

NIRMA's

Loss Prevention and Safety Department Monthly Newsletter

NIRMA's Safety Shorts

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May Is Employee Health and Fitness Month

The National Association for Health and Fitness (NAHF) www.physicalfitness.org was founded in 1979 by the President's Council on Physical Fitness, Sports and Nutrition and its mission is to improve the quality of life for all individuals by promoting physical fitness, sports and healthy lifestyles.



GENERAL SAFETY

By Chad Engle, Loss Prevention and Safety Specialist

Safety Committee News

I am pleased to report that NIRMA had 51 members submit safety committee minutes for the first quarter of 2020. That is excellent! If these members continue holding their meetings and submitting minutes, we could beat the old record.

Please do not let the coronavirus derail your safety committee meetings. I have been performing safety committee assessments via Zoom meetings and telephone calls and I am hearing that some members are not meeting due to the coronavirus meeting restrictions. I don't think that is a good idea and I want to offer, again, my services of hosting your safety committee meeting via Zoom if you are unable to do so because of meeting distance and attendee limitations. I think now more than ever we need to keep communication going and ensure our employees know what is happening and what to expect. Here at NIRMA we have moved from quarterly safety committee meetings to holding meetings every other week. With the recommendations and restrictions subject to change I think it makes sense to keep all officials and employees on the same page.

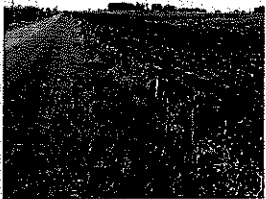
Safety committee assessments are going well. If you receive an email from me asking to set one up, there is nothing to worry about. It is a short meeting where we discuss the NIRMA Best Safety Practices for Counties, which of them your county/agency is utilizing and the resources NIRMA provides you to assist in following them. The meetings normally take less than an hour to complete and are painless. It is a great time for me to catch up with safety committee chairpersons, discuss what is new with their county/agency and what is new here at NIRMA.

Keep your eyes open for some exciting developments on NIRMA's new website! The loss prevention staff are busy working on a course catalog of all the different training topics that we can present on-site once the gathering directives allow. I am also working on NIRMA's own line of toolbox talks. These should start appearing in the Loss Prevention area of the website within the next month.

We are still here and willing to do whatever we can to help! Please do not hesitate to reach out if needed. I can be reached at chad@nirma.info and 1.800.642.6671. Take care.

Loss Prevention
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Fencing along and
across county
roads cause
accidents and
injuries as well as
making county
road and rights-of-
way maintenance
very difficult.
Snow removal and
mowing operations
can be severely
hindered by said
fences



Be Safe.

HIGHWAY DEPARTMENT

By Tim Baxter, Road Safety and Loss Prevention Specialist

FENCING AND COUNTY ROADS

Fences are important to let cattle graze safely. But it is a problem for counties when fences are placed next to county roads on the county's right-of-way, or worse yet, across a county road.

Nebraska state law (Neb. Rev. Stat. §39-301) clearly states that any person who obstructs a public road (including the right-of-way) with fencing is guilty of a criminal misdemeanor offense.

Nebraska state law (Neb. Rev. Stat. §39-307) also states that a person "who builds a barbed wire fence across or in any plain traveled road or track in common use, either public or private, without first putting up sufficient guards . . . shall be guilty of a . . . misdemeanor and shall be liable for all damages that may accrue to the party damaged by reason of such barbed wire fence."

While these laws seek to put a penalty on the person who builds a fence that interferes with a road, this does not always mean that the county has no legal responsibility. If a county has knowledge of, or reason to know, that such a fence has been installed, and a traveler or property is injured by it, there is still a risk of legal liability. Counties have general legal obligations under Nebraska law to maintain county roads and to warn of known dangers to the traveling public on county roads. It is all too easy for a lawyer to come up with an argument that a county should bear or share in civil legal responsibility in the event that a fence on or next to a county road causes an auto accident or injury.

Section 39-301 allows a highway superintendent to order the owner of a fence on or next to a county road to remove the fencing. And, if the notice or order is ignored by the owner, the county may remove the fence, and recover the costs of removal from the owner in a county court lawsuit.

It should go without saying that these legal rights of the counties should be exercised to their fullest.

Some great news is that we now have Nebraska Supreme Court precedent that fully supports the right of Counties to take legal actions to prevent illegal private fencing within county road rights-of-way. In Cedar County, a landowner was prosecuted and convicted of misdemeanor criminal offenses several times for repeatedly placing his cattle fence in the county road ditch. Cedar County also filed a civil lawsuit against the landowner and obtained a permanent injunction (court order) to prevent the landowner from continuing to do this. The Nebraska Supreme Court upheld both the criminal convictions and the injunction.¹ In the criminal proceeding, the Court made clear that the term "public road" includes the entire area within the County's right-of-way (usually 66 feet, measured from the centerline of the roadway on each side to a 33-foot distance to the ditch on each side, or as otherwise established by the County Board), and that any fence placed within the County's right-of-way would be unlawful. The Court found that in addition to being convicted of misdemeanors, the landowner could also be subject to the civil injunction, because the criminal convictions with minimal fines were

¹ *State v. Thelen*, 305 Neb. 334 (2020); *County of Cedar v. Thelen*, 305 Neb. 351 (2020).

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We understand this is a very difficult and challenging time for everyone. Be assured NIRMA remains strongly committed to serving and supporting our members. And please do everything you can to maintain your own personal health and take recommended steps to avoid exposure to this virus.

FENCING AND COUNTY ROADS *continued*

not enough to stop this landowner. The Court found that the injunction was necessary against that landowner to "protect the public from future repetitive acts."

It seems obvious that fencing across a county road, even a low-volume or dead-end road, creates an unnecessary risk of injuries to the traveling public. The same is true of fencing alongside the roadway. This kind of fence placement also interferes with a county's routine road maintenance responsibilities.

A claim was recently settled following mediation on behalf of a NIRMA member county that arose from improper fencing. A young woman and her passenger were seriously injured after running into a barbed wire fence on an ATV, where a landowner had placed a fence directly across the road to let his cattle graze in the area. It was not clear how often the road was in use. The road had never been properly vacated. It was not clear whether the county board knew or should have known that the road was being fenced by the landowner. Prior to the accident, the county had not taken any steps to put the landowner on notice that the fence needed to be removed. This lawsuit emphasizes the need to take the proactive steps outlined above to stop landowners from engaging in this practice.

County Boards or County Attorneys may hesitate to carry through prosecuting these matters. It can be difficult to confront landowners about the issue, especially when they are valued constituents, or even friends. But, apathy and failure to act in these situations can cost significant dollars. And the Cedar County cases mentioned above show that proactive efforts, as demonstrated by the Cedar County Highway Superintendent, Cedar County Board and Cedar County Attorney, can be very successful to stop this dangerous practice, and mitigate liability risks.

There are provisions in the NIRMA coverage agreement that exclude claims involving "expected or intended injury" and "violations of laws, policies, or procedures." These are similar to exclusions found in most comparable insurance policies. In a county where improper fencing is widespread or deliberately ignored by county officials, these could potentially be applied in the event of a claim. But careful risk management practices should prevent that.

One suggestion is for a county board to develop and vote to post a public notice in the local newspaper ordering landowners to remove obstructive fencing in or next to public county roads. The notice can be a warning that the county takes enforcement of state law on this topic seriously. An example of this kind of public notice is below. Be sure to review this kind of possible action in advance with your county attorney.

As a highway superintendent myself for over 20 years, I recall a former county board member who installed a fence on county right-of-way along a county road. I worked with the county attorney at the time to take the matter to court to recover damages after he refused to remove the fence. He told me he thought it was his right as a former board member and a landowner to have the fence. The court, however, disagreed. He was found guilty of a misdemeanor and ordered to pay court costs and a fine.

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FENCING AND COUNTY ROADS *continued*

It was not a pleasant experience, but one that was necessary in the best interests of the county.

I urge our member counties to take the responsibility to enforce state law and try to get landowners to remove traffic hazards such fences on or next to county roads. This is truly a risk that you do not have to face if you take simple steps.

Please contact me with any questions or for samples of letters to landowners regarding this issue, by calling 402-310-4417 or via email at tim@nirma.info. Be Safe.

PUBLIC NOTICE

From the ____ County Board

To all ____ County landowners and tenants, Nebraska Revised Statute §39-301 prohibits the installation of fencing that obstructs or encroaches upon county roads or rights-of-way. Violators will be prosecuted consistent with applicable law.

LAW ENFORCEMENT AND CORRECTIONS

By Terry Baxter, Law Enforcement and Safety Specialist

COVID-19

I think it is important that we repeatedly address the Coronavirus disease and the havoc it continues to place on the law enforcement and corrections communities. What a difficult time this has been for everyone, especially those on the front lines, answering the calls for service, still having to deal with the public on a one to one basis. All the things you prepare staff for to be successful in their profession and then challenges such as COVID-19 appear and impact your agencies workforce and job tasks.

The Centers for Disease Control and Prevention (CDC) put information on their website addressing what first responders needed to know about Coronavirus disease. I know through conversations I have had with many of you, that you have been accessing this information regularly and implementing safe practices for your personnel, but again based on the daily COVID-19 news reports both, nationwide and by Governor Ricketts, it is essential that each day you continually ensure personnel are following and practicing the recommendations being made.

CDC Recommendations:

Protecting Yourself from Exposure

- If possible, maintain a distance of at least six (6) feet.
- Practice proper hand hygiene. Wash your hands with soap and water for at least 20 seconds. If soap and water are not readily available and illicit drugs are not suspected to be present, use an alcohol-based hand sanitizer with at least 60% alcohol.

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We're on the Web

www.nirma.info

Please contact

Terry Baxter at

402.742.9220 or

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or email:

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LAW ENFORCEMENT AND CORRECTIONS

COVID-19 *continued*

- Do not touch your face with unwashed hands.
- Have trained emergency medical services assess and transport anyone you suspect may have COVID-19 to a health care facility.
- Ensure only trained personnel wearing appropriate personal protective equipment (PPE) have contact with individuals who may have or have COVID-19.
- Know your exposure control plan and participate in all-hands training on the proper use of PPE for respiratory protection, if available.

Recommended Personal Protective Equipment (PPE)

Law enforcement and correction personnel who must make contact with individuals confirmed or suspected of having COVID-19 should follow the CDC's Interim Guidance for EMS.

Minimum PPE recommended:

- A single pair of disposable examination gloves.
- Disposable isolation gown or single-use disposable coveralls.
- Any NIOSH-approved particulate respirator (N-95 or higher-level respirator). Facemasks are an acceptable alternative until supply chain is restored.
- Eye protection.
- If unable to wear disposable gown or coveralls because it limits access to duty belt and gear, ensure duty belt and gear are disinfected after contact with the individual.

Contact Occurred During Apprehension

- Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
- Follow your agencies standard operating procedures for the containment and disposal of used PPE.
- Follow your agencies standard operating procedures for containing and laundering clothes, avoid shaking clothes.

I realize for most the information is redundant, but it still bears noting until we get back to some form of normalcy.

Remember during this time of uncertainty and until we are able to conduct on-site meetings, training, etc. you can still access our on-line courses or request a training session provided by our Loss Prevention staff through the use of Zoom.

SHOUT OUT: National Public Safety Telecommunications Week is held every year during the second week of April honoring telecommunicators in the public safety community. On behalf of NIRMA, I want to thank all of our member telecommunicators who dedicate their lives serving the public and helping to keep first responders safe.

"Confidence, courage and determined spirit are vital for surviving hard times." — Lailah Gifty Akita