exception to the replacement cost provision for property coverage. Mobile equipment like portable pumps, backhoes, excavators, compressors, tractors and mowers are covered for “actual cash value.” The same underlying commitment to the member is used to adjust mobile equipment claims. A fair settlement takes into consideration the condition of the machine at the time of loss and market values of available equipment of the same or similar make and model.



Safety Seminar Season Starts in May

TWCARMF Risk Control Consultants have been developing their presentations for the 2019 round of Safety Seminars. Topics for this year's workshops are:

- ◆ Current Claim Trends – TWCARMF Workers' Compensation Claims Experience 2008 – 2018
- ◆ Driving Safety
- ◆ Ergonomics
- ◆ Lock Out/Tag Out
- ◆ Sprains and Strains

Topics are selected based on feedback from members, most frequent kinds of injuries and emerging claims trends observed by the Fund. Operations involving the use Lock Out/Tag Out also carry the risk of serious injury or death. The Fund wants everyone to be familiar with the exacting Lock Out/Tag Out procedures that can prevent injury or death. Improper ergonomics while working can lead to disabling injuries due to strains and repetitive trauma. Activities like lifting, running a jack hammer or sitting in front of a computer can cause injuries if proper ergonomics are not employed. Strains and sprains are the most common injuries whether they are caused by poor ergonomics or slips and falls. Another source of serious injury and cost to the district comes from driving district vehicles. Automobile accidents can result in workers' compensation claims, damage to the district's vehicle and injury to occupants of the other vehicle involved. The claims analysis presented in the workshop will illuminate the impact of all of the negative aspects of the topics presented in the workshop.

As usual the workshops will be presented at several locations around the state. Members are welcome to attend any one of the workshops but we have chosen locations convenient to most members. The following are the dates and locations for 2019:

- ◆ High Plains Underground Water Conservation District, Lubbock, May 22, 2019
- ◆ Coastal Water Authority, Houston, June 26, 2019
- ◆ Guadalupe Blanco River Authority, Seguin, July 24, 2019
- ◆ FM Global at Frisco, August 7, 2019
- ◆ San Jacinto River Authority, Conroe, Oct. 16, 2019
- ◆ Rio Grande Managers, at Tropical Behavioral Health Training Center, Weslaco, November 6, 2019

Watch for flyers that announce the details of the seminars. The materials presented are designed to enhance the knowledge and capabilities of any district employee who has safety

or risk management responsibilities including supervisors, safety officers, emergency response team members, risk managers, human resources claims coordinators and anyone who is exposed to any of the hazards being presented in the workshop. A light breakfast and hearty lunch will be served. Online registration of each attendee will insure enough workbooks and food will be available. Register at www.twcarmf.org. Please let us know you're coming. There is no charge for these workshops. Thank you to all members who have agreed to host a workshop.

Risk Management Briefs

Ebola

This extremely virulent disease is loose again in Africa. As of February 11, 2019 the outbreak had infected 759 people and killed 468 people in the Democratic Republic of the Congo (DRC). There have been no cases seen in the United States so far and the disease has not spread to bordering countries. The World Health Organization and Congolese medical responders have been effective in containing the disease within the DRC. An experimental vaccine has also been used to slow the spread. It has been given to 61,000 people in infected areas including front line medical staff and care givers. The vaccine appears to be very effective. Despite the best efforts of the World Health Organization and the Congolese medical teams persistent war in eastern provinces curtails containment efforts and displaces people as refugees to adjacent provinces contributing to the spread of the disease. (*All Africa, February 11, 2019, Congo – Kinshasa Ebola Vaccine is Key to Ongoing Efforts to Contain the DRC Outbreak*)

Hurricane Season Approaches

It is too early for Colorado State University's hurricane prediction to include estimated numbers of storms but an early paper recently published forecasts a season much like 2018. One of the general measures they use to characterize the intensity of a hurricane season is Accumulated Cyclonic Energy (ACE) which is a measure of the overall power of all the storms during a season. The ACE scores for the period 2014 through 2018 were:

2014	67	2017	226
2015	60	2018	129
2016	155	2019	???

CSU's estimate for 2019 is 130 with a 25% probability and 80 with a 20% probability. Their first concrete prediction of number of storms and types will be published on April 4, 2019.

(“Qualitative Discussion of Atlantic Basin Seasonal Hurricane Activity for 2019” Colorado State University Department of Meteorology)

OSHA Reported Workplace Fatalities in Texas in 2017

The Texas Department of Insurance, Division of Workers’ Compensation published a pamphlet entitled “Fatal Occupational Injuries in Texas 2017” in December 2018. It contains a statistical recap of all federally reported occupational fatalities during 2017. Several tables and charts are presented illustrating the main causes of fatalities and “key findings.” The most common cause of fatal accidents during work is transportation incidents related to driving. The highest number of fatal work injuries was “transportation incidents with 234 incidents” or 44% of the U.S. total in 2017. There were 545 total fatalities in Texas in 2017 for private employers. The second highest total involved fatal falls, slip or trip with 93 reported. Of this total 81 were falls to a lower level with the most common fall between 11 and 15 feet. Although driving related claims are not a leading cause of injury to member employees, the “Fall, Slip or Trip” category is the second leading cause of injury.

Over the last five complete years the cause of injuries to member employees breaks down to:

- ◆ 35% strain injuries
- ◆ 26% falls
- ◆ 15% caught in (including a fatality)
- ◆ 9% strike or struck by
- ◆ 7% motor vehicle accidents

The figures represent claims costs that impact member rates for workers’ compensation coverage. More detailed analysis of each member’s claims experience is distributed on a monthly basis. The pamphlet with complete data about fatalities in the United States in 2017 is available on the Texas Department of Insurance website at www.tdi.texas.gov/wc/safety/sis/documents/2017fatalrpt.pdf

2018 – 2019 Flu Season

The Centers for Disease Control has extended a warning that the current Flu season is far from over. Early in the season the H1N1 strain of flu was predominant but recently the H3N3 variety has taken hold and is now the most common strain. The flu vaccine formulated for this season is effective against both strains. The CDC reports that since October 1, 2018 there have been 26.3 million cases of flu and 31,200 deaths including 64 children. The Fund recommends a flu vaccination if you haven’t had one yet.

Welcome New Fund Staff

Micheon Balmer, A.R.M., Director of Pool Administration joined the Fund in September 2018 to fulfill the Program Management role. Ms. Balmer, joined the Fund from York’s Bickmore division in Sacramento, California where she administered two California public entity pools. Micheon will coordinate services and manages Fund operations for the TWCARMF. Micheon attended Heald College in California and has achieved the Associate of Risk Management (ARM) certification. She also serves on the Board of Directors of the Political Subdivision Workers’ Compensation Alliance. You can reach Micheon at 512-427-2312 or micheon.balmer@yorkrisk.com.

Mike DuBose, CSP, CFPS, ARM; Loss Control Consultant. Mike brings over 25 years’ experience in property and casualty loss control. He has provided occupational safety and property protection services for many organizations across a variety of industries. Mike previously worked for the Texas State Office of Risk Management, providing risk management services for various state agencies. DuBose received a BS in Criminal Justice and a MS in Criminal Justice Management from Sam Houston State University. He is a Certified Safety Professional (CSP), Certified Fire Protection Specialist (CFPS) and Associate in Risk Management (ARM). Mike has served as a principal member on National Fire Protection Association’s (NFPA’s) Emergency Management and Business Continuity Technical Committee, which promulgates NFPA 1600, Standard on Continuity, Emergency and Crisis Management. He has also served as a Technical Advisory Group Member of the United States Delegation for ISO Technical Committee 223 – Societal Security, which develops international standards on security, emergency management and continuity of operations. Mike will be based in Bryan, Texas and can be reached at 979-599-4486 or Michael.dubose@yorkrisk.com.

Andrew Yu recently joined the Fund as a **Senior Customer Service Representative**. He handles the day-to-day Fund coverage and renewal questions, property/vehicle change requests, evidence of insurance requests as well as assisting with MVR’s and flood zone determinations. In addition, he will be helping members with the placement of ancillary coverages, including employee dishonesty bonds, notary bonds, flood coverage, windstorm coverage in Tier 1 counties and cyber coverage. Andrew graduated from the University of Houston, majoring in Finance. He previously worked for companies such as GEICO and NORCAL Specialty Insurance Company in business development and underwriting. Once Andrew has completed is training, an introductory announcement will be sent to those Fund members he has been assigned to service.