

NH STATUTES RELATIVE TO INCIDENT MANAGEMENT

ISSUE: There are at least four state agencies with different, but primary, responsibilities in response to a traffic incident. Command is clearly set, and moves from fire to police to transportation, environment and public health as the incident response unfolds. The departments are not statutorily required to communicate or integrate their response efforts, although they have agreed to do so. Legal protections against liability in the response vary among the governmental agencies, but do not extend to contracted specialized responders from the private sector.

DEPARTMENT OF SAFETY:

RSA 154:1-d Fire Department Liability; Public Duty Rule; Status of Firefighters. –

I. Firefighting and other emergency service provided by a fire department shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for such services, or any particular level of, or manner of providing, such services; nor shall the provision of, or failure to provide, such services be deemed to create a special relationship or duty towards any person, upon which an action in negligence or other tort might be founded. Specifically:

(a) The failure to respond to a fire or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment or facilities, shall not be a breach of any duty to persons affected by any fire or other emergency.

(b) When a fire department does undertake to respond to a fire or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that fire or other emergency.

(c) A fire department shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a fire or other emergency.

(d) A fire department, in undertaking fire prevention activities, including inspections, or in undertaking to respond to a fire or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of such activity or response, nor shall any person have a right to rely on any such assumption of duty.

(e) In this section, "fire department" means any fire department of the state or its political subdivisions, including municipal fire departments organized under RSA 154:1, as well as private firefighting units which have been certified by the state fire marshal under RSA 153:4-a. For the purposes of this section and in addition to any other protections afforded to state agencies under law, the division of fire services, department of safety, shall be deemed a "fire department."

II. Any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the elected or appointed fire chief, or designee, of a municipal fire department organized in accordance with RSA 154:1, or who is participating in a fire department activity sanctioned by the local governing body or its designee, shall be an agent of the municipality, enjoying the same privileges and immunities as the municipality or employees of the municipality. Such privileges and immunities include, but are not limited to,

indemnification for civil rights damages to the extent set forth in RSA 31:106, and indemnification for any other accidental damages to the extent set forth in RSA 31:105, if the municipality has adopted that section.

III. Decisions of a fire chief or the chief's subordinates concerning the allocation and assignment of firefighters and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor a municipality shall be held liable in the absence of malice or bad faith, even when such decisions are made rapidly in response to the exigencies of an emergency.

IV. This section shall not be construed to affect the application of common law immunities, or of other statutes which may pertain to the liability of municipalities or firefighters, including, but not limited to RSA 507-B and RSA 508:17.

154:7 Authority of Fire Officer in Charge.

I. Terms used in this section shall be construed as follows, unless a different meaning is clearly apparent from the language or context, or is otherwise inconsistent with the manifest intention of the legislature.

(a) "Fire" shall include any and all effects of combustion.

(b) "Service call" shall include any request for the services of the fire department which involves a non-emergency.

(c) "Other emergency" shall include any other real emergency which does not directly involve the extinguishment of an actual fire; except that with respect to a propelled vehicle accident on or immediately adjacent to a way as defined in RSA 259:125 the term is limited to:

(1) An accident involving the transportation of any hazardous material as defined in Title 49 of the Code of Federal Regulations.

(2) An accident involving the spillage of fuel.

(3) An accident involving injury to persons in places where the fire department is responsible for the provision of emergency medical services.

(d) "Fire officer in charge" shall include the fire chief or any other elected or appointed fire officer or any member serving in the capacity of fire officer in charge.

(e) "Police officer" shall include any constable or other officer authorized to make arrests or serve process who is invested by law with authority to direct, control or regulate traffic.

II. While any duly constituted fire department recognized by the state fire marshal is responding to or operating at a fire, service call or other emergency, the fire officer in charge shall have the following authority:

(a) To control and direct the activities at such scene.

(b) To order any persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury or remove persons interfering with duties.

(c) To blockade any public highway, street or private right-of-way temporarily while at such scene.

(d) To trespass at any time of the day or night without liability while at such scene.

(e) To enter any building, including private dwellings, or upon any premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, for the purpose of extinguishing the fire.

(f) To enter any building, including private dwellings, or premises near the scene of the

fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire which is in progress in another building or premises.

(g) To direct without liability the removal or destruction of any fence, house, buildings, vehicle or other thing which the fire officer in charge may judge necessary to prevent the further spread of the fire.

(h) To request and be supplied materials such as sand, treatments, chemicals and special equipment when it is deemed a necessity, to prevent the further spread of the fire.

(i) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property.

(j) To direct industrial management or other personnel and equipment within the jurisdiction of the fire officer in charge whenever such officer's company or department is called to respond to such, if in the officer's opinion such action is in the interest of public safety.

(k) Upon request, to apprise the state fire marshal, or designee, of all hazardous materials incidents and to keep the state fire marshal or designee informed of the situation. The state fire marshal or designee shall take control of a hazardous materials incident upon the request of the local fire chief or fire official in charge, or if the state fire marshal or designee believes that the welfare of the public is not being appropriately served. Upon assuming control of a hazardous materials incident, the state fire marshal or designee shall have all of the authority outlined in this chapter.

III. Except as provided in RSA 154:7-a, the police officer in charge shall have authority to direct police officers at the scene to direct, control and regulate traffic, to gather investigative information, and to preserve and collect evidence, subject to the authority conferred upon the fire officer in charge by this section.

154:8 Duties at Scene of Fires or Other Emergencies. – The fire chief, or in the fire chief's absence the engineer or fire officer in charge, shall have the direction of all apparatus and other equipment, and the government and direction of all persons and proceedings relating to any fire or other emergency, and the other firewards or engineers shall aid as assistants.

They also have rules for response to release of or threatened release of hazardous substances. They offer training and certification under the national "Incident Command System" which was developed by the National Fire Academy (NFA) and is adopted as a National Fire Protection Association (NFPA) standard, No. 472, 1992 edition.

DEPARTMENT OF TRANSPORTATION:

236:29 Removal of Obstructions. – The department of transportation may remove all obstructions in class I, class II, class III, or class III-a highways, and the highway agent of any city or town may remove all obstructions on any other highway and on town maintained portions of class II highways.

236:32 Removal. – If any timber, lumber, stone or other thing is upon a state-maintained highway, encumbering it, the department of transportation may immediately remove the encumbrance, and, if upon any other highway, the highway agent of the city or town may

immediately remove the encumbrance, and the official shall hold the same in his possession until the costs of removal are paid.

236:38 Damaging Highway; Penalty. – If any person, without authority, willfully injures any highway or bridge thereon by destroying or taking away any plank, timber, stone or other material thereof, or by digging any pit therein, he shall be guilty of a misdemeanor.

236:39 Civil Liability. – If any person shall place any obstruction in a highway, or cause any defect, insufficiency or want of repair of a highway which renders it unsuitable for public travel, without authority, he shall be liable to the state for all damages to the highway when maintained by the state, and to the town for all damages to other highways, and for all damages and costs which the town shall be compelled to pay to any person injured by such obstruction, defect, insufficiency or want of repair.

DOT has rules at TRA 306 relative to reporting and correcting insufficiencies in the highways, which could be involved if the incident creates a highway insufficiency.

DEPARTMENT OF ENVIRONMENTAL SERVICES and DEPARTMENT OF HEALTH AND HUMAN SERVICES:

The two departments have interlocking responsibilities, as the protection of the land, air and water from pollution also serves to protect the public health. Contamination of the land, air or water from uncontrolled release of materials hazardous to human health are treated as emergencies. Areas they report on their websites having to do with emergency response. :

1. Spills: See the DES hazardous waste rules specifically: Env-Wm 513, Env-Wm 608, and Env-Wm 706.

Notices to be given:

National Emergency Response Center at 1-800-424-8802, 49 CFR 171.15

Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590 49 CFR 171.15 and 49 CFR 171.16,

United States Coast Guard – Coastal Oil Spills, 33 CFR 153.203 for oil and hazardous substances. National Response Center – Chemical or Oil spills that impact surface water – US EPA – 24 Hour emergency inland spills response

Local Police/Fire Department

NH State Police HAZ Material Response.

2. Hazardous waste transporter:

Registration required to pick up in NH or pass through NH

Hazardous material transportation, NH Department of Safety

Vehicle requirements rules Env-Wm 600

Discharge of hazardous materials/waste Env-Wm 608.01(b)

3. Drinking Water Protection

New Hampshire's approach to protecting drinking water sources* consists of three steps: (1) delineating the area to be protected, (2) inventorying potential contamination sources (PCSs), and (3) managing potential contamination sources.

POTENTIAL CONTAMINATION SOURCES (PCSs)*	
X Vehicle service and repair shops	X Salt storage and use
X General service and repair shops	X Snow dumps
X Metalworking shops	X Stormwater infiltration ponds or leaching catch basins
X Manufacturing facilities	X Cleaning services
X Underground and aboveground storage tanks	X Food processing plants
X Waste and scrap processing and storage	X Fueling and maintenance of earth moving equipment
X Transportation corridors	X Concrete, asphalt, and tar manufacture
X Septic systems (at commercial and industrial facilities)	X Cemeteries
X Laboratories and certain professional offices (medical, dental, veterinary)	X Hazardous waste facilities
X Use of agricultural chemicals	

*as identified in New Hampshire's Groundwater Protection Act (RSA 485-C)

4. Emergency Planning for Public Water Systems

New Hampshire Administrative Rule Env-Ws 360.14, which requires all community public water systems to have a formal emergency plan. Emergency plans are action steps to follow should a source of drinking water become contaminated or any other component of the storage or distribution system becomes damaged or is at risk. The rule requires that all community water systems submit a formal plan to DES once every six years.

5. Department of Health and Human Services

Under the NH State Emergency Plan, DHHS is responsible for all or parts of several emergency services programs. Organizationally, several responsibilities are implemented by staff from DHHS under the direction of the Coordinator of Emergency Services (CES).

RSA 107-B, Nuclear Planning and Response Program; RSA 161, Human Services (section 2, item XIII)

Federal:

Title 7, Agriculture, Chapter 2, Food & Nutrition Service, Department of Agriculture, Part 280, Emergency Food Assistance for Victims of Disaster; Chapter 68, Disaster Relief, Subchapter I, Findings-Declarations-Definitions, 42 USC 5121 et seq; RELATED RESOURCE Public Law 93-288 as amended, Robert Stafford Disaster Relief and Emergency Assistance Act

ISSUE: there is concern that recovery responders could be held liable to vehicle or load owners if in the process of recovery the vehicle or load suffers additional damage. NH law is silent on the issue. Other states, such as Florida are exploring the issue, but there is no consensus among the states to extend liability protection to these responders. See a proposed Florida law that attempted to do this.

NH laws with respect to removal of vehicles by wreckers.

“Abandoned Vehicles”, RSA 262:31 through 40-c. This statute was last amended in 1989.

The order to remove a vehicle must come from an “Authorized Official”, which is defined in RSA 259:4-a as being a state police officer, highway enforcement officer, or peace officer. The order to remove can be as a result of “obstructing any way or the access thereto” or being “a menace to traffic”, or being unattended on a toll road or turnpike in excess of 4 hours. See RSA 262:32. The “authorized official” hires the removal agent, and the vehicle owner is liable for towing and storage unless there is an administrative hearing which rules that the police made an error, in which case the police pay. The police are in charge of hiring of a wrecker service. The Department of Safety has rules for the conduct of hearings to determine if the police officer was reasonable and correct in ordering removal of a vehicle and liability for towing and storage charges. Rule Saf-C 2400.

Wreckers are covered as to equipment required by RSA 266:108 through 112. There is no separation by the capacity of the wrecker except at the 11000 GVW point, and that is only for the size of safety chain. There is no special statute regulating wreckers capable of superheavy moves, such as a tractor trailer. The department of safety controls the registration of the wrecker, inspectional requirements, driver licensing qualifications and endorsements for the operator, and demonstration of competency. Wreckers are regulated by the PUC as common carriers of property under RSA 375-B. They have to obtain a certificate of public necessity to operate and carry other people’s property (the towed vehicle).

Proposed Florida law, not yet enacted:

144 Section 3. Subsection (3) of section 316.061, Florida
145 Statutes, is amended to read:
146 316.061 Crashes involving damage to vehicle or property.--
147 (3)(a) Employees or authorized agents of the Department of
148 Transportation, law enforcement with proper jurisdiction, or an
149 expressway authority created pursuant to chapter 348, in the
150 exercise, management, control, and maintenance of its highway
151 system, may undertake the removal from the main traveled way of
152 roads on its highway system of all vehicles incapacitated as a
153 result of a motor vehicle crash and of debris caused thereby.
154 Such removal is applicable when such a motor vehicle crash
155 results only in damage to a vehicle or other property, and when
156 such removal can be accomplished safely and will result in the
157 improved safety or convenience of travel upon the road. The

158 driver or any other person who has removed a motor vehicle from
159 the main traveled way of the road as provided in this section
160 shall not be considered liable or at fault regarding the cause
161 of the accident solely by reason of moving the vehicle.

162 (b) Employees or authorized agents of an authorized or
163 unauthorized wrecker company, as defined in s. 321.051 or s.
164 323.002, may remove a vehicle or vehicle cargo from a public
165 road without consent of the owner or operator of the vehicle or
166 vehicle cargo upon request of a law enforcement officer as
167 defined in s. 112.531, a sheriff or deputy sheriff as defined in
168 s. 30.072, or a firefighter as defined in s. 112.81. The
169 employee or authorized agent of the wrecker company, its wrecker
170 operators, and other employees or agents of the wrecker company,
171 the law enforcement officer, sheriff, or deputy sheriff, the
172 firefighters and emergency medical services providers, and other
173 entities identified under this subsection are not liable for any
174 property damages or claims of damage for the removal if the
175 vehicle or vehicle cargo is removed to improve safety or
176 convenience of travel on the road.