



UNIVERSITY OF WISCONSIN SEA GRANT INSTITUTE

Liability for Watercraft Inspection and Decontamination Stations in Wisconsin



Quagga mussels on a marina support structure. Photo by J.N. Stuart.

Overview

Watercraft inspection and decontamination (WID) programs are effective at preventing the spread of aquatic invasive species. As interest in watercraft decontamination grows and more watercraft are decontaminated, there is an increased chance that someone might be injured or a boat damaged during the decontamination process. This can raise concerns that the person or organization performing the decontamination could be held liable for any injury or damage that occurs.

The liability risks associated with watercraft decontamination will vary depending on the location of the station, the agency or organization responsible for the equipment and operations, and the type of personnel present. Immunity from liability may apply for some entities and individuals; however, it is important to ensure that all WID stations use appropriate risk management strategies as litigation is always a possibility. Common risk management strategies include: identifying and reducing dangers; establishing safety measures; training employees and enforcing

safety standards; obtaining waivers from boat owners prior to conducting decontaminations; and purchasing insurance when necessary.

This fact sheet is designed to help organizations think about potential liability before implementing a watercraft decontamination program. Many aquatic invasive species prevention programs are implemented through partnerships among entities with different liability risks. Careful consideration of these potential issues prior to implementation may help satisfactorily resolved concerns before the program is even started.

This material contained here is for informational purposes only. Wisconsin Sea Grant and the National Sea Grant Law Center do not accept any liability for the use of the information or advice contained in this fact sheet. Any entity considering operating a WID station should consult with a licensed attorney in their state.

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The table below outlines potential liability for WID programs. The liability varies based on the entity operating the WID station, as well as who is (or is not) manning the stations. For government-run WID stations, many of the potential issues depend on whether an action is discretionary – or not required by statute or agency regulation or policy.

FEDERAL STATIONS	
Entity Liability	<p>The federal government generally enjoys broad immunity from civil or criminal lawsuits. However, the federal government can be held liable for the negligent or wrongful acts of employees in limited circumstances. Immunity will only apply if the employee’s action is considered discretionary.</p> <p>Employees injured in the performance of job-related duties are covered by the Federal Employees Compensation Act. Claims for workers compensation benefits would be handled by the U.S. Department of Labor.</p>
Employee Liability	<p>Federal employees also have broad immunity against tort claims for acts that involve an element of discretion.</p>
Contractor Liability	<p>Contractors providing services to the federal government may have some protections against tort liability. The applicability of the “government contractor” defense depends on the structure of the contract and the nature of the services provided.</p> <p>Contractors could be held liable for injuries sustained by their employees while performing job-related duties. Contractors usually purchase workers compensation insurance to manage this risk.</p>
Volunteer Liability	<p>Federal law limits the personal tort liability of volunteers. Volunteers are not liable for harm caused by them in the scope of their responsibilities, unless the volunteer deliberately disregards the required standard of care.</p> <p>Volunteers are not covered by the Federal Employees Compensation Act, and therefore could not submit claims for compensation benefits for personal injuries.</p>
Unmanned	<p>As stated, the federal government generally enjoys broad immunity.</p> <p>The placement of an unmanned station and associated signage would likely be considered discretionary.</p> <p>There may be a duty to properly maintain equipment. Failure to abide by the applicable standard of care could result in liability.</p>

- Low Risk
- Medium Risk
- High Risk



STATE/LOCAL STATIONS	
Entity Liability	<p>The state of Wisconsin and its local governments have broad immunity against tort claims. Wisconsin's protections are similar to federal law, in that the state enjoys immunity for acts that involve an element of discretion.</p> <p>The Wisconsin Workers Compensation Act covers employees of the state and local governments injured in the performance of their duties.</p>
Employee Liability	<p>State and local government employees also have broad immunity against tort claims for acts that involve an element of discretion.</p>
Contractor Liability	<p>Contractors providing services to the state or local governments may have immunity if the contractor is acting as an agent of the government and performing an act that involves an element of discretion or judgment. For immunity to apply, contractor must meet a three-part test to qualify as an agent.</p> <p>The Wisconsin Workers Compensation Act may cover injured independent contractors in certain circumstances.</p>
Volunteer Liability	<p>State law provides volunteers with protection against liability consistent with federal law.</p> <p>Volunteers are not covered by the state workers compensation laws.</p>
Unmanned	<p>The state of Wisconsin and its local governments have broad immunity against tort claims. Wisconsin's protections are similar to federal law, in that the state enjoys immunity for acts that involve an element of discretion.</p>

NONPROFIT STATIONS	
Entity Liability	<p>Nonprofits do not have immunity from tort claims.</p> <p>Nonprofit may be held liable to an injured party for a contractor's or volunteer's actions.</p> <p>Nonprofit may be held liable for injuries suffered by volunteers.</p> <p>Injured employees may be covered by workers compensation if nonprofit meets state requirements to provide worker compensation insurance.</p>
Employee Liability	<p>Nonprofit directors may have immunity unless the director engages in willful misconduct.</p> <p>Nonprofit members may have immunity for tortious act of the nonprofit or other nonprofit member.</p> <p>Employees of nonprofits that do not fall into one of the above categories could be held liable for wrongful acts.</p>
Contractor Liability	<p>Contractors providing services would not be entitled to any immunity from tort claims. If the contract includes an indemnification clause, the contractor may have a right to seek compensation from the nonprofit for any damages or losses sustained.</p>
Volunteer Liability	<p>State law provides volunteers with protection against liability consistent with federal law.</p> <p>An injured volunteer could file suit against nonprofit for damages.</p>
Unmanned	<p>No immunity for nonprofit.</p>

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